Agenda

Advisory Committee on Rules of Appellate Procedure

April 5, 2016

12:00 to 1:30 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

Welcome and approval of minutes.	Tab 1	Joan Watt
Consideration of comments to Rule 4. Motion to reinstate the time to appeal.	Tab 2	Tim Shea
Consideration of comments to e-filing rules.	Tab 3	Tim Shea
Rule 52. Child welfare appeals.	Tab 4	Mary Westby
Rule 37. Suggestion of mootness; voluntary dismissal.	Tab 5	Judge Voros
Rule 23D. Challenging the constitutionality of a statute or ordinance.	Tab 6	Tim Shea
Rule 40. Attorney's or party's certificate; sanctions and discipline.	Tab 7	Tim Shea

Committee Webpage: http://www.utcourts.gov/committees/appellate_procedure/

Meeting Schedule:

May 5, 2016

June 2, 2016

September 1, 2016

October 6, 2016

November 3, 2016

Tab 1

MINUTES

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

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

Judicial Council Room
Thursday, March 3, 2016
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Joan Watt- Chair	Paul Burke
Troy Booher	Bridget Romano
Marian Decker	
R. Shawn Gunnarson	
Alan Mouritsen	
Judge Gregory Orme	
Adam Pace – Recording Secretary	
Rodney Parker	
Clark Sabey	
Lori Seppi	
Tim Shea-Staff	
Ann Marie Taliaferro	
Judge Fred Voros	
Mary Westby	

1. Welcome and approval of minutes **Joan Watt**

Ms. Watt welcomed the committee to the meeting and invited a motion to approve the minutes from the March meeting.

Mr. Sabey moved to approve the March minutes. Ms. Decker seconded the motion and it passed unanimously.

2. Linking to the trial court record **Penny Rainaldi**

Mr. Shea introduced Penny Rainaldi, a member of the IT team working to develop the court's system for appellate e-filing. Ms. Rainaldi presented an early proof of concept for the e-filing system that allows attorneys to hyperlink record citations in appellate briefs to the electronic record. She demonstrated how to create the links and electronically file a brief using a sample brief supplied by Mr. Parker. The committee's overall impression of the demonstration was very positive.

Mr. Booher suggested and others agreed that it would be a good idea to have a uniform naming convention for briefs and other motions that are e-filed. Mr. Shea explained that the e-filing interface will have a narrow range of naming options for briefs and motions.

Mr. Sabey asked whether pro se litigants will also have access to the system. Mr. Shea explained that they will have access to the electronic record and the tools for creating a document with links, but that an attorney login will be required to e-file the brief.

Ms. Taliaferro expressed concern about the amount of time and work it will take attorneys or their staff to manually create links using the system. Judge Voros commented, and others agreed, that it would be more efficient if the system could automatically populate the links, instead of requiring attorneys to input them manually. Mr. Shea and Ms. Rainaldi said they will explore that option.

3. Consideration of comments to: Tim Shea
Rule 4. Appeal as of right: when taken.
Rule 28A. Appellate mediation office.

Mr. Shea reported that there were no public comments on the proposed amendments to Rule 28A or Rule 4, and that these rules are now ready for the committee's recommendation to the Utah Supreme Court. Mr. Shea explained that the civil rules committee is still considering amendments to some rules that may impact Rule 4, and that Rule 4 will be submitted for consideration to the court in a packet together with the civil rules committee's recommendations when they are finished.

Judge Voros expressed surprise that there were no public comments, and concern as to whether anyone was reading the proposed amendments.

Ms. Westby commented that she does not like the amendment to include URCP 60b motions in the list of motions that tolls the time for appeal under Rule 4(b). She asked whether the deadline for those motions could be changed to be consistent with the deadline for motions under URCP 59. Mr. Shea stated that that the committee has agreed to make that change to 28 days.

The committee continued to discuss whether a motion or claim for attorney's fees should be included in Rule 4(b). Mr. Booher suggested that the rule should be clarified to state that the tolling provision also applies to motions or claims for attorney's fees other than those brought under URCP 73—for example, when a request for fees is granted earlier in the litigation. Ms. Watt proposed that the committee should wait to approve Rule 4 or make further changes to it until they hear back from the civil rules committee about the proposed changes to related civil rules. The committee agreed with this proposal.

Ms. Watt invited a motion for the committee to approve the amended Rule 28A and recommend it to the Utah Supreme Court.

Mr. Booher moved to approve Rule 28A and recommend it to the Utah Supreme Court. Mr. Sabey seconded the motion and it passed unanimously.

4. Rule 4. Appeal as of right: when taken **Tim Shea**

Mr. Shea explained that the Utah Supreme Court requested a recommendation from the committee about whether a time limit should be imposed for filing a motion under Rule 4(f) to reinstate the time to file a direct appeal in criminal cases. Mr. Shea proposed amending the rule to impose a one year time limit.

Ms. Watt recalled that the committee already discussed this issue and decided to not include a time limit. Ms. Decker stated that she asked for the issue to be revisited. The committee proceeded to discuss whether a time limit should be imposed.

Ms. Decker supported including a time limit and agreed with Mr. Shea's proposal of one-year. Judge Voros suggested including a one year time limit with a good cause exception. Ms. Westby commented that a year is too short. Mr. Sabey expressed concern, and others agreed, that the district court might construe a time limit in the rule as a presumption that an untimely motion should be denied.

Ms. Watt opposed including a time limit. She commented that there are very few of these requests, and that it is important to protect the constitutional rights of defendants to appeal. She said that a time limit is not necessary in Rule 4(f) because the procedure established in *Manning v. State* for analyzing these motions already requires the court to consider whether good cause exists to reinstate the time for a direct appeal.

Ms. Watt asked whether the concern about imposing a time limit is related to appeals from justice court. Ms. Westby recalled that the committee's conclusion from the last time this issue was discussed was that a time limit should be imposed only for appeals from justice court.

Mr. Shea and Mr. Sabey proposed revisiting this issue after they gather more information from the court and the criminal rules committee. The committee agreed with this proposal.

5. Rule 2. Suspension of rules **Clark Sabey**

Mr. Sabey introduced the proposed amendment to Rule 2 to include Rule 14(a) in the list of rules the court cannot suspend in a particular case. There were no comments on the proposal. Ms. Watt invited a motion approving the amendment.

Ms. Taliaferro moved to approve the proposed amendment. Mr. Booher seconded the motion and it passed unanimously.

6. Other Business **Tim Shea**

The other items on the agenda were tabled until the next meeting. The committee did not discuss other business.

7. Adjourn

The meeting was adjourned at 1:30 p.m. The next meeting will be held on Tuesday, April 5, 2016.

Tab 2

Timothy M. Shea
Appellate Court Administrator

Andrea R. Martinez
Clerk of Court

Supreme Court of Utah
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210
Appellate Clerks' Office
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March 29, 2016

To: Appellate Rules Committee
From: Tim Shea
Re: Rule 4.

(1) CONSIDERATION OF COMMENTS

The amendments to Rule 4 are part of a package of civil and appellate rules designed to treat a motion or claim for attorney fees the same as other post-trial motions: the time to appeal does not begin to run until the dispositive order is entered. We did not receive any comments to the proposed amendment. It is ready for your recommendation to the court.

There were comments to civil rules 54, 58A, and 73, which are part of the package, but none of them addressed the timeliness of an appeal when there is a motion or claim for attorney fees. The civil rules committee addressed those comments on March 23, and I have attached the draft rules with that committee's final recommendations.

You asked that I raise with the civil rules committee the question: Do the proposed amendments include the scenario in which a party files a post-judgment motion to determine both liability for and the amount of attorney fees and the scenario in which a party files a claim for a specified amount, liability having been resolved earlier in the litigation? That committee's conclusion is "yes." Appellate Rule 4(b) specifies the post-judgment proceedings that qualify to postpone the time to appeal from the judgment, and it includes both "a motion or claim for attorney fees." Further, civil Rule 58A(f) will provide: "A motion or claim for attorney fees does not affect the finality of a judgment for any purpose, but, under Rule of Appellate Procedure 4, the time in which to file the notice of appeal runs from the disposition of the motion or claim."

The appellate and civil rules need to be submitted to the Supreme Court as a package because each depends on the others.

(2) MOTION TO REINSTATE THE TIME TO APPEAL

In Ralphs v. Mc Clellan the Supreme Court held that Rule 4(f) encompasses appeals from the justice court to the district court in the form of a trial *de novo*, and, since there is no deadline in Rule 4(f) for a motion to reinstate the time to appeal, the motion can be filed at any time. The court also asked this committee to consider an appropriate limit on the time for a motion and indicated its "inclination to amend the rule prospectively to add a time limitation going forward."

You asked that I follow up with the criminal rules committee to determine the status of your earlier recommendation that the deadline for a motion to reinstate the time for appeal from justice court to district court be governed by the Rules of Criminal Procedure. I discovered that a proposal had been published for comment last May but was never pursued beyond that. Because of the delay, the proposal has again been published for comment, and the comment deadline is May 1. The proposal in URCrP 38 would require that the motion be filed within 6 months of the judgment, unless there is excusable neglect.

The issue for this committee is whether there should be a time limit for appeals from criminal judgments of the district court, and, if so, what should the limit be.

Encl: Rule of Appellate Procedure 4
Rules of Civil Procedure 54, 58A, and 73
Rule of Criminal Procedure 38

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 dispositive 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 relief under Rule 60(b) of the Utah Rules of Civil Procedure if the motion is filed no later than 28 days after the judgment is entered;

(b)(1)(F) A motion or claim for attorney fees under Rule 73 of the Utah Rules of Civil Procedure; or

(b)(1)(G) 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~~ paragraph (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~~ paragraph (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) Motion for extension of time.

(e)(1) The trial court, upon a showing of good cause, may extend the time for filing a notice of appeal upon motion filed before the expiration of the time prescribed by paragraphs (a) and (b) of this rule. Responses to such motions for an extension of time are disfavored and the court may rule at any time after the filing of the motion. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

(e)(2) The trial court, upon a showing of good cause or excusable neglect, 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 court may rule at any time after the filing of the motion. That a movant did not file a notice of appeal to which paragraph (c) would apply is not relevant to the determination of good cause or excusable neglect. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

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

(g) Motion to reinstate period for filing a direct appeal in civil cases.

(g)(1) The trial court shall reinstate the thirty-day period for filing a direct appeal if the trial court finds by a preponderance of the evidence that:

(g)(1)(A) The party seeking to appeal lacked actual notice of the entry of judgment at a time that would have allowed the party to file a timely motion under paragraph (e) of this rule;

(g)(1)(B) The party seeking to appeal exercised reasonable diligence in monitoring the proceedings; and

(g)(1)(C) The party, if any, responsible for serving the judgment under Rule 58A(d) of the Utah Rules of Civil Procedure did not promptly serve a copy of the signed judgment on the party seeking to appeal.

(g)(2) A party seeking such reinstatement shall file a written motion in the trial court within one year from the entry of judgment. The party shall comply with Rule 7 of the Utah Rules of Civil Procedure and shall serve each of the parties in accordance with Rule 5 of the Utah Rules of Civil Procedure.

(g)(3) If the trial court enters an order reinstating the time for filing a direct appeal, a notice of appeal must be filed within 30 days after the date of entry of the order.

Advisory Committee Note

Paragraph (f) was adopted to implement the holding and procedure outlined in Manning v. State, 2005 UT 61, 122 P.3d 628.

Rule 54. Judgments; costs.

(a) Definition; form. "Judgment" as used in these rules includes a decree or order that adjudicates all claims and the rights and liabilities of all parties or any other order from which an appeal of right lies. A judgment should not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

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

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

(d) Costs.

(d)(1) To whom awarded. Unless a statute, these rules, or a court order provides otherwise, costs should be allowed to the prevailing party. Costs against the state of Utah, its officers and agencies may be imposed only to the extent permitted by law.

(d)(2) How assessed. The party who claims costs must ~~within~~ not later than 14 days after the entry of judgment file and serve a verified memorandum of costs. A party dissatisfied with the costs claimed may, within 7 days after service of the memorandum of costs, object to the claimed costs.

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

(e) Amending the judgment to add costs or attorney fees. If the court awards costs under paragraph (d) or attorney fees under Rule 73 after the judgment is entered, the prevailing party must file and serve an amended judgment including the costs or attorney fees. The court will enter the amended judgment unless another party objects within 7 days after the amended judgment is filed.

Advisory Committee Notes

2016 amendments

Paragraph (e) describes the process by which the determination of costs or fees becomes part of the judgment. If there is legal error in entering judgment for costs or attorney fees, that error is reviewable on appeal just like any other. But if the underlying basis for the award of costs or attorney fees, such as the defendant's liability in the action, is not upheld on appeal, the party should not be liable for costs or fees even if the award of costs or fees was entered without error or was not reviewed.

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

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

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

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

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

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

(b)(4) for relief under Rule 60; or

(b)(5) for attorney fees under Rule 73.

(c) Preparing a judgment.

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

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

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

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

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

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

(c)(4)(C) within 7 days after a party has objected to the form of the judgment. (The party preparing the proposed judgment may also file a response to the objection.)

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

(e) Time of entry of judgment.

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

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

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

(e)(2)(B) 150 days have run from the clerk recording the decision, however designated, that provides the basis for the entry of judgment.

(f) Award of attorney fees. A motion or claim for attorney fees does not affect the finality of a judgment for any purpose, but, under Rule of Appellate Procedure 4, the time in which to file the notice of appeal runs from the disposition of the motion or claim.

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

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

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

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

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

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

The clerk must sign the judgment for the specified sum.

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

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

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

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

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

Advisory Committee Note

2015 amendments

The 2015 amendments to Rule 58A adopt the requirement, found in Rule 58 of the Federal Rules of Civil Procedure, that a judgment be set out in a separate document. In the past, problems have arisen when the district court entered a decision with dispositive language, but without the other formal elements

of a judgment, resulting in uncertainty about whether the decision started the time for appeals. This problem was compounded by uncertainty under Rule 7 about whether the decision was the court's final ruling on the matter or whether the prevailing party was expected to prepare an order confirming the decision.

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

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

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

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

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

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

Under amended Rule 7(j), a written decision, however designated, is complete—is the judge's last word on the motion—when it is signed, unless the court expressly requests a party to prepare an order confirming the decision. But this should not be confused with the need to prepare a separate judgment when the decision has the effect of disposing of all clams in the case. If a decision disposes of all claims in the action, a separate judgment is required whether or not the court directs a party to prepare an order confirming the decision.

~~Rule 58A is similar to Fed. R. Civ. P. 58 in listing the instances where a separate document is not required. The state rule differs from the federal rule regarding an order for attorney fees. Fed. R. Civ. P. 58 includes an order for attorney fees as one of the orders not requiring a separate document. That particular order is omitted from the Utah rule because under Utah law a judgment does not become final~~

~~for purposes of appeal until the trial court determines attorney fees. See *ProMax Development Corporation v. Raile*, 2000 UT 4, 998 P.2d 254. See also Utah Rule of Appellate Procedure 4, which states that the time in which to appeal post-trial motions is from the disposition of the motion.~~

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

2016 amendments

The 2016 amendments in paragraphs (b) and (f) are part of a coordinated effort with the Advisory Committee on the Rules of Appellate Procedure to change the effect of a motion for attorney fees on the appealability of a judgment. The combined amendments of this rule and Rule of Appellate Procedure 4 effectively overturn *ProMax Development Corp. v. Raile*, 2000 UT 4, 998 P.2d 254 and *Meadowbrook, LLC v. Flower*, 959 P.2d 115 (Utah 1998). Paragraph (f) also addresses any doubts about the enforceability of a judgment while a motion for attorney fees is pending.

Under *ProMax* and *Meadowbrook* a judgment was not final until the claim for attorney fees had been resolved. An appeal filed before a claim for attorney fees had been resolved was premature and would be dismissed. Under the 2016 amendments, the time to appeal runs from the order disposing of a timely motion for attorney fees, just as it does timely motions under Rules 50, 52 and 59. The 2016 amendments to appellate Rule 4(b) also add a motion under Rule 60(b), but only if the motion is filed within 28 days after the judgment.

If a notice of appeal is filed before the order resolving the timely motion, the appeal is not dismissed; it is treated as filed on the day the order ultimately is entered, although the party must file an amended notice of appeal to appeal from the order disposing of the motion.

Although this change overturns *ProMax* and *Meadowbrook*, it is not the same as the federal rule. Under Federal Rule of Civil Procedure 58(e):

> Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4 (a)(4) as a timely motion under Rule 59.

In other words, a motion for attorney fees extends the time to appeal, but only if the trial court judge rules that it does. In the 2016 amendment of the state rules, a timely motion for attorney fees automatically has that effect.

Although the 2016 amendments change a policy of long standing in the Utah state courts, the amendments will help to protect the appellate rights of parties and avoid the cost of premature appeals.

Rule 73. Attorney fees.

(a) Time in which to claim. ~~When attorney fees are authorized by contract or by law, a request for attorney fees shall be supported by affidavit or testimony~~ Attorney fees must be claimed by filing a motion for attorney fees no later than 14 days after the judgment is entered unless the party claims attorney fees in accordance with the schedule in ~~subsection (d)~~ paragraph (f) or in accordance with Utah Code Section 75-3-718 and no objection to the fee has been made.

(b) Content of motion. ~~An affidavit supporting a request for or augmentation of attorney fees shall set forth~~ The motion must:

(b)(1) ~~the basis for~~ specify the judgment and the statute, rule, contract, or other grounds entitling the party to the award;

(b)(2) ~~a reasonably detailed description of the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work~~ disclose, if the court orders, the terms of any agreement about fees for the services for which the claim is made;

(b)(3) specify factors showing the reasonableness of the fees, if applicable;

(b)(4) specify the amount of attorney fees claimed and any amount previously awarded; and

(b)(5) disclose if the ~~affidavit is in support of~~ attorney fees are for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney ~~is not sharing~~ will not share the fee ~~or any portion thereof~~ in violation of Rule of Professional Conduct 5.4.

(c) Supporting affidavit. The motion must be supported by an affidavit or declaration that reasonably describes the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work.

(d) Liability for fees. The court may decide issues of liability for fees before receiving submissions on the value of services. If the court has established liability for fees, the party claiming them may file an affidavit and a proposed order. The court will enter an order for the claimed amount unless another party objects within 7 days after the affidavit and proposed order are filed.

~~(c)~~ (e) Fees claimed in complaint. If a party ~~requests~~ claims attorney fees ~~in accordance with the schedule in subsection (d)~~ under paragraph (f), the ~~party's~~ complaint ~~shall~~ must state the basis for attorney fees, state the amount of attorney fees allowed by the schedule, cite the law or attach a copy of the contract authorizing the award, and, if the attorney fees are for services rendered to an assignee or a debt collector, a statement that the attorney will not share the fee ~~or any portion thereof~~ in violation of Rule of Professional Conduct 5.4.

~~(d)~~ (f) Schedule of fees. Attorney fees awarded under the schedule may be augmented only for considerable additional efforts in collecting or defending the judgment and only after further order of the court.

Amount of Damages, Exclusive of Costs, Attorney Fees and Post-Judgment Interest, Between	and:	Attorney Fees Allowed
0.00	1,500.00	250.00
1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00
3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	or more	775.00

Advisory Committee Notes

Rule 38. Appeals from justice court to district court.

(a) Appeal of a judgment or order of the justice court is as provided in Utah Code Section 78A-7-118. A case appealed from a justice court shall be heard in a district courthouse located in the same county as the justice court from which the case is appealed. In counties with multiple district courthouse locations, the presiding judge of the district court shall determine the appropriate location for the hearing of appeals.

(b) The notice of appeal.

(b)(1) A notice of appeal from an order or judgment must be filed within 30 days of the entry of that order or judgment.

(b)(2) Contents of the notice. The notice required by this rule shall be in the form of, or substantially similar to, that provided in the appendix of this rule. At a minimum the notice shall contain:

(b)(2)(A) a statement of the order or judgment being appealed and the date of entry of that order or judgment;

(b)(2)(B) the current address at which the appealing party may receive notices concerning the appeal;

(b)(2)(C) a statement as to whether the defendant is in custody because of the order or judgment appealed; and

(b)(2)(D) a statement that the notice has been served on the opposing party and the method of that service.

(b)(3) Deficiencies in the form of the filing shall not cause the court to reject the filing. They may, however, impact the efficient processing of the appeal.

(c) Motion to reinstate period for filing appeal.

(c)(1) Upon a showing that a defendant was deprived of the right to appeal, the justice court shall reinstate the thirty-day period for filing an appeal. A defendant seeking such reinstatement shall file a written motion in the justice court and serve the prosecuting entity. The court shall appoint counsel if the defendant qualifies for court-appointed counsel. The prosecutor shall have 21 days after service of the motion to file a written response. If the prosecutor opposes the motion, the justice court shall set a hearing at which the parties may present evidence. If the justice court finds by a preponderance of the evidence that the defendant has demonstrated that the defendant was deprived of the right to appeal, it shall enter an order reinstating the time for appeal. The defendant's notice of appeal must be filed with the clerk of the justice court within 30 days after the date of entry of the order.

(c)(2) Absent a showing of excusable neglect, a motion to reinstate may be filed no later than six months after the original time for appeal has expired.

~~(c)~~(d) Duties of the justice court. Within five days of receiving the notice of appeal, the justice court shall transmit to the appropriate district court a certified appeal packet containing copies of:

~~(c)~~(d)(1) the notice of appeal;

~~(c)~~(d)(2) the docket;

~~(c)~~(d)(3) the information or citation;

~~(c)~~(d)(4) the judgment and sentence, if any; and

~~(c)~~(d)(5) any other orders and papers filed in the case.

~~(d)~~(e) Duties of the district court.

~~(d)~~(e)(1) Upon receipt of the appeal packet from the justice court, the district court shall hold a scheduling conference to determine what issues must be resolved by the appeal. The district court shall send notices to the appellant at the address provided on the notice of appeal. Notices to the other party shall be to the address provided in the justice court docket for that party.

~~(d)~~(e)(2) If the defendant is in custody because of the matter appealed, the district court shall hold the conference within 7 days of the receipt of the appeals packet. If the defendant is not in custody because of the matter appealed, the court shall hold the conference within 28 days of receipt of the appeals packet.

~~(e)~~(f) District court procedures for trials de novo. An appeal by a defendant pursuant to Utah Code Ann. §78A-7-118(1) shall be accomplished by the following procedures:

~~(e)~~(f)(1) If the defendant elects to go to trial, the district court will determine what number and level of offenses the defendant is facing.

~~(e)~~(f)(2) Discovery, the trial, and any pre-trial evidentiary matters the court deems necessary, shall be held in accordance with these rules.

~~(e)~~(f)(3) After the trial, the district court shall, if appropriate, sentence the defendant and enter judgment in the case as provided in these rules and otherwise by law.

~~(e)~~(f)(4) When entered, the judgment of conviction or order of dismissal serves to vacate the judgment or orders of the justice court and becomes the judgment of the case.

~~(e)~~(f)(5) A defendant may resolve an appeal by waiving trial and compromising the case by any process authorized by law to resolve a criminal case.

~~(e)~~(f)(5)(A) Any plea shall be taken in accordance with these rules.

~~(e)~~(f)(5)(B) The court shall proceed to sentence the defendant or enter such other orders required by the particular plea or disposition.

~~(e)~~(f)(5)(C) When entered, the district court's judgment or other orders vacate the orders or judgment of the justice court and become the order or judgment of the case.

~~(e)~~(f)(5)(D) A defendant who moves to withdraw a plea entered pursuant to this section may only seek to withdraw it pursuant to the provisions of Utah Code Ann. § 77-13-6.

~~(e)~~(f)(6) Other dispositions. A defendant, at a point prior to judgment, by plea or trial, may choose to withdraw the appeal and have the case remanded to the justice court. Within 14 days of the defendant notifying the court of such an election, the district court shall remand the case to the justice court.

~~(f)~~(g) District court procedures for hearings de novo. If the appeal seeks a de novo hearing pursuant to Utah Code Ann. § 78A-7-118(3) or (4); and

~~(f)~~(g)(1) the court shall conduct such hearing and make the appropriate findings or orders.

~~(f)~~(g)(2) Within 14 days of entering its findings or orders, the district court shall remand the case to the justice court , unless the case is disposed of by the findings or orders, or the district court retains jurisdiction pursuant to §78A-7-118(6).

~~(g)~~(h) Retained jurisdiction. In cases where the district court retains jurisdiction after disposing of the matters on appeal, the court shall order the justice court to forward all cash bail, other

security, or revenues received by the justice court to the district court for disposition. The justice court shall transmit such monies or securities within 21 days of receiving the order.

~~(h)~~(i) Other bases for remand. The district court may also remand a case to the justice court if it finds that the defendant has abandoned the appeal.

~~(i)~~(j) Justice court procedures on remand. Upon receiving a remanded case, the justice court shall set a review conference to determine what, if any proceedings need be taken. If the defendant is in custody because of the case being considered, such hearing shall be had within five days of receipt of the order of remand. Otherwise, the review conference should be had within 28 days. The court shall send notice of the review conference to the parties at the addresses contained in the notice of appeal, unless those have been updated by the district court.

~~(j)~~(k) During the pendency of the appeal, and until a judgment, order of dismissal, or other final order is entered in the district court, the justice court shall retain jurisdiction to monitor terms of probation or other consequences of the plea or judgment, unless those orders or terms are stayed pursuant to Rule 27A.

~~(k)~~(l) Reinstatement of dismissed appeal.

~~(k)~~(l)(1) An appeal dismissed pursuant to subsection (h) may be reinstated by the district court upon motion of the defendant for:

~~(k)~~(l)(1)(A) mistake, inadvertence, surprise, excusable neglect; or

~~(k)~~(l)(1)(B) fraud, misrepresentation, or misconduct of an adverse party.

~~(k)~~(l)(2) The motion shall be made within a reasonable time after entry of the order of dismissal or remand.

Tab 3

Timothy M. Shea
Appellate Court Administrator

Andrea R. Martinez
Clerk of Court

Supreme Court of Utah

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Salt Lake City, Utah 84114-0210
Appellate Clerks' Office
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March 29, 2016

To: Appellate Rules Committee
From: Tim Shea
Re: Consideration of comments to e-filing amendments

As of today, there have been only 2 questions posted as comments to the e-filing amendments—one with a "yes" answer, the other with an "almost certainly"—but no comments. However, there were several observations raised as a result of the CLE held on March 18. The subcommittee will address those on March 31 and come to the meeting with recommendations. I have attached the draft rules.

SUMMARY OF AMENDMENTS

The appellate courts anticipate e-filing some time in 2016. Programming has begun and is being given priority. Many of the Rules of Appellate Procedure need to be amended to accommodate e-filing, and these are published for comment. The deadline for comments is April 1. To submit a comment, go to http://www.utcourts.gov/utc/rules-comment/2016/02/18/appellate-efiling-rules/.

The model for e-filing may change as the courts and lawyers gain experience, but the following points describe the main features of the model that we anticipate:

- As in the district court and in the juvenile court, e-filing in the appellate courts will be optional when it is available, with mandatory e-filing by lawyers about 2-4 months after that. The AOC will host e-filing. There will be no third-party service providers, as there are in district court.
- Self-represented parties will continue to file and serve documents by traditional means, but will be encouraged to e-mail them to the court and to the other parties.
- Printed courtesy copies of some briefs will be required. Otherwise only a digital file will be filed.
- As in the district court, e-filing a document has the effect of serving the document on other e-filers. Self-represented parties will have to serve and be served using traditional means, which will include email. Unlike URCP 5, service by email on a self-represented party will not require the party's agreement.
- The transcriber will electronically file the transcript, as is now the case.
- The record in the review of an administrative agency will be assembled either as a digital or paper file, depending on the capability of the agency, and delivered to the appellate court.
- There will be no traditional assembly of the record on appeal from the district court or juvenile court nor an electronic equivalent of assembly into a single digital file. Exhibits offered or introduced as evidence and not electronically filed in the trial court will be sent to the appellate court in the traditional way.

- The digital records of the district court and juvenile court will be available to lawyers, self-represented parties and the courts through the courts' e-filing systems. A digital file of assembled agency records will be available to lawyers, self-represented parties and the courts as a digital file. A paper file of assembled agency records will be checked out of the agency or the appellate court in the traditional manner. The court will print select portions of a digital file for a self-represented party upon request and a showing of need.
- Citations in briefs and other appellate filings to the trial court record will be by the number of the document in the trial court docket and the relevant page number within the document. The citation to the trial court record will be a link to the relevant page of the document. Citations to the record of an administrative agency's digital or paper file will be by citation to the relevant Bates number or page number of the file. The IT department of the AOC has developed an application to simplify the process of creating links, and the application will be publicly available.
- A traditional signature on filings will be permitted but not required. The effective signature is the filer's electronic signature, which is governed by Title 46, Chapter 4, Uniform Electronic Transactions Act. The filer's electronic signature carries all of the representations and consequences of a traditional signature.

~~Rule 5-201. Requests for enlargement of time by court reporters and court transcribers.~~

~~Intent:~~

~~To establish a process to expedite the preparation of transcripts and promote consistency in granting requests for enlargements of time.~~

~~To establish a process which will facilitate the disposition of appeals.~~

~~Applicability:~~

~~This rule shall apply to the appellate courts.~~

~~Statement of the Rule:~~

~~(1) To obtain an enlargement of time in which to complete and file a transcript under Rule 12(a) of the Rules of Appellate Procedure, the reporter or transcriber shall file with the clerk of the appellate court a request for an enlargement of time showing good cause for permitting the extension. The request shall contain the following elements which are similar in form to a motion for an enlargement of time under Rule 22(b) of the Rules of Appellate Procedure:~~

~~(A) A statement of the reasons for granting the request.~~

~~(B) A statement of whether the reporter or transcriber has obtained any previous enlargements of time and, if so, the number and duration of such enlargements.~~

~~(C) A statement of the original deadline sought to be extended.~~

~~(D) A statement of the date certain on which the reporter or transcriber will file the transcript with the court from which the appeal is taken, and~~

~~(E) A certificate of service of the request upon all parties to the appeal or their counsel of record or a stipulation by them to the extension request.~~

~~(2) The request for an enlargement of time shall be filed prior to the expiration of the deadline sought to be extended. A request for an enlargement of time that fails to meet these requirements shall be docketed but denied by the clerk of the appellate court.~~

~~(3) If a reporter or transcriber fails to file a transcript with the trial court and notify the clerk of the appellate court of such filing within the time permitted by Rule 12(a) or within an enlarged period of time as permitted by the appellate court, the court reporter or transcriber shall be subject to disciplinary action pursuant to CJA 3-304(5)(C) and may be ordered to appear before a panel of the appellate court and show cause why sanctions should not be imposed.~~

Standing Order No. 8

(As to establishment of a pilot program to require submission of electronic courtesy briefs to the Utah Supreme Court and the Utah Court of Appeals)

Effective May 15, 2008

The Utah Supreme Court hereby establishes a pilot program to determine the feasibility and desirability of requiring parties to provide the Utah appellate courts with a courtesy copy on compact disk (CD) of all briefs on the merits.

As of the effective date of this order, any party filing a brief on the merits in the Utah Supreme Court or the Utah Court of Appeals, including an intervenor and any person who has been granted permission to appear amicus curiae, shall submit a so-called Courtesy Brief on CD in searchable Portable Document Format (PDF) to the appellate court and to the parties in addition to complying with the filing and service requirements set forth in the Utah Rules of Appellate Procedure. The filing party shall include in the Courtesy Brief, the appendices, including relevant portions of the record, in PDF. The filing party shall submit the Courtesy Brief to the appellate court and the parties within fourteen (14) days after the filing of the printed form of the brief.

A person confined in a state institution and not represented by counsel who is filing a brief on the merits is exempt from this standing order. Any party or party's attorney who lacks the technological capability to comply with the standing order, must file a motion to be excused from compliance at the same time that the party files its brief on the merits.

As part of the pilot program, the Utah Supreme Court urges a filing party who has the technological capability to do so to submit a so-called Enhanced Courtesy Brief that includes hyperlinks to the cases, statutes, treatises, and portions of the record cited in the brief. A party electing to submit an Enhanced Courtesy Brief, shall submit the Enhanced Courtesy Brief to the appellate court and the parties within fourteen (14) days after the filing of the printed form of the brief. To view sample pages from an Enhanced Courtesy Brief (with hyperlinks), please click here.

Rule 3. Appeal as of right: how taken.

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

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

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

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

~~**(e) Service of notice of appeal.** The party taking the appeal shall give notice of the filing of a notice of appeal by serving each party to the judgment or order in accordance with the requirements of the court from which the appeal is taken. If counsel of record is served, the certificate of service shall designate the name of the party represented by that counsel.~~

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

~~**(g)**~~ **(e) Docketing of appeal.** Upon the filing of the notice of appeal, the clerk of the trial court ~~shall immediately transmit a certified copy of the notice of appeal, showing the date of its filing, and a statement by the clerk~~ will promptly notify the clerk of the appellate court of the appeal, indicating whether the filing fee was paid and whether the cost bond required by Rule 6 was filed. ~~Upon receipt of the copy of the notice of appeal, the clerk of the appellate court shall enter the appeal upon the docket.~~

Advisory Committee Notes

~~The designation of parties is changed to conform to the designation of parties in the federal appellate courts.~~

~~The rule is amended to make clear that the mere designation of an appeal as a "cross-appeal" does not eliminate liability for payment of the filing and docketing fees. But for the order of filing, the cross-appellant would have been the appellant and so should be required to pay the established fees.~~

The provisions for service, proof of service, and paying filing fees, formerly found in this rule, have been consolidated in Rule 21.

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~~ Notice 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~~ must file notice of the filing of the petition ~~on~~ with 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~~ must 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~~ must 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.

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

~~documents~~ parts of the record that may be relevant to determining whether to grant permission to appeal may be referenced by identifying trial court docket entries of the documents.

(d) Page limitation. A petition for permission to appeal ~~shall~~ may not exceed 20 pages, excluding table of contents, if any, and the addenda.

~~**(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.~~

~~**(f)**~~ **(e) Response; no reply.** No petition will be granted in the absence of a request by the court for a response. No response to a petition for permission to appeal will be received unless requested by the court. Within ~~10~~ 14 days after an order requesting a response, any other party may oppose or concur with the petition. Any response to a petition for permission to appeal ~~shall be~~ is subject to the same page limitation set out in ~~subsection~~ paragraph (d), and may refer to parts of the record that may be relevant to determining whether to grant permission to appeal by identifying trial court docket entries of the documents. ~~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 response on the petitioner.~~ The petition and any response ~~shall~~ will be submitted without oral argument unless otherwise ordered. No reply in support of a petition for permission to appeal ~~shall be~~ is permitted, unless requested by the court.

~~**(g)**~~ **(f) 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~~ that will be considered and may be on ~~such~~ terms, including the filing of a bond for costs and damages, ~~as~~ determined by the appellate court ~~may determine~~. ~~The clerk of the appellate court shall immediately give the parties and trial court notice by mail or by electronic order of any order granting or denying the petition.~~ If the petition is granted, the appeal ~~shall be~~ is deemed to have been filed and docketed by the granting of the petition. All proceedings subsequent to the granting of the petition ~~shall~~ will be as, and within the time required, for appeals from final judgments except that no docketing statement ~~shall~~ may be filed under Rule 9 unless ~~the court~~ otherwise ~~orders~~ ordered, and no cross-appeal may be filed under ~~rule~~ Rule 4(d).

(g) Notice of order. The clerk of the appellate court will promptly transmit the order granting or denying the petition to the parties and trial court. If the order grants the petition, the clerk of the appellate court will promptly transmit a copy of the petition to the trial court.

(h) Stays pending interlocutory review. The appellate court will not ~~consider~~ grant 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~~ paragraph (a) ~~of this rule~~.

The provisions for service, proof of service, and paying filing fees, formerly found in this rule, have been consolidated in Rule 21.

Rule 9. Docketing statement.

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

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

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

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

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

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

(c)(2)(ii) The date the notice of appeal was filed in the trial court.

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

(c)(2)(iv) If a~~ny~~ motion~~s~~ listed in Rule 4(b) ~~were~~ was filed, the date ~~such~~ the motion was filed in the trial court and the date of entry of ~~any~~ the order disposing of ~~such~~ the motion.

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

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

(c)(3) If the appeal is taken from an order certified as final pursuant to Rule 54(b) of the Utah Rules of Civil Procedure, a statement of what claims and parties remain before the trial court for adjudication.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Consequences of failure to comply. In a civil appeal, failure to file a docketing statement within the time period provided in ~~subsection~~ paragraph (b) may result in dismissal of a civil appeal or a petition for review. In a criminal case, failure to file a docketing statement within the time period provided in ~~subsection~~ paragraph (b) may result in a finding of contempt or other sanction.

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

Advisory Committee Notes

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

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

~~The content of the docketing statement has been reordered and brought into conformity with revised Rule 4, Utah Rules of Appellate Procedure.~~ This rule is satisfied by a docketing statement in compliance with ~~form 7~~ the forms found at http://www.utcourts.gov/howto/appeals/#forms.

The provisions for service formerly found in this rule, have been consolidated in Rule 21.

Rule 10. Motion for summary disposition.

(a) Time for filing; grounds for motion. The court, on motion or its own initiative must dismiss an appeal or petition for review if the court lacks jurisdiction; or may summarily affirm the order or judgment under review if no substantial question is presented; or may summarily reverse on the basis of manifest error.

(a)(1) A party may ~~move~~ at any time file a motion to dismiss the appeal or the petition for review on the basis that the appellate court lacks jurisdiction.

(a)(2) Within ~~10~~ 14 days after the docketing statement or an order granting a petition under Rule ~~5(e)~~ 5 is ~~served~~ filed, a party may ~~move~~ file a motion:

(a)(2)(A) To affirm the order or judgment ~~which is the subject of~~ under review on the basis that ~~the grounds for review are so insubstantial as not to merit further proceedings and consideration by the appellate court~~ there is no substantial question; or

(a)(2)(B) To reverse the order or judgment ~~which is the subject of~~ under review on the basis of manifest error.

(b) ~~Number of copies; f~~Form of motion. ~~For matters pending in the Supreme Court, an original and seven copies of a motion made pursuant to this rule shall be filed with the Clerk of the Supreme Court. For matters pending in the Court of Appeals, an original and four copies shall be filed with the Clerk of the Court of Appeals.~~ The motion ~~shall~~ must be in the form prescribed by Rule 23.

(c) Filing of response. ~~The~~ Within 14 days after the motion is filed, the party moved against ~~shall have 10 days from the service of such a motion in which to~~ may file a response. ~~For matters pending in the Supreme Court, an original response and seven copies shall be filed in the Supreme Court. For matters pending in the Court of Appeals, an original response and four copies shall be filed in the Court of Appeals.~~

(d) Submission of motion; suspension of further proceedings. Upon the filing of a response or the expiration of time therefor, the motion ~~shall~~ will be submitted to the court for consideration and an appropriate order. The time for taking other steps in the appellate procedure is suspended pending disposition of a motion to affirm or reverse or dismiss.

~~**(e) Ruling of court.** The court, upon its own motion, and on such notice as it directs, may dismiss an appeal or petition for review if the court lacks jurisdiction; or may summarily affirm the judgment or order which is the subject of review, if it plainly appears that no substantial question is presented; or may summarily reverse in cases of manifest error.~~

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

Rule 11. The trial court record on appeal.

(a) Composition of the record on appeal. ~~The original papers~~ All documents and exhibits filed in the trial court, ~~including the presentence report in criminal matters,~~ and the transcript of proceedings, if any, ~~the index prepared by the clerk of the trial court, and the docket sheet,~~ ~~shall~~ constitutes the trial court 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) Cross-designation by appellee. If the appellant does not order the entire transcript, the appellee may, within 10 days after the service of the designation or certificate described in paragraph (e)(1) of this rule, file and serve on the appellant a designation of additional parts to be included.~~

(b) Access to the record; exhibits. The electronic record is available through the e-filing system. Upon application and a showing of good cause, the clerk of the appellate court will print the requested parts of the record for a self-represented party. The trial court clerk must scan into the trial court record exhibits capable of being scanned, such as documents and photographs. Upon request by a party or the clerk of the appellate court, the clerk of the trial court will transmit to the appellate court an exhibit not capable of being scanned.

~~**(f)**~~ **(c) Agreed statement as the record ~~on appeal~~.** ~~In lieu~~ Instead 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~~ any additions ~~as~~ the trial court

~~may~~ considers necessary ~~fully~~ to present the issues ~~raised by the appeal~~, ~~shall~~ will be approved and entered ~~by~~ in the trial court record. The clerk of the trial court ~~shall transmit the statement to~~ will promptly notify the clerk of the appellate court ~~within the time prescribed by Rule 12(b)(2)~~ of entry of the statement. ~~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)~~ (d) 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~~ must be served on the appellee, who may serve objections or propose amendments within ~~10~~ 14 days after service. The statement and any objections or proposed amendments ~~shall~~ must 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~~ will be entered in the trial court record. The clerk of the trial court will promptly notify the clerk of the appellate court of entry of the statement.

~~(h)~~ (e) Correction or modification of the record.

(e)(1) If a party claims that the transcript of a hearing is incorrect, the appellate court may compare the transcript to the audio or video record or may remand the case to the trial court to compare the records. If the transcript does not correctly reflect the content of the audio or video record, the court will order the court reporter or official court transcriber to correct the transcript.

(e)(2) If any difference other than an incorrect transcript arises as to whether the record truly discloses what occurred in the trial court, the difference ~~shall~~ must 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, 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, ~~the parties by stipulation,~~ the trial court~~,~~ or the appellate court, ~~either before or after the record is transmitted,~~ on motion of a party or on its own initiative, may direct that the omission or misstatement be corrected and~~, if necessary, that a supplemental record be certified and transmitted~~ entered in the trial court record. The moving party, or the court if it is acting on its own initiative, ~~shall~~ must serve on the parties a statement of the proposed changes. Within ~~10~~ 14 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~~ must be presented to the appellate court.

Advisory Committee Notes

~~The rule is amended to make applicable in the Supreme Court a procedure of the Court of Appeals for preparing a transcript where the record is maintained by an electronic recording device. The rule is modified slightly from the former Court of Appeals rule to make it the appellant's responsibility, not the clerk's responsibility, to arrange for the preparation of the transcript.~~

The clerk of the appellate court will not print the record unless the self-represented party shows good cause for doing so. Inmates of the Utah State Prison, for example, are not allowed to use computers and so do not have access to the electronic file. Every state courthouse has computers for free public use, as do most libraries. The clerk will not print the record unless the self-represented party shows why this access is not sufficient. The clerk will print only those parts of the record that are necessary for the appeal. Even when printing is appropriate, the clerk will not necessarily print the entire record.

Rule 12. ~~Transmission of the record~~ Transcripts.

(a) Time for filing request for transcript. Within 14 days after filing the notice of appeal, the appellant must order online at www.utcourts.gov a transcript of the entire proceeding or desired parts of the proceeding or file a certificate that no parts of the proceeding need to be transcribed. The appellant must serve on the appellee a designation of the parts of the proceeding to be transcribed or the certificate that no parts of the proceeding need to be transcribed.

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

(c) Cross-designation by appellee. If the appellant does not order the entire transcript, the appellee may, within 14 days after the filing of the designation or certificate described in paragraph (a), order additional parts of the proceeding to be transcribed.

~~(a)~~ (d) ~~Duty to prepare and file transcript; request for enlargement of time; notice to appellate court~~ Assignment of reporter or transcriber; payment of fee.

~~(a)(1)~~ (d)(1) Upon receipt of a request for a transcript, the clerk of the appellate court ~~shall~~ will assign the preparation of the transcript to the court reporter who reported the proceedings or, if recorded on video or audio equipment, to an official court transcriber and notify the requesting party of the assignment. ~~By stipulation of the parties approved by the appellate court, a person other than an official court transcriber may transcribe a recorded hearing.~~

~~(a)(2)~~ (d)(2) A party requesting a transcript ~~shall~~ must make satisfactory arrangements for paying the fee to the reporter or transcriber ~~and notify the clerk of the appellate court of the date on which satisfactory arrangements were made~~. The transcript ~~shall~~ must be completed and filed within 30 days after that date. Upon completion of the transcript, the reporter and, if applicable, the transcriber must certify that the transcript is a true and correct record of the court hearing or of the file provided by the clerk of the appellate court. The reporter or transcriber must prepare an index of its contents and file the electronic file through the transcript management program.

~~(a)(3) The reporter or transcriber may request from the clerk of the appellate court an enlargement of time in which to file the transcript. The request for enlargement of time shall be in writing and shall contain the elements stated in CJA 5-201(1). If filed prior to the expiration of the transcript preparation period, the request shall make a showing of good cause. If filed after the expiration of the period, the request shall make a showing of extraordinary circumstances beyond the control of the reporter or transcriber. The reporter or transcriber shall provide a copy of the request to the parties. The clerk of the appellate court shall provide written notice of the disposition of the request for enlargement of time to the reporter or transcriber and the parties.~~

~~(a)(4) Upon completion of the transcript, the reporter and, if applicable, the transcriber shall certify that the transcript is a true and correct record of the court hearing or of the file provided by the clerk of the appellate court. The reporter or transcriber shall prepare an index of its contents and file the electronic file through the transcript management program. The original hard copy of the transcript and index shall be filed with the clerk of the trial court. At the request of the person ordering the transcript or at the request of the appellate court, the reporter or transcriber shall file the transcript in a compressed format that places multiple complete pages of the original transcript upon each page of compressed transcript. The compressed transcript shall retain the page and line numbers of the original transcript. A compressed transcript may be certified as a correct copy of the original.~~

~~(b) Transmittal of record on appeal to appellate court.~~

~~(b)(1) Transmittal of index. Within 20 days from the date of request from the appellate court, the trial court, juvenile court, or government agency shall transmit a certified copy of the index prepared pursuant to Rule 11(b) to the clerk of the appellate court.~~

~~(b)(2) Transmittal of non-paginated record. Within 7 days from the date of request from the appellate court, the trial court, juvenile court, or government agency shall transmit the papers and any transcripts on file to the clerk of the appellate court. These papers may be sent "as is," without pagination, and will be used by the appellate court for purposes of preliminary review. If the appeal is not summarily dismissed, the record will be returned for indexing and pagination.~~

~~(b)(3) Transmittal of paginated record. Within 20 days from the date of request from the appellate court, the trial court, juvenile court, or government agency shall transmit the papers, transcripts and exhibits in the appeal to the appellate court.~~

~~(b)(4) Transmission of exhibits. Documents of unusual bulk or weight, and physical exhibits other than documents, photographs, or binders, shall not be transmitted by the trial court, juvenile court, or government agency unless directed to do so by a party or by the clerk of the appellate court. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.~~

~~(b)(5) Checking out record on appeal. During the briefing period, counsel for the parties who are members of the Utah State Bar in good standing may, as officers of the court, check out the record upon written request to the clerk of court of the court in possession of the record on appeal. The record may be mailed by registered mail or other reputable overnight carrier, return receipt requested, provided that counsel requesting mailing makes advance arrangements with the clerk and pays the cost of shipping. The record may be picked up in person by counsel, or his or her authorized agent. Counsel shall be responsible for promptly returning the record to the court not later than when the party's brief is filed.~~

~~(c) Expedited transmittal of parts of the record.~~ ~~If prior to the time the record is transmitted the record is required in the appellate court, the clerk of the trial court at the request of any party or of the appellate court shall transmit to the appellate court such parts of the original record as designated.~~

(e) Request for extension of time.

(e)(1) The reporter or transcriber may file with the appellate court a written request showing good cause for an extension of time in which to file the transcript. The request must be filed before expiration of the deadline sought to be extended. The request must state the reasons for the request and the date on which the reporter or transcriber will file the transcript. The clerk of the appellate court will notify the reporter or transcriber of the disposition of the request.

(e)(2) If a reporter or transcriber fails to file a transcript with the trial court and notify the clerk of the appellate court of the filing within the original or extended time, the reporter or transcriber will be subject to disciplinary action under Code of Judicial Administration Rule 5-202 and may be ordered to appear and show cause why sanctions should not be imposed.

~~**Advisory Committee Notes**~~

~~The amendment keeps the requirement that the court reporter acknowledge the receipt of the request for transcript. Formerly, that acknowledgment was to appear at the foot of the request itself. Rule 12 now treats the acknowledgment as a separate document. The content of the acknowledgment includes a statement regarding the satisfactory arrangement for payment. Until satisfactory arrangements for payment have been made, the reporter is under no obligation to prepare the transcript.~~

~~Rule 12 is amended to impose upon the court reporters the same standard of "good cause" and the same procedures now applicable to parties in seeking an extension of time for preparation of the transcript.~~

Rule 13. Notice of ~~filing by clerk~~ briefing schedule.

~~Upon receipt of the index transmitted by the clerk of the trial court pursuant to Rule 12(b) or Rule 11(f), the~~ The clerk of the appellate court ~~shall file the index and shall immediately give notice to~~ will notify all parties of the date on which ~~it was filed and the date on which~~ the appellant's brief is due ~~pursuant to~~ under Rule 26.

Rule 14. Review of administrative orders: how obtained; intervention.

(a) Petition for review of order; joint petition. When judicial review by the Supreme Court or the Court of Appeals is provided by statute of an order or decision of an administrative agency, board, commission, committee, or officer (hereinafter the term "agency" shall include agency, board, commission, committee, or officer), a petition for review ~~shall~~ must be filed with the clerk of the appellate court within the time prescribed by statute, or if there is no time prescribed, then within 30 days after the date of the written decision or order. The petition ~~shall~~ must specify the parties seeking review and ~~shall~~ must designate the respondent(s) and the order or decision, or part thereof, to be reviewed. In each case, the agency ~~shall~~ must be named respondent. The State of Utah ~~shall be deemed~~ is a respondent if ~~so~~ required by statute, even ~~though~~ if not ~~so~~ designated in the petition. If two or more persons are entitled to petition for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

~~**(b) Filing fees.** At the time of filing any petition for review, the party obtaining the review shall pay to the clerk of the appellate court the filing fee established by law. The clerk of the appellate court shall accept a petition for review regardless of whether the filing fee has been paid. Failure to pay the required filing fee within a reasonable time may result in dismissal.~~

~~**(c)**~~ **(b) Service of petition.** ~~A copy of the petition for review shall be served by the petitioner on the named respondent(s), upon all other parties to the proceeding before the agency, and upon the Attorney General of Utah, if the state is a party, in the manner prescribed by Rule 3(e). The petitioner, at the time of filing the petition for review, shall also file with the clerk of the appellate court a certificate reflecting service upon all parties to the agency proceeding who have been served.~~ The petitioner must serve the petition on the respondents and all parties to the proceeding before the agency in a manner provided by Rule 21.

~~**(d)**~~ **(c) Intervention.** Any person ~~who seeks to intervene in a proceeding under this rule shall serve upon all parties to the proceeding and upon all parties who participated before the agency, and~~ may file with the clerk of the appellate court a motion ~~for leave~~ to intervene. The motion ~~shall~~ must contain a concise statement of the interest of the moving party and the grounds ~~upon~~ on which intervention is sought. A motion ~~for leave~~ to intervene ~~shall~~ must be filed within 40 days of the date on which the petition for review is filed.

Advisory Committee Notes

The provisions for service, proof of service, and paying filing fees, formerly found in this rule, have been consolidated in Rule 21.

Rule ~~11~~ 16. The agency record on appeal.

(a) Composition of the record on appeal. The original ~~papers~~ documents and exhibits filed ~~in the trial court~~ with the agency, ~~including the presentence report in criminal matters,~~ the transcript of proceedings, if any, the index prepared by the ~~clerk of the trial court~~ agency, and the docket sheet, if any, ~~shall~~ constitutes the agency record on appeal ~~in all cases~~. A copy of the record certified by the ~~clerk of the trial court~~ agency 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.~~ The agency must include all documents and exhibits in the agency file as part of the record unless otherwise directed by the appellate court on its own initiative or motion of a party.

(b) Pagination and indexing of record.

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

(b)(1)(A) ~~the~~ a chronological index ~~prepared by the clerk~~ of the record that contains a reference to the date on which the document, deposition or transcript was filed and the starting page of the record on which the document, deposition or transcript is found;

(b)(1)(B) the docket sheet, if any;

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

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

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

(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~~ agency must mark the bottom right corner of every page of the collated index, docket sheet, and all ~~original papers~~ documents 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)~~ (b)(3) The agency will transmit a single record unless there is a supplemental record. If a supplemental record is ~~forwarded to the appellate court~~ transmitted, the ~~clerk shall~~ agency must collate the ~~papers~~ documents, 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~~ documents 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~~ The agency and the appellate courts ~~shall~~ will 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~~ petitioner. ~~After filing the notice of appeal, the appellant, or in the event that more than one appeal is taken, each appellant, shall~~ Each petitioner must comply with ~~the provisions of paragraphs (d) and (e) of this rule~~ Rule 12 and ~~shall~~ take any other action necessary to enable the ~~clerk of the trial court~~ agency 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~~ petitioner to order; notice to ~~appellee~~ respondent if partial transcript is ordered.

(e)(1) Request for transcript; time for filing. Within ~~10~~ 14 days after filing the ~~notice of appeal~~ petition for review, the ~~appellant shall,~~ petitioner must order from the agency a transcript of the entire proceeding or desired parts of the proceeding or file a certificate that no parts of the proceeding need to be transcribed. The appellant must serve on the respondent a designation of the parts of the proceeding to be transcribed or the certificate that no parts of the proceeding need to be transcribed~~order the transcript(s) online at , 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~~ petitioner intends to urge ~~on appeal~~ that a finding or conclusion is unsupported by or is contrary to the evidence, the ~~appellant shall~~ petitioner must include in the record a transcript of all evidence relevant to ~~such~~ the finding or conclusion. Neither the court nor the ~~appellee~~ respondent is obligated to correct ~~appellant's~~ petitioner's deficiencies in providing the relevant portions of the transcript.

(e)(3) Cross-designation by ~~appellee~~ respondent. If the ~~appellant~~ petitioner does not order the entire transcript, the ~~appellee~~ respondent may, within ~~10~~ 14 days after the ~~service~~ filing of the

designation or certificate described in paragraph (e)(1) ~~of this rule, file and serve on the appellant a designation of additional parts to be included~~ order additional parts of the proceeding to be transcribed.

~~**(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)~~ (f) Correction or modification of the record.

(f)(1) For the duration of the review, including any proceedings on writ of certiorari, the agency must maintain and make available to the parties any audio or video record of the agency proceedings. The agency may collect a fee authorized by law for access to the record.

(f)(2) If a party claims that the transcript of a hearing is incorrect, the appellate court may compare the transcript to the audio or video record or may remand the case to the agency to compare the records. If the transcript does not correctly reflect the content of the audio or video record, the agency or court will order the court reporter or official court transcriber to correct the transcript.

(f)(3) If any difference other than an incorrect transcript arises as to whether the record truly discloses what occurred in the ~~trial court~~ agency, the difference ~~shall~~ must be submitted to and settled by ~~that court~~ the agency 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, by accident, or because the ~~appellant~~ petitioner did not order a transcript of proceedings that the ~~appellee~~ respondent needs to respond to issues raised in the Brief of Appellant, the ~~parties by stipulation, the trial court,~~ agency or the appellate court, ~~either before or after the record is transmitted,~~ on motion of a party or on its own initiative, may direct that the omission or misstatement be corrected and entered in the agency record 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~~

must serve on the parties a statement of the proposed changes. Within ~~10~~ 14 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~~ must be presented to the appellate court.

(g) Transmission of the record. The clerk of the appellate court will request the index, a non-paginated record, or a paginated record. The agency will transmit the index within 21 days; the non-paginated record within 7 days; and the paginated record within 21 days.

(h) Checking out record. During the briefing period, counsel for the parties may check out the agency record from the agency or court in possession of the record. Unless picked up in person or by an authorized agent, the record must be delivered and returned by a shipping method that tracks the shipment. Counsel must pay the cost of shipping. Counsel must return the record promptly and not later than when the party's brief is filed.

~~**Advisory Committee Notes**~~

~~The rule is amended to make applicable in the Supreme Court a procedure of the Court of Appeals for preparing a transcript where the record is maintained by an electronic recording device. The rule is modified slightly from the former Court of Appeals rule to make it the appellant's responsibility, not the clerk's responsibility, to arrange for the preparation of the transcript.~~

Rule 19. Extraordinary writs.

(a) ~~P~~Service of 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~~

(a)(1) Unless an action is pending in ~~the~~ a trial court or agency, ~~the~~ a petition ~~shall~~ for an extraordinary writ under Utah Rule of Civil Procedure 65B must be served ~~personally~~ on the respondent ~~judge, agency, person or entity~~ by any of the methods in Utah Rule of Civil Procedure 4 of the Utah Rules of Civil Procedure and ~~service shall be made by the most direct means available~~ must be served on all persons or associations whose interests might be substantially affected by the most direct means available.

(a)(2) If an action is pending in a trial court or agency, a petition for an extraordinary writ must be served on the respondent judge, agency, person, or entity and on all parties to the action in the trial court or agency by any of the methods allowed by Rule 21.

(a)(3) If imprisoned, the petitioner may mail the petition by United States mail, postage prepaid to the Attorney General of Utah or the county attorney of the county if imprisoned in a county jail.

(b) Contents of petition and filing fee. ~~A~~ The petition ~~for an extraordinary writ shall~~ must 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~~ A copy of or a link to 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~~ If emergency relief is sought, the petition must comply with Rule 23C(b), including any additional requirements set forth by that ~~subpart~~ paragraph.

(b)(10) ~~Where~~ If 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~~ are 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~~ are not thereby ~~be deemed~~ admitted. ~~Where~~ If emergency relief is sought, Rule 23C(d) ~~shall apply~~ applies. Otherwise, within ~~seven~~ 14 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~~ may 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~~ must comply with Rules 24 and 27. If emergency relief is sought, Rule 23C(f) applies to requests for hearings ~~in emergency matters~~. ~~With regard to emergency petitions submitted under Rule 23C, and where~~ If emergency relief is sought and 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~~ 7 days of notice of disposition, but ~~such~~ the request ~~shall~~ may not include any additional argument or briefing.

(e) Transmission of record. ~~In reviewing a petition for extraordinary writ, the~~ 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)~~ (f) Issuance of extraordinary writ by appellate court ~~sua sponte~~ on its own initiative. The appellate court, in aid of its own jurisdiction in extraordinary cases, may issue a writ ~~of certiorari sua sponte~~ on its own initiative directed to a judge, agency, person, or entity. A copy of the writ ~~shall~~ must 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~~ must 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~~ 4 business days of the issuance of the writ, petition the court to dissolve or amend the writ. The petition ~~shall~~ must be accompanied by a concise statement of the reasons for dissolution or amendment of the writ.

Rule 20. Habeas corpus proceedings.

(a) Application for an original writ; when appropriate. If a petition for a writ of habeas corpus is filed in the appellate court or submitted to a justice or judge ~~thereof~~ of the court, it will be referred to the appropriate district court unless it is shown on the face of the petition to the satisfaction of the appellate court that the district court is unavailable or other exigent circumstances exist. If a petition is initially filed in a district court or is referred to a district court by the appellate court and the district court denies or dismisses the petition, ~~a refiling of~~ the order may be appealed, but the petition may not be refiled with the appellate court ~~is inappropriate; the proper procedure in such an instance is an appeal from the order of the district court~~.

(b) Procedure on original petition.

(b)(1) A habeas corpus proceeding may be commenced by filing a petition with the clerk of the appellate court or, in emergency situations, with a justice or judge of the court. ~~For matters pending in the Supreme court, an original petition and seven copies shall be filed in the Supreme Court. For matters pending in the Court of Appeals, an original petition and four copies shall be filed in the Court of Appeals.~~ The ~~petitioner shall serve a copy of the~~ petition must be served on the respondent ~~pursuant to~~ by any of the methods ~~provided for service of process~~ in Rule 4 of the Utah Rules of Civil Procedure but, if imprisoned, the petitioner may mail by United States mail, postage prepaid, a copy of the petition to the Attorney General of Utah or the county attorney of the county if imprisoned in a county jail. ~~Such service is in lieu of service upon the named respondent, and a certificate of mailing under oath that a copy was mailed to the Attorney General or county attorney must be filed with the clerk of the appellate court~~. In emergency situations, an order to show cause may be issued by the court, or a single justice or judge if the court is not available, and a stay or injunction may be issued to preserve the court's jurisdiction until ~~such time as~~ the court can hear argument on whether a writ should issue.

(b)(2) If the petition is not referred to the district court, the attorney general or the county attorney, as the case may be, ~~shall~~ must answer the petition or otherwise plead within ~~ten~~ 14 days after service of ~~a copy of~~ the petition. When a responsive pleading or motion is filed or an order to show cause is issued, the court ~~shall~~ will set the case for hearing and the clerk ~~shall~~ will give notice to the parties.

(b)(3) The clerk of the appellate court ~~shall~~ will, if the petitioner is imprisoned or ~~is a person otherwise~~ in the custody of the state or any political subdivision ~~thereof~~, give notice of the time for the filing of memoranda and for oral argument, to the attorney general, the county attorney, or the city attorney, depending on where the petitioner is held and whether the petitioner is detained pursuant to state, county, or city law. Similar notice ~~shall~~ will be given to any other person or ~~an~~ association detaining the petitioner not in custody of the state.

(c) Contents of petition and attachments. The petition ~~shall~~ must include the following:

(c)(1) A statement of where the petitioner is detained, by whom the petitioner is detained, and the reason, if known, why ~~the respondent has detained~~ the petitioner is detained.

(c)(2) A brief statement of the reasons why the detention is ~~deemed~~ unlawful. The petition ~~shall~~ must state in plain and concise language:

(c)(2)(A) the facts giving rise to each claim that the confinement or detention is in violation of a state order or judgment or a ~~constitutional~~ right established by the United States Constitution or the Constitution of the State of Utah or is otherwise illegal;

(c)(2)(B) whether an appeal was taken from the judgment or conviction pursuant to which a petitioner is incarcerated; and

(c)(2)(C) whether the allegations of illegality were raised in the appeal and decided by the appellate court.

(c)(3) A statement indicating whether any other petition for a writ of habeas corpus based on the same or similar grounds has been filed and the reason why relief was denied.

(c)(4) ~~Copies~~ A copy of or a link to the court order or legal process, court opinions and findings pursuant to which the petitioner is detained or confined, affidavits, copies of orders, and other supporting written documents ~~shall~~ must be attached to the petition or ~~it shall be stated by~~ the petitioner must state why ~~the same~~ they are not attached.

(d) Contents of answer. The answer ~~shall~~ must concisely set forth specific admissions, denials, or affirmative defenses to the allegations of the petition and must state plainly and unequivocally whether the respondent has, or at any time has had, the person designated in the petition under control and restraint and, if so, the cause for the restraint. The answer ~~shall~~ must not contain citations of legal authority or legal argument.

(e) Other provisions.

(e)(1) If the respondent cannot be found or if the respondent does not have the person in custody, the writ and any other process issued may be served ~~upon~~ on anyone having the petitioner in custody, in the manner and with the same effect as if that person had been made respondent in the action.

(e)(2) If the respondent refuses or avoids service, or attempts wrongfully to carry the person imprisoned or restrained out of the county or state after service of the writ, the person serving the writ ~~shall~~ must immediately arrest the respondent or other person so resisting, for presentation, together with the person designated in the writ, forthwith before the court.

(e)(3) At the time of the issuance of the writ, the court may, if it appears that the person detained will be carried out of the jurisdiction of the court or will suffer some irreparable injury before compliance with the writ can be enforced, cause a warrant to issue, reciting the facts and directing the sheriff to bring the detained person before the court to be dealt with according to law.

(e)(4) The respondent ~~shall~~ must appear at the proper time and place with the person designated or show good cause for not doing so. If the person designated has been transferred, the respondent must state when and to whom the transfer was made, and the reason and authority for the transfer.

The writ ~~shall~~ may not be disobeyed for any defect of form or misdescription of the person restrained or of the respondent, if enough is stated to show the meaning and intent.

(e)(5) The ~~person restrained~~ petitioner may waive any rights to be present at the hearing, in which case the writ ~~shall~~ will be modified accordingly. Pending a determination of the matter, the court may place ~~such person~~ the petitioner in the custody of an individual or association as may be deemed proper.

Advisory Committee Note

The amendments make clear that an original writ for habeas corpus should be filed only in the District Court. An application to an appellate court ~~must~~ that does not demonstrate on the face of the petition the unavailability of the District Court~~. Petitions that do not contain such documentation will~~ or exigent circumstances may be summarily referred to the District Court. The clarification seeks to halt the practice ~~by some pro se petitioners~~ of simultaneously filing the same petition in different courts.

The amendments simplify the procedures for service ~~of petitions upon~~ on the respondent by incarcerated petitioners. The former rule required service by summons on the respondent. The amendments allow service on the Attorney General or county attorney by mail.

Rule 21. Filing and service.

(a) Filing. ~~Papers~~

(a)(1) Any filing required or permitted ~~to be filed~~ by these rules ~~shall~~ must be filed with the clerk of the appropriate court. ~~Filing may be accomplished by mail addressed to the clerk. Except as provided in subpart (f), filing is not considered timely unless the papers are received by the clerk within the time fixed for filing, except that briefs shall be deemed filed on the date of the postmark if first class mail is utilized. If a motion requests relief which may be granted by a single justice or judge, the justice or judge may accept the motion, note the date of filing, and transmit it to the clerk.~~Courtesy briefs must be bound as required in Rule 27. Otherwise, if a paper document is filed, the pages must not be bound or stapled.

(a)(2) Unless filed by an inmate confined in an institution, a filing must be received by the clerk within the time fixed for filing. A filing by an inmate confined in an institution is timely filed if it is deposited in the institution's internal mail system on or before the last day for filing with first-class postage prepaid. An inmate must include in the certificate of service a statement under penalty of Utah Code Section 78B-5-705 required by paragraph (d).

(a)(3) Filing by a self-represented party may be by delivery or by mail or email addressed to the clerk of the court. Before [date] filing by a lawyer may be by delivery or electronic filing or by mail or email addressed to the clerk of the court. After [date] filing by a lawyer must be by electronic filing.

(a)(4) The filer must pay any fee established by law at the time of filing, but the clerk will accept the filing regardless of whether the fee has been paid. Failure to pay the filing fee within a reasonable time may result in dismissal.

(b) Service of all ~~papers~~ documents required. ~~Copies of all papers~~

(b)(1) Service on counsel or party. Any document filed with the appellate court ~~shall, at or before the time of filing,~~ must be served on all other parties ~~to the appeal or review~~ at or before the time of filing. Service on a party represented by counsel ~~shall~~ must be made on counsel of record, or, if the party is not represented by counsel, ~~upon~~ on the party ~~at the last known address~~.

(b)(2) Served documents must be filed. A ~~copy of any paper~~ document required by these rules to be served on a party ~~shall~~ must be filed with the court and accompanied by proof of service.

(b)(3) Service on the attorney general. Any document filed by a defendant in a criminal case originally charged as a felony or by a juvenile in a delinquency proceeding must be served on the Criminal Appeals Division of the Office of the Utah Attorney General.

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

(c)(1) submitting it for electronic filing if the person being served has an electronic filing account, except a petition for review under Rule 14;

(c)(2) emailing it to the email address provided by the person or to the email address on file with the Utah State Bar;

(c)(3) mailing it to the person's last known address;

(c)(4) handing it to the person;

(c)(5) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place; or

(c)(6) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there.

(d) Proof of service. ~~Papers presented for~~ A filing ~~shall~~ must contain or be filed with an acknowledgment of service by the person served or a certificate of service ~~in the form of a statement of~~ stating the date and manner of service, the names of the persons served, and the addresses at which they were served. ~~The certificate of service may appear on or be affixed to the papers filed.~~ If counsel of record is served, the certificate of service ~~shall~~ must designate the name of the party represented by that counsel. The certificate of service of a service by an inmate must also state under penalty of Utah Code Section 78B-5-705 the date the filing was deposited in the institution's internal mail system and state that first-class postage was prepaid.

(e) Signature. All ~~papers~~ documents filed in the appellate court ~~shall~~ must be signed by counsel of record or by a party who is not represented by counsel. A person may sign a document using any form of signature recognized by law. If a document is electronically signed, the document may contain a typed representation of a signature, such as "s/name."

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

(f) Filing a notarized document. Except when required by statute a filing need not be verified or accompanied by affidavit. If a rule requires an affidavit or a notarized, verified, or acknowledged signature, the person may submit a declaration pursuant to Utah Code Section 78B-5-705. If a statute requires an affidavit or a notarized, verified, or acknowledged signature and the party electronically files the document, the party may:

(f)(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section 46-1-16(7);

(f)(2) electronically file a scanned image of the affidavit;

(f)(3) electronically file the affidavit with a conformed signature; or

(f)(4) if the filer does not have an electronic filing account, present the original affidavit to the clerk of the court, who will electronically file a scanned image and return the original to the filer.

The filer must keep the original affidavit of anyone other than the filer safe and available for inspection upon request until the action is concluded.

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

Advisory Committee Notes

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

2015 amendments

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

2016 amendments

The provisions for service, proof of service, and paying filing fees, formerly found in other rules, have been consolidated in this rule.

The addresses of the clerks of court are:

Clerk of the Supreme Court	Clerk of the Court of Appeals
supremecourt@utcourts.gov	courtofappeals@utcourts.gov
POB 140210	POB 140230
Salt Lake City, UT 84114-0210	Salt Lake City, UT 84114-0230

Rule 21A. Hyperlinks.

(a) Required and permitted links. If a filing cites to a document in the trial court record under Rule 11, to the transcript of a trial court hearing under Rule 12, or to a document already filed with the appellate court, the citation in a filing by a lawyer must link to the document. The citation in a filing by a self-represented party may link to the document. If the citation in a filing by a self-represented party does not link to the document, the document must be attached in an addendum to the filing.

(b) Displayed text of link or citation.

(b)(1) The displayed text of a link to a document in the trial court record must set forth "R:#:#" where the first digit is the docket number of the document and the second digit is the PDF page number on which the reference is found.

(b)(2) The displayed text of a link to a document the appellate court record must set forth "A:#:#" where the first digit is the docket number of the document and the second digit is the PDF page number on which the reference is found.

(b)(3) If the document cited is included in the addendum to the filing, the displayed text of the citation must include the name of the document and the page number on which the document is found.

(b)(4) A party may set forth a further reference to a document to aid the reader, such as a document title, paragraph number, section number, etc.

(b)(5) The displayed text of a link to legal authority should reasonably conform the *Bluebook Uniform System of Citation* and Standing Order 4.

Advisory Committee Notes

A link to a cited document allows the reader to read the source material in context. The appellate courts require links only to court records, showing the importance of those records in an appeal, review, or original proceeding. A party is permitted to link to any other cited material, including other parts of the document being filed.

Before linking to a document, the author should consider the possibility that the source material will change. First, a link built with a URL is broken if the publisher changes the URL or removes an item from publication. Also, the content of material may change over time. A statute linked to when a brief is written might be amended by the time the brief is read. An alternative to linking to material on the internet is to create a file from the source, include the file in an addendum, and link to it there.

There are several publishers who offer proprietary applications with primary and secondary source materials through the internet. A link to a proprietary application will not work for someone who does not subscribe to that application.

The process for creating links is not governed by court rule. It is a function of the software used to create the document. For more information about the proprietary applications used by the courts, public sources for reference materials, and brief instructions on creating links, see the court's webpage [URL for webpage describing links].

Rule 22. Computation and ~~enlargement~~ extensions of time.

(a) Computation of time. ~~In computing any period of time prescribed by these rules, by an order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time under subsection (d), is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes days designated as holidays by the state or federal governments.~~ A time period specified in a rule, order, or statute is computed according to this paragraph unless the rule, order, or statute specifies a different method of computing time.

(a)(1) When the period is stated in days or a longer unit of time:

(a)(1)(A) exclude the day of the event that triggers the period;

(a)(1)(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(a)(1)(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

(a)(2) When the period is stated in hours:

(a)(2)(A) begin counting immediately on the occurrence of the event that triggers the period;

(a)(2)(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(a)(2)(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(a)(3) Unless the court orders otherwise, if the clerk's office is inaccessible:

(a)(3)(A) on the last day for filing under paragraph (a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or

(a)(3)(B) during the last hour for filing under paragraph (a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(a)(4) Unless a different time is set by a statute or court order, filing on the last day means:

(a)(4)(A) for electronic filing, before midnight; and

(a)(4)(B) for filing by other means, before the clerk's office is scheduled to close.

(a)(5) The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(a)(6) "Legal holiday" means the day for observing:

(a)(6)(A) New Year's Day;

(a)(6)(B) Dr. Martin Luther King, Jr. Day;

(a)(6)(C) Washington and Lincoln Day;

(a)(6)(D) Memorial Day;

(a)(6)(E) Independence Day;

(a)(6)(F) Pioneer Day;

(a)(6)(G) Labor Day;

(a)(6)(H) Columbus Day;

(a)(6)(I) Veterans' Day;

(a)(6)(J) Thanksgiving Day;

(a)(6)(K) Christmas; and

(a)(6)(L) any day designated by the Governor or Legislature as a state holiday.

(a)(7) When the specified time is after service and service is made only by mail, 3 days are added after the period would otherwise expire.

(b) ~~Enlargement~~ Extension of time.

(b)(1) ~~Motions~~ A motion for an ~~enlargement~~ extension of time for filing a brief~~s beyond the time permitted by stipulation of the parties under Rule 26(a) are~~ is not favored.

(b)(2) The court for good cause shown may upon motion ~~enlarge~~ extend the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of ~~such~~ time, but the court may not ~~enlarge~~ extend the time ~~for filing a notice of appeal or a petition for review from an order of an administrative agency~~ of a jurisdictional deadline, except as ~~specifically~~ expressly authorized by law. For the purpose of this rule, good cause includes, but is not limited to, the complexity of the case on appeal, engagement in other litigation, and extreme hardship to counsel.

(b)(3) A motion for an ~~enlargement~~ extension of time ~~shall~~ must be filed ~~prior to~~ before the expiration of the time for which the ~~enlargement~~ extension is sought.

(b)(4) A motion for ~~enlargement~~ an extension of time ~~shall~~ must state:

(b)(4)(A) with particularity the good cause for granting the motion;

(b)(4)(B) whether the movant has previously been granted an ~~enlargement~~ extension of time and, if so, the number and duration of ~~such enlargements~~ extensions;

(b)(4)(C) when the time will expire for doing the act for which the ~~enlargement of time~~ extension is sought; and

(b)(4)(D) the date on which the act for which the ~~enlargement of time~~ extension is sought will be completed.

(b)(5)(A) If the good cause relied ~~upon~~ on is engagement in other litigation, the motion shall:

(b)(5)(A)(i) identify ~~such~~ the litigation by caption, number and court;

(b)(5)(A)(ii) describe the action of the court in the other litigation on a motion for continuance;

(b)(5)(A)(iii) state the reasons why the other litigation should take precedence over the ~~subject~~ appeal;

(b)(5)(A)(iv) state the reasons why associated counsel cannot prepare the brief for timely filing or relieve the movant in the other litigation; and

(b)(5)(A)(v) identify any other relevant circumstances.

(b)(5)(B) If the good cause relied ~~upon~~ on is the complexity of the appeal, the movant ~~shall~~ must state the reasons why the appeal is so complex that an adequate brief cannot reasonably be prepared by the due date.

(b)(5)(C) If the good cause relied ~~upon~~ on is extreme hardship to counsel, the movant ~~shall~~ must state ~~in detail~~ the nature of the hardship.

(b)(5)(D) All facts supporting good cause ~~shall~~ must be stated with ~~specificity~~ particularity. Generalities, such as "the motion is not for the purpose of delay" or "counsel is engaged in other litigation," are insufficient.

~~**(c) Ex parte motion.** Except as to enlargements of time for filing and service of briefs under Rule 26(a), a party may file one ex parte motion for enlargement of time not to exceed 14 days if no enlargement of time has been previously granted, if the time has not already expired for doing the act for which the enlargement is sought, and if the motion otherwise complies with the requirements and limitations of paragraph (b) of this rule.~~

~~**(d) Additional time after service by mail.** Whenever a party is required or permitted to do an act within a prescribed period after service of a paper and the paper is served by mail, 3 days shall be added to the prescribed period.~~

(c) Motion acted on by clerk. The clerk of the court may act on a motion to extend time:

(c)(1) without waiting for a response; and

(c)(2) after the deadline has expired, but the motion must be filed before the deadline has expired.

Advisory Committee Note

~~A motion to enlarge time must be filed prior to the expiration of the time sought to be enlarged. A specific date on which the act will be completed must be provided. The court may grant an extension of time after the original deadline has expired, but the motion to enlarge the time must be filed prior to the deadline.~~

~~Counsel should note that there is no penalty for seeking an enlargement of time in filing briefs. However, both appellate courts place appeals in the oral argument queue in accordance with the priority of the case and the date of the completion of briefing. Delays in the completion of briefing will likely delay the date of oral argument.~~

If a rule, order, or statute specifies “business” days or “court” days for purposes of calculating a deadline, the calculation is made under paragraph (a), but an intervening Saturday, Sunday, or holiday is not included in the calculation.

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~~ must be made by filing a motion ~~for such order or relief with proof of service on all other parties~~. The motion ~~shall~~ must contain or be accompanied by the following:

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

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

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

(a)(4) Affidavits and papers, where appropriate.

(b) Response. Any party may file a response to a motion within ~~10~~ 14 days after ~~service~~ filing of the motion; however, the court may, for good cause ~~shown~~, ~~dispense with,~~ shorten or extend the time for responding to ~~any~~ a motion or act on a motion without waiting for a response.

(c) Reply. The moving party may file a reply only to answer new matter raised in the response. A reply, if any, ~~may~~ must be filed no later than ~~5~~ 7 days after filing of the response, but the court may rule on the motion without awaiting a reply.

(d) Determination of motions for procedural orders. Notwithstanding ~~the provisions of~~ paragraph (a) ~~of this rule as to motions generally~~, a motion~~s~~ for a procedural order~~s~~ ~~which do~~ that does 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,~~ on without awaiting a response or reply. ~~Pursuant to rule or order of the~~ The court~~, motions for specified types of procedural orders may be disposed of by the clerk~~ by order may permit the clerk of the court to act on a motion for a procedural order. The court may review ~~a disposition by~~ action of the clerk ~~upon~~ on motion of a party or ~~upon~~ on its own ~~motion~~ initiative.

(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~~ 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~~ rule on any 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.~~ The court may review a ruling by a justice or judge on motion of a party or on its own initiative.

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

~~(f)(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.~~

~~(f)(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.~~

~~(f)(3) A~~ Except as provided in Rule 27, a motion or other ~~paper shall~~ document must contain a caption ~~setting forth~~ stating the name of the court, the title of the case, the docket number, and a brief ~~descriptive~~ title ~~indicating~~ describing the purpose of the ~~paper~~ document. ~~The attorney shall sign all papers filed with the court with his or her individual name.~~ The attorney shall ~~give~~ state his or her business address, telephone number, email address on file with the Utah State Bar, and Utah State Bar number in the upper left hand corner of the first page of every ~~paper~~ document filed with the court except briefs, petitions for writ of certiorari and petitions for rehearing. A party who is not represented by an attorney ~~shall sign any paper filed with the court and~~ must state the party's address, email address and telephone number in the upper left hand corner of the first page of every document filed with the court except briefs, petitions for writ of certiorari and petitions for rehearing.

Rule 23B. Motion to remand for findings necessary to determination of ineffective assistance of counsel claim.

(a) Grounds for motion; time. A party to an appeal in a criminal case may move the court to remand the case to the trial court for entry of findings of fact, necessary for the appellate court's determination of a claim of ineffective assistance of counsel. The motion shall be available only upon a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel was ineffective.

The motion shall be filed prior to the filing of the appellant's brief. Upon a showing of good cause, the court may permit a motion to be filed after the filing of the appellant's brief. In no event shall the court permit a motion to be filed after oral argument. Nothing in this rule shall prohibit the court from remanding the case under this rule on its own motion at any time if the claim has been raised and the motion would have been available to a party.

(b) Content of motion; response; reply. The content of the motion shall conform to the requirements of Rule 23. The motion shall include or be accompanied by affidavits alleging facts not fully appearing in the record on appeal that show the claimed deficient performance of the attorney. The affidavits shall also allege facts that show the claimed prejudice suffered by the appellant as a result of the claimed deficient performance. The motion shall also be accompanied by a proposed order or remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed on remand.

A response shall be filed within ~~20~~ 21 days after the motion is filed. The response shall include a proposed order of remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed by the trial court in the event remand is granted, unless the responding party accepts that proposed by the moving party. Any reply shall be filed within ~~10~~ 14 days after the response is served.

(c) Order of the court. If the requirements of parts (a) and (b) of this rule have been met, the court may order that the case be temporarily remanded to the trial court for the purpose of entry of findings of fact relevant to a claim of ineffective assistance of counsel. The order of remand shall identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed by the trial court. The order shall also direct the trial court to complete the proceedings on remand within 90 days of issuance of the order of remand, absent a finding by the trial court of good cause for a delay of reasonable length.

If it appears to the appellate court that the appellant's attorney of record on the appeal faces a conflict of interest upon remand, the court shall direct that counsel withdraw and that new counsel for the appellant be appointed or retained.

(d) Effect on appeal. Oral argument and the deadlines for briefs shall be vacated upon the filing of a motion to remand under this rule. Other procedural steps required by these rules shall not be stayed by a

motion for remand, unless a stay is ordered by the court upon stipulation or motion of the parties or upon the court's motion.

(e) Proceedings before the trial court. Upon remand the trial court shall promptly conduct hearings and take evidence as necessary to enter the findings of fact necessary to determine the claim of ineffective assistance of counsel. Any claims of ineffectiveness not identified in the order of remand shall not be considered by the trial court on remand, unless the trial court determines that the interests of justice or judicial efficiency require consideration of issues not specifically identified in the order of remand. Evidentiary hearings shall be conducted without a jury and as soon as practicable after remand. The burden of proving a fact shall be upon the proponent of the fact. The standard of proof shall be a preponderance of the evidence. The trial court shall enter written findings of fact concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the order of remand. Proceedings on remand shall be completed within 90 days of entry of the order of remand, unless the trial court finds good cause for a delay of reasonable length.

(f) Preparation and transmittal of the record. At the conclusion of all proceedings before the trial court, the clerk of the trial court and the court reporter shall immediately prepare the record of the supplemental proceedings as required by these rules. ~~If the record of the original proceedings before the trial court has been transmitted to the appellate court, the clerk of the trial court shall immediately transmit the record of the supplemental proceedings upon preparation of the supplemental record. If the record of the original proceedings before the trial court has not been transmitted to the appellate court, the clerk of the court shall transmit the record of the supplemental proceedings upon the preparation of the entire record.~~

(g) Appellate court determination. Upon receipt of the record from the trial court, the clerk of the court shall notify the parties of the new schedule for briefing or oral argument under these rules. Errors claimed to have been made during the trial court proceedings conducted pursuant to this rule are reviewable under the same standards as the review of errors in other appeals. The findings of fact entered pursuant to this rule are reviewable under the same standards as the review of findings of fact in other appeals.

Rule 23C. Motion for emergency relief.

(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. No emergency relief will be granted in the absence of a separately filed petition or notice that invokes the ~~appellate~~ jurisdiction of the appellate court.

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

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

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

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

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

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

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

The motion ~~shall~~ may not exceed ~~fifteen~~ 15 pages, exclusive of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. It also ~~shall~~ may not seek relief beyond that necessitated by the emergency circumstances justifying the motion.

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

(d) Response; no reply. Any party may file a response to the motion within ~~three~~ 3 business days after ~~service~~ filing of the motion or whatever shorter time the appellate court may fix. The response ~~shall~~ may not exceed ~~fifteen~~ 15 pages, exclusive of any addendum containing statutes, rules, regulations, or portions of the record necessary to decide the matter. No reply ~~shall be~~ is permitted. Unless the appellate court is persuaded that an emergency ~~circumstance justifies and~~ requires a temporary stay of ~~a lower tribunal's~~ proceedings ~~prior to~~ before the opportunity to receive or review a response, no motion ~~shall~~ will be granted before the response period expires.

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

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

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

Advisory Committee Notes

2016 amendments

Paragraph (g) describing the power of a single judge to act on a motion is deleted because that authority is included in Rule 23.

Rule 24. Briefs.

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

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

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

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

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

(a)(5) A statement of the issues presented for review, including for each issue:

(a)(5)(A) the standard of appellate review with supporting authority; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) References ~~in briefs~~ to parties. ~~Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations~~ Parties should not be referred to as "appellant" and "appellee." It promotes clarity to use the designations used in the ~~lower~~ trial court or ~~in the~~ agency ~~proceedings~~, or the ~~actual~~ names of parties and others, or descriptive terms such as "the employee," "the injured person,' "the taxpayer," etc.

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

(e)(1) The displayed text of a reference to the trial court record must set forth "R:#:#" where the first digit is the docket number of the document referred to and the second digit is the PDF page number on which the reference is found.

(e)(2) The displayed text of a reference to the appellate court record must set forth "A:#:#" where the first digit is the docket number of the document referred to and the second digit is the PDF page number on which the reference is found.

(e)(3) The displayed text of a reference to the trial court or appellate court record must link to the page of the document on which the reference is found.

(e)(4) A party may set forth a further reference to a document to aid the reader, such as a document title, paragraph number, section number, etc.

(e)(5) The displayed text of a reference to an agency record must set forth the page number of the paginated record on which the reference is found.

~~R~~ (e)(6) A reference~~s~~ to an exhibit~~s shall be made to~~ must set forth the exhibit number~~s~~. If the reference is ~~made~~ to evidence the admissibility of which is in controversy, the reference ~~shall be made to~~ must set forth the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) Length of briefs.

(f)(1) Type-volume limitation.

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

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

(f)(1)(C) Certificate of compliance. A brief submitted under ~~Rule24~~ paragraph (f)(1) must include a certificate by the attorney or an unrepresented party that the brief complies with the type-volume limitation. The person preparing the certificate may rely on the word or line count of the word processing system used to prepare the brief. The certificate must state either the number of words in the brief or the number of lines of monospaced type in the brief.

(f)(2) Page limitation. Unless a brief complies with ~~Rule 24~~ paragraph (f)(1), a principal brief~~s shall~~ may not exceed 30 pages, and a reply brief~~s shall~~ may not exceed 15 pages, exclusive of pages

containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) ~~of this rule~~.

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

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

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

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

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

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

(g)(5) Type-Volume Limitation.

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

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

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

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

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

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

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

good cause for granting the motion. A motion filed at least ~~seven~~ 7 days ~~prior to~~ before the date the brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words, or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion filed within ~~seven~~ 7 days of the date the brief is due ~~and~~ or seeking more than three additional pages, 1,400 additional words, or 130 lines of text ~~shall~~ must be accompanied by a copy of the finished brief. If the motion is granted, the responding party is entitled to an equal number of additional pages, words, or lines without further order of the court. Whether the motion is granted or denied, the draft brief will be destroyed by the court.

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

(j) Citation of supplemental authorities. When pertinent and significant authorities come to the attention of a party after that party's brief has been filed~~,~~ or after oral argument but before decision, a party may promptly ~~advise the clerk of the appellate court, by letter~~ file a notice of supplemental authority setting forth the citations~~. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be~~ a reference either to the page of the brief or to a point argued orally to which the citations ~~pertain~~ applies, ~~but the letter shall state~~ and the reasons for the supplemental citations. The body of the ~~letter must~~ notice may not exceed 350 words. Any response ~~shall be made~~ must be filed within ~~seven~~ 7 days of filing the notice and ~~shall~~ must be similarly limited.

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

Advisory Committee Notes

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

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

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

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~~ must identify the interest of the movant and ~~shall~~ state the reasons why ~~a~~ the 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)~~ 50(e), the motion for leave ~~shall~~ must be filed at least 21 days ~~prior to~~ before 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,~~ file a response to the motion. Any response ~~of a party~~ to a motion for leave ~~shall~~ must be filed within ~~7~~ 14 days of ~~service~~ filing of the motion. If leave is granted, an amicus curiae or guardian ad litem ~~shall~~ must file its brief within 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~~ runs from the timely ~~service~~ filing of the amicus or guardian ad litem brief or from the timely ~~service~~ filing 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 26. Filing ~~and service of~~ briefs.

(a) Time for ~~service and~~ filing briefs. ~~Briefs shall be deemed filed on the date of the postmark if first-class mail is utilized.~~

(a)(1) The appellant's ~~shall serve and file a~~ brief ~~within~~ is due 40 days after the date of the notice ~~from the clerk of the appellate court pursuant to~~ under Rule 13. If a motion for summary disposition of the appeal or a motion to remand for determination of ineffective assistance of counsel is filed after the ~~Rule 13 briefing~~ notice is sent, ~~service and filing of~~ appellant's brief ~~shall be within~~ is due 30 days from ~~the~~ denial of ~~such~~ the motion.

(a)(2) The appellee's brief, or in cases involving a cross-appeal, the appellee/cross-appellant's, ~~shall serve and file a~~ brief ~~within~~ is due 30 days after ~~service~~ filing of the appellant's brief.

(a)(3) In cases involving cross-appeals, the appellant's ~~shall serve and file the~~ second brief described in Rule 24(g) ~~within~~ is due 30 days after ~~service~~ filing of the appellee/cross-appellant's brief.

(a)(4) A reply brief may be ~~served and~~ filed by the appellant or the appellee/cross-appellant in cases involving cross-appeals. If a reply brief is filed, it ~~shall be served and filed within~~ is due 30 days after the filing ~~and service~~ of the appellee's brief or the appellant's second brief in cases involving cross-appeals. If oral argument is scheduled fewer than 35 days after the filing of appellee's brief, the reply brief must be filed at least ~~5~~ 7 days ~~prior to~~ before oral argument.

(a)(5) By stipulation filed with the court ~~in accordance with Rule 21(a)~~ before the expiration of the period sought to be extended, the parties may extend each ~~of such~~ period~~s~~ for no more than 30 days. A motion for ~~enlargement~~ extension of time need not accompany the stipulation. ~~No such stipulation shall be effective unless it is filed prior to the expiration of the period sought to be extended.~~

~~**(b) Number of copies to be filed and served.** For matters pending in the Supreme Court, ten copies of each brief, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court. For matters pending in the Court of Appeals, eight copies of each brief, one of which shall contain an original signature, shall be filed with the Clerk of the Court of Appeals. Two copies shall be served on counsel for each party separately represented.~~

~~(c)~~ (b) Consequence of failure to file briefs. If an appellant fails to file a brief within the original or extended time ~~provided in this rule, or within the time as may be extended by order of the appellate court~~, an appellee may move ~~for dismissal of~~ to dismiss the appeal. If an appellee fails to file a brief within the original or extended time ~~provided by this rule, or within the time as may be extended by order of the appellate court~~, an appellant may move that the appellee not be heard at oral argument.

~~(d)~~ (c) Return of record to the clerk. Each party, upon the filing of its brief, shall return ~~the~~ any records or exhibits to the clerk of the court having custody ~~pursuant to these rules~~.

Rule 27. Form of briefs, and other documents; courtesy copies.

~~**(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. 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~~

(a) Form of all documents. All documents must conform to the following format:

(a)(1) portrait aspect, 8½ inches wide by 11 inches long, black text on white background;

(a)(2) font: Georgia 12 point;

(a)(3) margins: 1.85 inches (sides); 1.7 inches (top and bottom);

(a)(4) tables: may exceed the side margins if necessary;

(a)(5) line spacing: 1.15 or 15 point;

(a)(6) paragraph spacing: 10 point;

(a)(7) endnotes: prohibited;

(a)(8) justification: full;

(a)(9) hyphenation: optional;

(a)(10) footnotes and block quotes: the same as other text, except that block quotes must be indented an additional one-half inch; and

(a)(11) header: title of document left justified, case number centered, and page number right justified.

(b) Additional requirements for briefs, petitions for writ of certiorari and petitions for rehearing.

(b)(1) In addition to the requirements of paragraph (a), the cover of a brief, petition for rehearing, response to a petition for rehearing, petition for certiorari, response to a petition for certiorari, and a reply to the response to a petition for certiorari must include centered and stacked in the following order:

(b)(1)(A) appellate case number;

(b)(1)(B) appellate court;

(b)(1)(C) parties;

(b)(1)(D) trial court;

(b)(1)(E) trial court judge;

(b)(1)(F) trial court number;

(b)(1)(G) title of document; and

(b)(1)(H) names of counsel filing the document.

(b)(2) the second page of a brief, petition for rehearing, response to a petition for rehearing, petition for certiorari, response to a petition for certiorari, and a reply to the response to a petition for certiorari, must include:

(b)(2)(A) a list of all parties and their counsel as required by Rule 24; and

(b)(2)(B) 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~~ whether the brief is an Anders brief.

(c) Courtesy copies. No later than 7 days after filing the following, the filer must deliver to the clerk of the appellate court 6 courtesy copies. Courtesy copies must be printed on both sides of the page, and bound so that they lie reasonably flat. If there is an addendum, it must be bound as part of the brief, petition, response or reply unless doing so makes the document unreasonably thick. If the addendum is bound separately, it must contain a table of contents. The cover of the courtesy copies must be of heavy stock with adequate contrast between the printing and the color of the cover. If bound separately, the cover of an addendum must be the same color as the brief with which it is filed. The color of the cover must be as follows:

(c)(1) appellant’s opening brief, blue;

(c)(2) appellee’s opening brief, red;

(c)(3) brief of an intervenor, guardian ad litem, or amicus curiae, green; and

(c)(4) reply brief, or in a cross-appeal, appellant's second brief, gray.

~~(e)~~ (d) Effect of non-compliance with rules. ~~The clerk shall examine all briefs before filing. If they are~~ A brief, petition for writ of certiorari, or petition for rehearing not prepared in accordance with these rules~~, they will not be filed but shall be returned to be properly prepared~~ is subject to being stricken. The clerk~~ shall retain one copy of the non-complying brief and~~ will promptly notify the party ~~shall~~ to file within 7 days a brief, petition for writ of certiorari, or petition for rehearing 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~~ Upon a showing of extraordinary circumstances, the clerk may grant additional time for bringing a brief, petition for writ of certiorari, or petition for rehearing into compliance ~~only under extraordinary circumstances~~. This ~~rule is~~ paragraph does not ~~intended to~~ permit ~~significant~~ substantive changes in a brief~~s~~, petition for writ of certiorari, or petition for rehearing.

Advisory Committee Note

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

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

Rule 29. Oral argument.

(a)(1) 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~~ 28 days ~~prior to~~ before the date on which a case is calendared, the clerk ~~shall~~ will give notice of the time and place of oral argument, and the time to be allowed each side. If all parties to a case believe oral argument will not benefit the court, they may file a joint motion to cancel oral argument not later than ~~15~~ 14 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~~ 14 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 Court of Appeals; waiver of argument; continuance. Not later than ~~30~~ 28 days ~~prior to~~ before the date on which a case is calendared, the clerk ~~shall~~ will 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~~ 14 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~~ 14 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)~~ (d) Order of argument. The appellant ~~shall~~ argue~~s~~ first and the appellee ~~shall~~ respond~~s~~. The appellant may reply to the appellee's argument if appellant reserved part of appellant's time for this purpose. ~~Such a~~Argument in reply ~~shall~~ must be limited to responding to points made by appellee in appellee's oral argument and answering any questions from the court.

~~(d)~~ (e) Cross and separate appeals. A cross or separate appeal ~~shall~~ will 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 trial court action ~~below shall be~~ is deemed to be 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~~ must 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~~ must open the argument and present only the issues raised in the appellant's opening brief. The

appellee/cross-appellant ~~shall~~ must then present an argument which answers the appellant's issues and addresses original issues raised by the cross-appeal. The appellant ~~shall~~ must 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~~ will grant reasonable requests, for good cause shown, for extended argument time.

~~(e)~~ (f) 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)~~ (g) 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)~~ (h) Use of physical exhibits at argument; removal. If physical exhibits other than documents are to be used at the argument, counsel ~~shall~~ must arrange to have them placed in the courtroom before the court convenes on the date of the argument. After the argument, counsel ~~shall~~ must 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~~ will be destroyed or otherwise disposed of as the clerk shall think best.

Advisory Committee Notes

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.

Rule 34. Award of costs.

(a) To whom ~~allowed~~ awarded. Except as otherwise provided by law, if an appeal is dismissed, costs ~~shall be taxed against the appellant~~ will be awarded to the appellee unless otherwise agreed by the parties or ordered by the court; if a judgment or order is affirmed, costs ~~shall be taxed against appellant~~ will be awarded to the appellee unless otherwise ordered; if a judgment or order is reversed, costs ~~shall be taxed against the appellee~~ will be awarded to the appellant unless otherwise ordered; if a judgment or order is affirmed or reversed in part, or is vacated, costs ~~shall be allowed~~ will be awarded as ordered by the court. Costs ~~shall~~ may not be ~~allowed or taxed~~ awarded in a criminal case.

(b) Costs for and against the state of Utah. In cases involving the ~~s~~State of Utah or an agency or officer thereof, an award of costs for or against the state ~~shall be~~ is at the discretion of the court unless ~~specifically~~ required or prohibited by law.

(c) Costs of briefs and attachments, record, bonds and other expenses on appeal. The following may be ~~taxed~~ awarded as costs in favor of the prevailing party in the appeal: ~~the actual costs of a printed or typewritten brief or memoranda and attachments not to exceed $3.00 for each page~~; ~~actual costs incurred in the preparation and transmission of the record, including~~ costs of the ~~reporter's~~ transcript unless otherwise ordered by the court; premiums paid for supersedeas or cost bonds ~~to preserve rights pending appeal~~; and the fees for filing ~~and docketing~~ the appeal.

(d) ~~Bill of costs taxed after remittitur~~ Costs in an appeal from a trial court. A party claiming costs ~~shall,~~ in an appeal from a trial court a party must claim costs in the trial court under Rule of Civil Procedure 54 within ~~15~~ 14 days after the remittitur is filed with the clerk of the trial court~~, serve upon the adverse party and file with the clerk of the trial court an itemized and verified bill of costs. The adverse party may, within 5 days of service of the bill of costs, serve and file a notice of objection, together with a motion to have the costs taxed by the trial court. If there is no objection to the cost bill within the allotted time, the clerk of the trial court shall tax the costs as filed and enter judgment for the party entitled thereto, which judgment shall be entered in the judgment docket with the same force and effect as in the case of other judgments of record. If the cost bill of the prevailing party is timely opposed, the clerk, upon reasonable notice and hearing, shall tax the costs and enter a final determination and judgment which shall thereupon be entered in the judgment docket with the same force and effect as in the case of other judgments of record. The determination of the clerk shall be reviewable by the trial court upon the request of either party made within 5 days of the entry of the judgment~~.

(e) Costs in other proceedings and agency appeals. In all other matters ~~before the court~~, including appeals from an agency, costs may be ~~allowed~~ awarded as in cases on appeal from a trial court. Within ~~15~~ 14 days after the expiration of the time in which to file a petition for rehearing ~~may be filed~~ or within ~~15~~ 14 days after an order denying ~~such~~ a petition, the party to whom costs have been awarded may file with the clerk of the appellate court ~~and serve upon the adverse party~~ an itemized and verified bill of costs. The adverse party may, within ~~5~~ 7 days after the ~~service~~ filing of the bill of costs file ~~a notice of~~ an objection ~~and a motion to have the costs taxed by the clerk~~ to the cost bill. If no objection ~~to the cost bill~~ is

filed ~~within the allotted time~~, the clerk ~~shall thereupon tax~~ will award the costs and enter judgment against the adverse party. If the adverse party timely objects to the cost bill, the clerk, upon reasonable notice and hearing, ~~shall~~ will determine ~~and settle~~ the costs~~, tax the same,~~ and enter a judgment ~~shall be entered thereon~~ against the adverse party for the amount awarded. The determination by the clerk ~~shall be reviewable~~ will be reviewed by the court upon the request of either party made within ~~5~~ 7 days of the entry of judgment; unless otherwise ordered, oral argument ~~shall~~ is not ~~be~~ permitted. ~~A~~ An abstract of a judgment under this ~~section~~ paragraph may be filed ~~with the clerk of~~ in any district court ~~in the state, who shall docket a certified copy of the same in the manner and with the same force and effect as judgments of the district court~~ under Rule of Civil Procedure 58A.

Rule 35. Petition for rehearing.

(a) Petition for rehearing permitted. A rehearing will not be granted in the absence of a petition for rehearing. A petition for rehearing may be filed only in cases in which the court has issued an opinion, memorandum decision, or per curiam decision. ~~No other petitions for rehearing will be considered.~~

(b) Time for filing. A petition for rehearing ~~may~~ must be filed ~~with the clerk~~ within 14 days after issuance of the opinion, memorandum decision, or per curiam decision ~~of the court~~, unless ~~the time is shortened or enlarged by~~ otherwise ordered.

(c) Contents of petition. The petition must comply with Rule 27 and must include a copy of the opinion, memorandum decision, or per curiam decision to which it is directed. The petition ~~shall~~ must state with particularity the points of law or fact ~~which~~ that the petitioner claims the court has overlooked or ~~misapprehended~~ misunderstood and ~~shall~~ must contain ~~such~~ argument in support of the petition ~~as the petitioner desires~~. ~~Counsel for petitioner must certify that the~~ The petition must include a certification that it is ~~presented~~ filed in good faith and not for delay.

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

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

~~**(f) Form of petition.** 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 6 copies shall be filed with the court. Two copies shall be served on counsel for each party separately represented.~~

~~(h)~~ (e) Length. ~~Except by order of the court, a~~ A petition for rehearing and any response ~~requested by the court shall~~ may not exceed 15 pages unless otherwise ordered.

~~**(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. All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover.~~

~~(j)~~ (f) Action by court ~~if granted.~~ ~~If a petition for rehearing is granted, the~~ 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 appropriate orders ~~as are deemed appropriate under the circumstances of the particular case~~.

~~**(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.~~

~~(l)~~ (g) Amicus curiae. An amicus curiae may not file a petition for rehearing but may file a response to a petition if the court has requested a response ~~under paragraph (c) of this rule~~.

Rule 36. Issuance of remittitur.

(a) Date of issuance.

(a)(1) In the Supreme Court the remittitur ~~of the court shall~~ will issue ~~15~~ 14 days after the entry of the judgment. If a petition for rehearing is timely filed, the remittitur ~~of the court shall~~ will issue ~~five~~ 7 days after the entry of the order disposing of the petition.

(a)(2) In the Court of Appeals the remittitur ~~of the court shall~~ will issue ~~immediately~~ promptly after the expiration of the time for filing a petition for writ of certiorari. If a petition for writ of certiorari is timely filed, issuance of the remittitur by the Court of Appeals ~~will automatically be~~ is stayed until the Supreme Court's disposition on the petition ~~for writ of certiorari~~. If the Supreme Court denies the petition, the Court of Appeals ~~shall~~ will issue its remittitur ~~five~~ 7 days after entry of the order denying the petition. If the Supreme Court grants the petition, jurisdiction of the appeal ~~shall be~~ is transferred to the Supreme Court~~, and the Court of Appeals shall close its file and transfer the record on appeal, if any, to the Supreme Court~~.

(a)(3) The time for issuance of the remittitur may be ~~otherwise stayed, enlarged, or shortened~~ changed by court order ~~of the court~~. A ~~certified~~ copy of the opinion of the court, any direction as to costs, and the record of the proceedings ~~shall~~ constitutes the remittitur.

(b) Stay, supersedeas or injunction pending application for review to the Supreme Court of the United States. A stay or supersedeas of the remittitur or an injunction pending application for review to the United States Supreme Court may be granted on motion and for good cause. Any motion for a stay of the remittitur or for approval of a supersedeas bond or for an order suspending, modifying, restoring, or granting an injunction during the pendency of the appeal ~~shall~~ must be filed in the Utah ~~Supreme Court. Reasonable notice of the motion shall be given to~~ appellate court and served on all parties. The period of the stay, supersedeas or injunction ~~shall~~ will be ~~for such time~~ as ordered by the court up to and including the final disposition of the application for review. A bond or other security on ~~such~~ terms ~~as~~ the court deems appropriate may be required as a condition to granting or continuing the ~~grant or continuance of~~ relief under this paragraph. If the stay, supersedeas, or injunction is granted until the final disposition of the application for review, the party seeking the review ~~shall~~ must~~, within the time permitted for seeking the review,~~ timely file with the clerk of the court ~~which~~ that entered the decision sought to be reviewed, a certified copy of the notice of appeal, petition for writ of certiorari, or other application for review, or ~~shall~~ must file a certificate that ~~such~~ an application for review has been filed. Upon ~~the~~ filing ~~of a copy of an~~ the order of the United States Supreme Court dismissing the appeal or denying the petition for a writ of certiorari, the remittitur ~~shall~~ will issue immediately.

Rule 39. Duties of the clerk.

~~**(a) General provisions.** The office of the Clerk of the Court, with the clerk or a deputy in attendance, shall be open during business hours on all days except Saturdays, Sundays and legal holidays.~~

~~**(b)** **(a) The docket; calendar; other records required.** The clerk ~~shall~~ will keep a record, known as the docket, ~~in form and style as may be prescribed by the court, and shall enter therein~~ of each case. ~~The number of each case shall be noted on the page of the docket whereon the first entry is made.~~ All ~~papers~~ documents filed with the clerk and all process, orders and opinions ~~shall~~ will be entered chronologically in the docket ~~on the pages assigned to the~~ of each case. Entries ~~shall~~ will be brief but ~~shall~~ will show the date and nature of each ~~paper~~ document filed or decision or order entered ~~and the date thereof~~. The clerk ~~shall~~ will keep an ~~suitable~~ index of cases contained in the docket.

~~**(c) Minute book.** The clerk may keep a minute book, in which shall be entered a record of the daily proceedings of the court.~~ **(b) Calendar.** The clerk ~~shall~~ will prepare, under the direction of the Chief Justice of the Supreme Court or the Presiding Judge of the Court of Appeals, a calendar of cases awaiting argument.

~~**(d) Notice**~~**(c) Service of orders.** ~~Immediately~~ Promptly upon the entry of an order or decision, the clerk ~~shall~~ will serve ~~a notice of entry by mail upon~~ the order or decision on each party to the proceeding, together with a copy of any opinion respecting the order or decision. Service on a party represented by counsel shall be made upon counsel through the appellate electronic filing system.

~~**(e)** **(d) Custody of records and papers.** The clerk ~~shall have~~ has custody of and will preserve the court's records ~~and papers of the court~~. The clerk ~~shall~~ will not permit any original record ~~or paper~~ to be removed from the court, except as authorized by these rules or the ~~orders or~~ court's instructions ~~of the court~~. ~~Original papers transmitted as the record on appeal or review shall upon disposition of the case be returned to the court or agency from which they were received. The clerk shall preserve copies of briefs and attachments, as well as other printed papers filed.~~

Rule 41. Certification of questions of law by United States courts.

(a) Authorization to answer questions of law. The Utah Supreme Court may answer a question of Utah law certified to it by a court of the United States ~~when requested to do so by such certifying court acting~~ in accordance with the provisions of this rule if the state of the law of Utah applicable to a proceeding before the certifying court is uncertain.

(b) Procedure to invoke. Any court of the United States may invoke this rule by entering an order of certification as described in this rule. When invoking this rule, the certifying court may act either ~~sua sponte or upon a~~ on its own initiative or on motion by any party.

(c) Certification order.

(c)(1) A certification order ~~shall~~ must be directed to the Utah Supreme Court and ~~shall~~ must state:

(c)(1)(A) the question of law to be answered;

(c)(1)(B) that the question certified is a controlling issue of law in a proceeding pending before the certifying court; and

(c)(1)(C) that there appears to be no controlling Utah law.

(c)(2) The order ~~shall~~ must also set forth all facts ~~which are~~ relevant to the determination of the question certified and ~~which~~ that show the nature of the controversy, the context in which the question arose, and the procedural steps by which the question was framed.

(c)(3) The certifying court may also include in the order any additional reasons for its entry of the certification order ~~that are not otherwise apparent~~.

(d) Form of certification order; submission of record. A certification order ~~shall~~ must be signed by the judge presiding over the proceeding giving rise to the certification order and forwarded to the Utah Supreme Court by the clerk of the certifying court ~~under its official seal~~. The Supreme Court may require that all or any portion of the record before the certifying court be filed with the Supreme Court if the record ~~or a portion thereof~~ may be necessary in determining whether to accept the certified question or in answering that question. A copy of the record certified by the clerk of the certifying court to conform to the original may be substituted for the original as the record.

(e) Acceptance or rejection of certification. Upon filing of the certification order and accompanying papers with the clerk, the Supreme Court ~~shall~~ will promptly enter an order ~~either~~ accepting or rejecting the question certified to it, and the clerk ~~shall~~ will serve copies of the order upon the certifying court and all parties identified in the certification order. If the Supreme Court accepts the question, the Court will set out in the order of acceptance (1) the specific question or questions accepted, (2) the deadline for notifying the Supreme Court as to those portions of the record which shall be copied and filed with the Clerk of the Supreme Court, and (3) information as to when the briefing schedule will be established.

(f) Briefing; oral argument. The form of briefs and proceedings on oral argument will be governed by these rules except as ~~such rules may be~~ modified by the Supreme Court to accommodate the differences between the appeal process and the determination of a certified question. The clerk of the

Supreme Court will provide written notice to the parties ~~as to~~ of the schedule for the filing of briefs and content requirements, as well as the schedule and procedures for oral argument.

(g) Appearance of counsel pro hac vice. Upon acceptance by the Supreme Court of the question of law presented by the certification order, counsel for the parties not licensed to practice law in the state of Utah may appear pro hac vice upon motion filed pursuant to ~~the Code of Judicial Administration~~ Rules Governing the Utah State Bar.

(h) Issuance of opinion on certified questions. The Supreme Court will issue a written opinion that will be published and reported. A copy of the opinion ~~shall~~ will be transmitted by the clerk ~~under the seal of the Supreme Court~~ to the certifying court and to the parties identified in the certification order.

~~**Advisory Committee Note**~~

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

Rule 42. Transfer of case from Supreme Court to Court of Appeals.

(a) Discretion of Supreme Court to transfer. At any time before a case is set for oral argument ~~before the Supreme Court~~, the Supreme Court may transfer to the Court of Appeals any case except those cases within the Supreme Court's exclusive jurisdiction. The order of transfer ~~shall~~ will be issued without opinion~~, written or oral,~~ as to the merits of the appeal or the reasons for the transfer.

~~**(b) Notice of order of transfer.** Upon entry of the order of transfer the Clerk of the Supreme Court shall give notice of entry of the order of transfer by mail to each party to the proceeding and to the clerk of the trial court. Upon entry of the order of transfer, the Clerk of the Supreme Court shall transfer the original of the order and the case, including the record and file of the case from the trial court, all papers filed in the Supreme Court, and a written statement of all docket entries in the case up to and including the order of transfer, to the Clerk of the Court of Appeals.~~

~~**(c) Receipt of order of transfer by Court of Appeals.** Upon receipt of the original order of transfer from the Clerk of the Supreme Court, the Clerk of the Court of Appeals shall enter the appeal upon the Court of Appeals docket. The Clerk of the Court of Appeals shall immediately give notice to each party to the proceeding and to the clerk of the trial court that the appeal has been docketed and that all further filings will be made with the Clerk of the Court of Appeals. The notice shall state the docket number assigned to the case in the Court of Appeals.~~

~~**(d) Filing or transfer of appeal record.** If the record on appeal has not been filed with the Clerk of the Supreme Court as of the date of the order of transfer, the Clerk of the Supreme Court shall notify the clerk of the trial court that upon completion of the conditions for filing the record by that court, the clerk shall transmit the record on appeal to the Clerk of the Court of Appeals. If, however, the record on appeal has already been transmitted to and filed with the Clerk of the Supreme Court as of the date of the entry of the order of transfer, the Clerk of the Supreme Court shall transmit the record on appeal to the Clerk of the Court of Appeals within five days of the date of the entry of the order of transfer.~~

~~**(e)** **(b)** **Subsequent proceedings before Court of Appeals.** Upon receipt by the Clerk of the Court of Appeals of the order of transfer and the entry thereof upon the docket of the Court of Appeals, the~~ The case ~~shall~~ will proceed before the Court of Appeals to final decision and disposition as in other appellate cases pursuant to these rules. The Clerk of the Court of Appeals will promptly notify all parties and the clerk of the trial court that the appeal has been docketed and that all further filings will be made with the Clerk of the Court of Appeals.

Advisory Committee Note

~~Former Rules 4A and 4B have been renumbered as Rules 42 and 43 respectively and included in a new title governing the certification and transfer of cases between courts. The amendments make uniform the practices followed by the two appellate courts in transferring cases.~~

Rule 43. Certification by the Court of Appeals to the Supreme Court.

(a) Transfer. In any case over which the Court of Appeals has original appellate jurisdiction, the court may, upon the affirmative vote of four judges of the court, certify a case for immediate transfer to the Supreme Court for determination.

(b) Procedure for transfer.

(b)(1) The Court of Appeals may, on its own ~~motion~~ initiative, decide whether a case should be certified. Any party to a case may, however, file ~~and serve an original and eight copies of~~ a suggestion for certification not exceeding ~~five~~ 5 pages setting forth the reasons why the party believes that the case should be certified. The suggestion may not be filed ~~prior to~~ before the filing of a docketing statement. Within ~~ten~~ 14 days of ~~service~~ filing, an adverse party may file ~~and serve an original and eight copies of~~ a statement not ~~in excess of five~~ exceeding 5 pages either supporting or opposing the suggestion for certification.

~~(b)(2) Upon entry of the order of certification, the Clerk of the Court of Appeals shall immediately transfer the case, including the record and file of the case from the trial court, all papers filed in the Court of Appeals, and a written statement of all docket entries in the case up to and including the certification order, to the Clerk of the Supreme Court. The Clerk of the Court of Appeals shall promptly notify all parties and the clerk of the trial court that the case has been transferred.~~

~~(b)(3) Upon receipt of the order of certification, the Clerk of the Supreme Court shall enter the appeal upon the docket of the Supreme Court.~~ (b)(2) The case will proceed before the Supreme Court to final decision and disposition as in other appellate cases pursuant to these rules. The clerk of the Supreme Court ~~shall immediately send notices to~~ will notify all parties and ~~to~~ the clerk of the trial court that the case has been docketed and that all further filings will be made with the Clerk of the Supreme Court. ~~The notice shall state the docket number assigned to the case in the Supreme Court. The case shall proceed before the Supreme Court to final decision and disposition as in other appellate cases pursuant to these rules.~~

~~(b)(4) If the record on appeal has not been filed with the Clerk of the Court of Appeals as of the date of the order of transfer, the Clerk of the Court of Appeals shall notify the clerk of the trial court that upon completion of the conditions for filing the record by that court, the clerk shall transmit the record on appeal to the Clerk of the Supreme Court. If, however, the record on appeal has already been transmitted to and filed with the Clerk of the Court of Appeals as of the date of the entry of the order of transfer, the Clerk of the Court of Appeals shall transmit the record on appeal to the Clerk of the Supreme Court within five days of the date of the entry of the order of transfer.~~

(c) Criteria for transfer. The Court of Appeals ~~shall~~ will consider certification only in the following cases:

(c)(1) ~~Cases which are of such a nature that~~ If it is apparent that the case should be decided by the Supreme Court and that the Supreme Court would probably grant a petition for a writ of certiorari

in the case if decided by the Court of Appeals, irrespective of how the Court of Appeals might rule, and

(c)(2) Cases ~~which~~ that will govern a number of other cases involving the same legal issue or issues pending in the district courts, juvenile courts or the Court of Appeals or which are cases of first impression under state or federal law which will have wide applicability.

Advisory Committee Note

~~Former Rules 4A and 4B have been renumbered as Rules 42 and 43 respectively and included in a new title governing the certification and transfer of cases between courts. The amendments make uniform the practices followed by the two appellate courts in transferring cases.~~

Rule 47. ~~Transmission of record; j~~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~~ may not be joined with any other filing.

(b) Parties. All parties to the proceeding in the Court of Appeals ~~shall be~~ are 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~~. A party noted as no longer interested may remain a party by ~~notifying the clerk, with service on the other parties,~~ filing and serving notice that the party has an interest in the petition.

~~**(c) Transmission of record.** 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~~ must be paid at the time of filing the petition.

(b) ~~Refusal~~ Rejection of untimely petition. The clerk will ~~refuse to receive~~ reject any untimely 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 that complies with Rule 35(a) 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~~ paragraphs (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~~ must 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.

(e)(1) The Supreme Court, upon a showing of 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~~ before the expiration of the time prescribed by paragraph (a) or (c)~~ of this rule~~. Responses ~~to such motions~~ are disfavored and the court may rule at any time after the filing of the motion. No extension ~~shall~~ may exceed 30 days past the prescribed time or 14 days from the date of entry of the order granting the motion, whichever occurs later, and no more than one extension will be granted.

(e)(2) The Supreme Court, upon a showing of good cause or excusable neglect, 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. No extension ~~shall~~ may exceed 30 days past the prescribed time or 14 days from the date of entry of the order granting the motion, whichever occurs later, and no more than one extension will be granted.

(f) Form of petition. ~~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.~~ The petition must comply with Rule 27.

Rule 50. Brief in opposition; reply brief; brief of amicus curiae.

(a) Brief in opposition. Within 30 days after ~~service~~ filing of a petition the respondent ~~shall~~ may file an opposing brief, disclosing any matter or ground why the case should not be reviewed by the Supreme Court. ~~Such~~ The brief ~~shall~~ must comply with Rule~~s~~ 27 and, as applicable, Rule 49. ~~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 ~~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 writ of certiorari may be included in the brief in opposition.

~~**(d) Distribution of filings.** Upon the filing of a brief in opposition, the expiration of the time allowed therefor, or express waiver of the right to file, the petition and the 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 the cross-respondent, the expiration of the time allowed therefor, or express waiver of the right to file.~~

~~**(e)**~~ **(d) Reply brief.** ~~A~~ Within 7 days after filing of a brief in opposition, the petitioner may file a reply brief addressed to arguments first raised in the brief in opposition ~~may be filed by any petitioner~~, but ~~distribution under paragraph (d) of this rule will not be delayed pending the filing of any such~~ the court may act on the petition without awaiting a reply brief. ~~Such~~ The reply brief must comply with Rule 27 and ~~brief shall be as short as possible, but~~ may not exceed ~~five~~ 5 pages. ~~Such brief shall comply with Rule 27. The number of copies to be filed shall be as described in Rule 50(a).~~

~~**(f)**~~ **(e) Brief of amicus curiae.** A brief of an amicus curiae 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~~ must 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~~ must 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~~ must 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~~ must 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. 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~~ must be filed within ~~seven~~ 14 days of ~~service~~ filing of the motion. 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~~ does 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.

Rule 51. Disposition of petition for writ of certiorari.

(a) Order ~~after consideration~~. ~~After consideration of the documents distributed pursuant to Rule 50, the~~ The Supreme Court will enter an appropriate order ~~denying the petition or granting the petition in whole or in part. The order shall be decided summarily, shall be~~ without oral argument~~, and shall not constitute a decision on the merits~~. ~~The clerk shall not issue a formal writ unless directed by the Supreme Court.~~

(b) Grant of petition; briefing oral argument.

(b)(1) ~~Whenever~~ When an order granting a petition for a writ of certiorari is entered, the Clerk of the Supreme Court ~~forthwith shall~~ will notify the Clerk of the Court of Appeals and ~~counsel of record.~~

~~(b)(2) If the record has not previously been filed, the Clerk of the Supreme Court shall request the clerk of the court with custody of the record to certify it and transmit it to the Supreme Court.~~

~~(b)(3) The clerk shall file the record~~ the parties and give notice to the parties of the date ~~on which it was filed and the date~~ on which petitioner's brief is due.

~~(b)(4)~~ (b)(2) If the petition is granted, Rules 24, ~~through 31 shall~~ 25, 26 and 27 govern briefs~~,~~ ~~argument, and disposition of the petition for writ of certiorari~~. Rule 29 governs oral argument. Rule 30 governs the decision of the Supreme Court. In applying Rules 24 through ~~31~~ 30, the petitioner ~~shall~~ stands in the place of the appellant and the respondent in the place of the appellee. ~~In lieu~~ Instead of providing the citation or statements required by Rules 24(a)(5)(A) and (B), the statement of the issues presented for review as required by Rule 24(a)(5) ~~shall~~ must include, for each issue, a statement and citation showing that the issue was ~~presented~~ fairly included in the order granting the petition for certiorari ~~or fairly included therein~~.

(c) Denial of petition. ~~Whenever~~ When a petition for a writ of certiorari is denied, ~~an order to that effect will be entered, and~~ the Clerk of the Supreme Court ~~forthwith~~ will notify the Court of Appeals and ~~counsel of record~~ the parties.

Rule 53. Notice of appeal in child welfare appeals.

(a) Filing and contents. A notice of appeal filed pursuant to Rule 52(a) must be filed with the clerk of the juvenile court where the order was entered. The notice ~~shall~~ must specify the ~~party or parties taking the appeal; shall~~ appellant and designate the judgment or order, or part thereof, appealed from~~; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken~~. The notice of appeal ~~shall~~ must substantially comply with the notice of appeal form that accompanies these rules.

(b) Signature or Diligent Search. The notice of appeal must be signed by appellant's counsel and by appellant, unless the appellant is a minor child or state agency. Counsel filing a notice of appeal without appellant's signature ~~shall~~ must contemporaneously file, with the clerk of the juvenile court, a certification that substantially complies with the Counsel's Certification of Diligent Search form that accompanies these rules. An amended notice of appeal adding appellant's signature ~~shall~~ must be filed within 15 days of the filing of the notice of appeal or the appeal ~~shall~~ will be dismissed.

(c) Service. The appellant shall serve a copy of the notice on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party ~~at the party's last known address~~, in ~~the~~ a manner prescribed in Rule ~~3(e)~~ 21. ~~Promptly after filing the notice of appeal with the clerk of the juvenile court, the appellant shall mail or deliver an informational copy of such notice to the clerk of the Court of Appeals.~~

Advisory Committee Note

As provided in Rule 21, the appellant may sign the notice of appeal by any means recognized by law. This includes an electronic signature within the definition of Utah Code Section 46-4-102.

Rule 54. Transcript of proceedings in child welfare appeals.

(a) Duty of appellant to request transcript. Within ~~4~~ 7 days after filing the notice of appeal, the appellant ~~shall file with the clerk of the appellate court a written request for transcript, specifying the entire proceeding or parts of the proceeding to be transcribed that are not already on file. Within the same period, the appellant shall file a copy with the clerk of the juvenile court and serve the parties~~ must order online at www.utcourts.gov a transcript of the entire proceeding or desired parts of the proceeding or file a certificate that no parts of the proceeding need to be transcribed. The appellant must serve on the other parties, including the Guardian ad Litem, a designation of the parts of the proceeding to be transcribed or the certificate that no parts of the proceeding need to be transcribed.

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

~~**(c) Notice that no transcript needed.** If no parts of the proceeding need to be transcribed, within four days after filing the notice of appeal, the appellant shall file a notice to that effect with the clerk of the Court of Appeals and a copy with the clerk of the juvenile court.~~

(c) Cross-designation by other parties. If the appellant does not order the entire transcript, any other party, including the Guardian ad Litem, may, within 7 days after the filing of the designation or certificate described in paragraph (a), order additional parts of the proceeding to be transcribed.

Rule 55. Petition ~~on~~ in child welfare appeals.

(a) Filing; dismissal for failure to timely file. The appellant ~~shall~~ must file the petition on appeal with the clerk of the Court of Appeals ~~an original and four copies of the petition on appeal. The petition on appeal must be filed with the appellate clerk~~ within 15 days from the filing of the notice of appeal or the amended notice of appeal. If the petition on appeal is not timely filed, the appeal ~~shall~~ will be dismissed. It ~~shall~~ must be accompanied by proof of service. ~~The~~ If the petition ~~shall be~~ is delivered by first-class mail, it is deemed filed on the date of the postmark ~~if first-class mail is utilized~~. The appellant ~~shall~~ must serve a copy on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party ~~at the party's last known address~~, in the manner prescribed in Rule 21(c).

(b) Preparation by trial counsel. The petition on appeal ~~shall~~ must be prepared by appellant's trial counsel. Trial counsel may ~~only~~ be relieved of this obligation by the juvenile court only upon a showing of extraordinary circumstances. Claims of ineffective assistance of counsel do not constitute extraordinary circumstances but should be raised by trial counsel in the petition on appeal.

(c) Format. ~~All~~ The petition~~s~~ on appeal ~~shall~~ must comply with Rule 27(a) and substantially comply with the Petition on Appeal form that accompanies these rules. The petition ~~shall~~ may not exceed 15 pages, excluding the attachments required by ~~Rule 55(d)(6)~~ paragraph (d)(7). ~~The petition 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 ½ inches wide and 11 inches long. 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. 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. Examples are CG Times, Times New Roman, New Century, Bookman and Garamond. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes. Examples are Pica and Courier.~~

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

(d)(1) A statement of the nature of the case and the relief sought.

(d)(2) The entry date of the judgment or order on appeal.

(d)(3) The date and disposition of any post-judgment motions.

(d)(4) A concise statement of the material adjudicated facts as they relate to the issues presented in the petition on appeal.

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

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

(d)(7) The petition on appeal ~~shall have attached to it~~ must include a copy of or a link to:

(d)(7)(A) ~~a copy of~~ the order, judgment, or decree on appeal;

(d)(7)(B) ~~a copy of~~ any rulings on post-judgment motions.

(e) Compliance with Rule 21. Petitions made under this rule that contain information or records classified as other than public must comply with Rule 21(g).

Rule 56. Response to petition ~~on~~ in child welfare appeal~~s~~.

(a) Filing. Any appellee, including the Guardian ad Litem, may file a response to the petition on appeal~~. An original and four copies of the response must be filed~~ with the clerk of the Court of Appeals within 15 days after ~~service~~ filing of the appellant's petition on appeal. It ~~shall~~ must be accompanied by proof of service. ~~The~~ If the response ~~shall be~~ is delivered by first-class mail, it is deemed filed on the date of the postmark ~~if first-class mail is utilized~~. The appellee ~~shall~~ must serve a copy on counsel of record of each party, including the Guardian ad Litem, or, if the party is not represented by counsel, then on the party ~~at the party's last known address~~, in the manner prescribed in Rule 21(c).

(b) Format. A response ~~shall~~ must comply with Rule 27(a) and substantially comply with the Response to Petition on Appeal form that accompanies these rules. The response ~~shall~~ may not exceed 15 pages, excluding any attachments~~, and shall comply with Rule 27(a) and (b), except that it may be printed or duplicated on one side of the sheet~~.

(c) Compliance with Rule 21. Responses made under this rule that contain information or records classified as other than public must comply with Rule 21(g).

Rule 57. Record ~~on~~ in child welfare appeal~~; transmission of record~~.

~~(a)~~ The record on appeal ~~shall~~ include~~s~~ the legal file, any exhibits admitted as evidence, and any transcripts.

~~(b) The record shall be transmitted by the juvenile court clerk to the clerk of the Court of Appeals upon completion of the transcript or, if there is no transcript, within 20 days after the filing of the notice of appeal.~~

Rule 58. Ruling in child welfare appeals.

~~(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~~ appellate court may issue a decision or may ~~set~~ schedule the case for full briefing under rule ~~24~~ 13. The ~~Court of Appeals~~ appellate court may order an expedited briefing schedule and specify which issues ~~shall~~ must be briefed. If the issue to be briefed is ineffective assistance of counsel, the ~~Court of Appeals~~ appellate court may order the juvenile court to appoint conflict counsel within 15 days ~~for briefing and argument~~.

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

Rule 59. Extensions of time in child welfare appeals.

(a) Extension of time to appeal. The juvenile court, upon a showing of good cause or excusable neglect, may extend the time for filing a notice of appeal upon motion filed ~~prior to~~ before the expiration of time prescribed by Rule 52. No extension ~~shall~~ may exceed ~~10~~ 14 days past the prescribed time or ~~10~~ 14 days from the date of entry of the order granting the motion, whichever occurs later.

(b) Extension of time to file petition on appeal or response. The ~~Court of Appeals~~ appellate court for good cause shown may extend the time for filing a petition on appeal or a response to the petition on appeal upon motion filed ~~prior to~~ before the expiration of the time for which the extension is sought. No extension ~~shall~~ may exceed ~~10~~ 14 days past the original due date or ~~10~~ 14 days from the date of entry of the order granting the motion, whichever occurs later. The motion ~~shall~~ must comply with Rule 22(b)~~(4)~~.

Rule 60. Judicial bypass appeals.

(a) Scope. This rule applies to an appeal from an order denying or dismissing a petition filed by a minor to bypass parental consent to an abortion under Utah Code ~~Ann. §~~ Section 76-7-304.5~~. In such appeals, this rule supercedes~~ and supersedes the other appellate rules to the extent they may be inconsistent with this rule.

(b) Jurisdictional limitation. This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Rule 3.

(c) Notice of appeal.

(c)(1) A minor may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal in the juvenile court within the time allowed under Rule 4. The notice of appeal ~~may be filed in person, by mail, or by fax, and must be accompanied by a copy of~~ must designate the order from which the appeal is taken. No filing fee will be charged. The clerk of the juvenile court shall immediately notify the clerk of the court of appeals that the appeal has been filed.

(c)(2) The notice of appeal must indicate that the appeal is being filed pursuant to this rule, but the court will apply this rule to cases within its scope whether they are so identified or not.

(c)(3) ~~Blank n~~Notice of appeal forms will be available at all juvenile court locations and will be ~~mailed or faxed~~ provided to a minor upon request. No fee will be charged for this ~~service~~ or other services provided to a minor in an appeal under this rule.

(d) Record on appeal. The record on appeal consists of the juvenile court file, including all papers and exhibits filed in the juvenile court, and a recording or transcript of the proceedings before the juvenile court. ~~The clerk of the court of appeals shall request the record immediately upon receiving notice that the appeal has been filed. Upon receiving this request, the clerk of the juvenile court shall immediately transmit the record to the court of appeals by overnight mail or in another manner that will cause it to arrive within 48 hours after the notice of appeal is filed.~~

(e)~~ Brief~~ Memorandum in support of the appeal. A brief is not required. However, the minor may file a ~~typewritten~~ memorandum in support of the appeal. The memorandum ~~shall~~ must be submitted within ~~two judicial~~ 2 business days after the notice of appeal is filed.

(f) Oral argument. If ordered by the court, oral argument will be held within ~~three judicial~~ 3 business days after the notice of appeal is filed. The court of appeals clerk will immediately notify the minor of the date and time for oral argument. Upon request, the minor will be allowed to participate ~~telephonically~~ by contemporaneous transmission from a different location at court ~~system~~ expense.

(g) Disposition. The court ~~shall~~ will enter an order stating its decision immediately after oral argument or, if oral argument is not held, within ~~three judicial~~ 3 business days after the date the notice of appeal is filed. The clerk ~~shall~~ will immediately notify the minor of the decision. The court may issue an opinion explaining the decision at any time following entry of the order. The opinion ~~shall~~ will be written to ensure the confidentiality of the minor.

(h) Confidentiality. ~~Documents and proceedings~~ Records in an appeal under this rule are ~~confidential~~ safeguarded and hearings are closed. Court personnel are prohibited from notifying the minor's parents, guardian, or custodian that the minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(i) Attorney. If the minor is not represented by an attorney, the court ~~shall~~ will consider appointing an attorney or the Office of Guardian ad Litem to represent the minor in the appeal. If an attorney or the Office of Guardian ad Litem was appointed to represent the minor in the trial court, the appointment continues through appeal.

Tab 4

Rule 52. Child welfare appeals.

(a) Time for appeal. A notice of appeal from an order in a child welfare proceeding, as defined in Rule 1(f), must be filed within 15 days of the entry of the order appealed from. ~~If a timely post judgment motion is filed pursuant to Utah Rules of Civil Procedure 50(b), 52(b), or 59, the time for appeal shall run from the entry of the order disposing of the motion.~~

(b) Time for appeal extended by certain motions.

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

(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; or

(b)(1)(D) A motion for a new trial under Rule 59 of the Utah Rules of Civil 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 paragraph (b), will be treated as filed after entry of the order and on the day thereof, except that the notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in paragraph (b)(1), 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.

~~(b)~~ (c) Time for cross-appeal. ~~A notice of cross appeal may be filed within the 15 days for filing a notice of appeal or~~ If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 5 days ~~after a notice of appeal is filed~~ 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.

~~(c)~~ (d) Appeals of interlocutory orders. Appeals from interlocutory orders are governed by Rule 5.

Tab 5

Rule 37. Suggestion of mootness; voluntary dismissal.

(a) Suggestion of mootness. ~~It is the duty of each party at all times during the course of an appeal or other proceeding to inform the court of any~~ Any party aware of circumstances ~~which have transpired subsequent to the filing of the appeal or other proceeding which~~ that likely render moot one or more of the issues ~~raised~~ presented for review must~~. If a party determines that one or more, but less than all, of the issues have been rendered moot, the party shall~~ promptly ~~advise the court by filing~~ file a "suggestion of mootness" in the form of a motion under Rule 23. ~~If all parties to an appeal or other proceeding agree as to the mootness of one or more, but less than all, of the issues raised, a stipulation to that effect shall be filed with the suggestion of mootness. If an appellant determines all issues raised in the appeal or other proceeding are moot, a motion for voluntary dismissal shall be filed pursuant to the provisions of paragraph (b) of this rule.~~

(b) Voluntary dismissal. At any time ~~prior to~~ before the issuance of a decision an appellant may move to voluntarily dismiss an appeal or other proceeding. If all parties ~~to an appeal or other proceeding~~ agree that dismissal is appropriate, a stipulation to that effect ~~shall~~ must be filed with the motion ~~for voluntary dismissal~~. ~~Any such~~ The stipulation shall specify the terms as to payment of costs and attorney fees, if applicable~~, and provide for payment of whatever fees are due~~. If all parties stipulate in writing that a case be dismissed, specifying the terms for payment of applicable costs and attorney fees, and pay any fees then due the court, the clerk of the court will enter an order dismissing the appeal or other proceeding.

(c) When affidavit or declaration is required. If the appellant has the right to effective assistance of counsel, a motion ~~to voluntarily dismiss~~ for voluntary dismissal for reasons other than mootness ~~shall~~ must be accompanied by appellant's personal affidavit or declaration under Section 78B-5-705 demonstrating that the appellant's decision to dismiss the appeal is voluntary and made with knowledge of the right to an appeal and ~~an understanding~~ of the consequences of ~~voluntary~~ dismissal. If an attorney representing the appellant has lost communication with the appellant, the motion must be accompanied by the attorney's affidavit or declaration to that effect and stating the basis of the motion.

~~(d) A suggestion of mootness or motion for voluntary dismissal shall be subject to the appellate court's approval.~~

Advisory Committee Notes

Criminal defendants have a constitutional right to the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); State v. Arguelles, 921 P.2d 439, 441 (Utah 1996). Parties in juvenile court proceedings have a statutory right to effective assistance of counsel. State ex rel. E.H. v. A.H., 880 P.2d 11, 13 (Utah App. 1994)~~; see Utah Code Ann. § 78-3a-913(1)(a)(Supp. 1998)~~. ~~To protect these rights and the right to appeal, Utah Code Ann. § 77-18a-1(1)(Supp. 1998); id. § 78-3a-909(1)(1996), the last sentence was added to Rule 37(b) to~~ Paragraph (c) assures that the decision to abandon an appeal is an informed choice made by the appellant, not ~~unilaterally~~ by the appellant's attorney.

Tab 6

Rule 23D. Challenging the constitutionality of a statute or ordinance.

(a) Notice to the attorney general or the county or municipal attorney; penalty for failure to give notice.

(a)(1) If any party presents for review the constitutionality of a statute or ordinance in its brief, every party must serve its brief on the attorney general or the county or municipal attorney, as appropriate, and file proof of service with the court.

(a)(2) If a party fails to serve its brief as required by this rule, the party is liable for costs, expenses, and attorney fees caused by the failure.

(b) Notice by the attorney general or county or municipal attorney; amicus brief. No later than 7 days after service of the appellee's brief under paragraph (a), the attorney general or the county or municipal attorney must file notice of whether it intends to file an amicus brief. Without further leave of the court, the attorney general or the county or municipal attorney may file an amicus brief no later than 14 days after the appellee's brief.

(c) Call for the views of the attorney general or county or municipal attorney. If a party presents for review the constitutionality of a statute or ordinance, the appellate court may call for the views of the attorney general or the county or municipal attorney and set a schedule for an amicus brief. The attorney general or the county or municipal attorney must address any issues identified by the court.

Tab 7

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

(a) Attorney's or party's signature. Every motion, brief, and other document must be signed by at least one attorney of record who is an active member in good standing of the Bar of this state or by a party who is self-represented. A person may sign a document using any form of signature recognized by law as binding.

(b) Representations to court. The signature of an attorney or self-represented party certifies that to the best of the person's knowledge formed after an inquiry reasonable under the circumstances:

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

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

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

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

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

(c) Sanctions and discipline of attorneys and parties.

(c)(1) The court may~~, after reasonable notice and an opportunity to show cause to the contrary, and upon hearing, if requested, take appropriate action~~ enter a discipline order against ~~any~~ an attorney or ~~person~~ a self-represented party who ~~practices~~ appears before it for ~~inadequate representation of a client,~~ conduct unbecoming ~~a member of the Bar or a person allowed to appear before the court,~~ an attorney or a self-represented party or for failure to comply with these rules or a court order ~~of the court~~. In addition the court may enter a discipline order against an attorney for inadequate representation of a client.

(c)(2) When alleged conduct constituting grounds for discipline comes to the attention of the court, the court may enter an order to show cause why a discipline order should not be entered. The order to show cause will describe the alleged conduct, and the clerk of the court will send the order to the attorney or self-represented party.

(c)(3) No later than 14 days after receiving the order the self-represented party or attorney may file a memorandum showing cause why a discipline order should not be entered and may request a hearing.

(c)(4) If the self-represented party or attorney fails to show cause why a discipline order should not be entered, the court may enter the order, which may include suspension from practice before the

court for a definite or indefinite term; reprimand; financial penalty; or any other appropriate sanction other than disbarment or suspension from the practice of law.

(c)(5) A financial penalty is the personal responsibility of the person disciplined, and may not be reimbursed by a client. A person suspended from practice before the court for a definite term is automatically reinstated at the end of the term. A person suspended from practice before the court for an indefinite term may be reinstated only by order of the court. A person suspended from practice before the court who represents clients before the court must promptly notify the clients of the term of the suspension.

(c)(6) ~~Any action to suspend or disbar a member of the Utah State Bar shall be referred~~ If the person disciplined is an attorney, the clerk of the court will promptly send the discipline order to the Office of Professional Conduct of the Utah State Bar.

(d) Rule does not affect contempt power. This rule does not limit or impair the court's inherent and statutory contempt powers.

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

Advisory Committee Notes

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