Agenda

Advisory Committee on Rules of Appellate Procedure

February 2, 2017

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	Paul Burke
Committee Member Disclosures		Paul Burke
Rule 24 and new Rule 24A - Public comments submitted on proposed amendments	Tab 2	Paul Burke
Rule 21 - Conforming amendment to Civil Rule 5 – prisoner mailbox rule	Tab 3	Supreme Court
INFORMATION –Logue Subcommittee report	Tab 4	Lori Seppi
Rule 30 –Technical amendment to Title	Tab 5	Judge Voros
Appendix of Forms	Tab 6	James Ishida

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

Meeting Schedule. All meetings are from 12:00 to 1:30 at the Administrative Office of the Courts in the Matheson Courthouse.

March 2, 2017
April 6, 2017
May 4, 2017
June 1, 2017
September 7, 2017
October 5, 2017
November 2, 2017
December 7, 2017

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, December 1, 2016
12:00 p.m. to 1:30 p.m.

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

1. Welcome and approval of minutes **Paul Burke**

Mr. Burke welcomed the committee to the meeting. Ms. Romano introduced her guest Anna Crandall. Mr. Burke suggested amending the minutes from the November meeting to reflect that the committee presented former committee chair Joan Watt with a certificate of appreciation from the Utah Supreme Court, and voted to thank her for her service on the committee. *Ms. Romano moved to approve the November minutes with this amendment. Ms. Seppi seconded the motion and it passed unanimously.*

2. Rule 37. Suggestion of mootness; voluntary dismissal **Judge Voros**

Judge Voros presented the proposed changes to Rule 37 that were last discussed at the October meeting. Judge Voros explained the revision to Rule 37(c) is intended to provide a safety valve for counsel who cannot obtain the affidavit from their client necessary to support a motion for voluntary dismissal of an appeal. Ms. Seppi asked what a "reasonable factual basis" is for counsel to believe that the appellant no longer wishes to pursue the appeal. Judge Voros

commented that it should be up to counsel to decide. The rule does not require counsel to articulate a reasonable factual basis—just to certify that there is one.

Ms. Romano asked why the last sentence in 37(a) was deleted. She said that it may be worth keeping that sentence to let practitioners know that they can file a motion for voluntary dismissal if the issues are moot. Judge Voros said that the court wants to determine mootness for itself, which resolved Ms. Romano's concern. Ms. Seppi supported deleting the last sentence because it required appellants to file a motion for voluntary dismissal if they thought the issue was moot, rather than file a suggestion of mootness. Ms. Romano commented from a practitioner standpoint that if the court stays briefing on the merits to consider a suggestion of mootness, it should fully resolve the issue of mootness before requiring the parties to resume briefing on the merits.

The committee discussed the proposed deletion of the last sentence in 37(b), and agreed that the sentence should be kept, but reworded to say: "The stipulation must specify the terms of payment of costs and fees, if any."

Judge Voros moved to adopt the proposed amendments to Rule 37 with this change. Ms. Decker seconded the motion, and it passed unanimously. Mr. Sabey abstained from voting on the amendments related to automatic dismissal of appeals.

3. Selection of subcommittee member re Logue vs. Court of Appeals, 2016 UT 44 (2016) **Paul Burke**

Mr. Burke reported that the Utah Supreme Court agreed with the suggestion to form a joint subcommittee with the civil and criminal rules committees to address the court's request in the *Logue* decision. Mr. Burke asked for volunteers to serve on the subcommittee. Ms. Westby, Mr. Sabey, and Ms. Seppi volunteered. Ms. Decker volunteered Mark Field from the Utah Office of the Attorney General. Mr. Burke asked Mark Field and Ms. Seppi to serve as the committee's representatives on the subcommittee.

4. Rule 52 Proposals re child welfare appeals **Supreme Court**

Mr. Burke invited discussion about whether Rules 52-59 should be adjusted relating to child welfare appeals and expediting adoption appeals. Ms. Westby said that she asked for feedback on this issue from the juvenile rules committee, but she has not heard anything back. Ms. Romano said she would follow up with the chair of the juvenile rules committee about it.

Several members of the committee said that they did not have a clear sense of the issues with Rules 52-59 that need to be addressed. Mr. Sabey said that the issue relating to expediting adoption appeals came from a letter the court received from an adoptive family complaining about the uncertainty that had plagued them for years while their appeal was pending. Ms. Romano asked if the committee could read the letter to better understand the family's complaint. Judge Voros said that it may be a case management problem, rather than a need for an amended rule. Mr. Parker agreed, saying that the court has internal mechanisms to deal with case management issues. Judge Voros suggested that the court could treat adoption appeals like

election issues, where an order is issued right away and the opinion is issued later. Judge Voros also suggested that a procedure similar to that provided for in Rule 30(d) could be established, allowing the court to dispose of the case by order without written opinion. Judge Orme said that the court needs to have discretion whether to expedite the appeal, and suggested that this issue should be placed on the agenda for discussion at the annual judicial conference.

The committee decided to continue discussion of these issues at a future meeting after obtaining feedback from the juvenile rules committee and the judicial conference.

5. Appellate Rules Committee outreach **Paul Burke**

Mr. Burke asked for suggestions about how to obtain feedback from the legal community about changes that should be made to the rules. He also invited the committee members to suggest issues to consider.

Mr. Booher suggested the committee consider briefing of certified questions. He said that simultaneous briefing should be the default, but that there should be a mechanism for deciding when ordered briefing applies. Mr. Sabey suggested the committee also consider the order of oral argument for certified questions. Ms. Romano suggested the committee consider a policy governing when the court dismisses an appeal as improvidently granted.

Mr. Ishida suggested using the website to invite feedback from the community. Mr. Burke suggested sending an email to the Utah bar. Mr. Burke invited the committee to submit other suggestions by email to either him or Mr. Ishida.

6. Adjourn

The meeting was adjourned at 1:06 p.m.. The next meeting will be held on January 5, 2017.

Tab 2

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

TO: Appellate Rules Committee

FROM: James Ishida JNI

DATE: December 29, 2016

RE: *Public comments received on proposed amendment to Appellate Rule 24 and proposed new Appellate Rule 24A*

The proposed amendment to Appellate Rule 24 and proposed new Appellate Rule 24A were published for public comment on November 10, 2016. After the 45-day public comment period expired on December 25, 2016, we received three comments. The comments were generally favorably, with the commentators suggesting modest revisions.

Bryan Booth

The language in Rule 24(c) "may adopt by reference any part of the brief or another" should probably be "may adopt by reference any part of the brief OF another."

Leslie Slaugh

Rule 24(a)(1)(B): I suggest adding "and all counsel" after "all parties" on line 8. If the purpose of the list of parties is to allow the appellate court to discover potential conflicts of interest, then the list should include the names of all trial counsel, including attorneys who have previously withdrawn.

Rule 24(d), line 115: I suggest using the singular form of both "surname" and "parent." That is consistent with using the singular "minor" in line 114. And, many minors will have only one parent. Using the singular will still preclude using the name of either parent when both parents are mentioned in the brief.

Rule 24(g)(1): There is a typo in the second substantive line of the table. "Legal" should be "Legality."

Rule 24(g)(2): It would be helpful to clarify whether the page or word limit includes the certificate of compliance with length limits and the certificate of service. The rule could perhaps state that everything from the Introduction to the Conclusion is included in the page or word limit. (This would also apply to proposed Rule 24A(g).)

Rule 24(i), line 217: I suggest inserting "an appropriate sanction including" before "attorney fees." A pro se party may incur a loss responding to an improper brief, but under the current proposal would not be entitled to recover attorney fees (because caselaw does not allow pro se parties to recover attorney fees). Allowing the court to assess a "sanction" would give the court flexibility to make an appropriate award.

Rule 24A(d): Reply briefs are generally optional, but this rule mandates that the appellant file a reply brief. Perhaps in line 12 "first replies" could be replaced by "first presents any reply."

William Hains

As suggested by the previous comment, consider revising rule 24(g)(2) as follows:
"Headings, footnotes, and quotations count toward the page or word limit, but the table of contents, table of authorities, certificates of compliance and service, and addendum do not."

And consider revising rule 24A(d) as follows:
"The appellant must then file only one brief. That brief first may reply to the cross-appellant's response to the issues raised in the appeal, and then respond to the issues raised in the cross-appeal."

Rule 24. Principal and reply ~~B~~briefs.

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

(a)(1) A list of current and former parties. ~~A complete~~ The list of parties must include:

(a)(1)(A) all parties to the proceeding in the appellate court and their counsel; and

(a)(1)(B) listed separately, all parties to the proceeding in the court or agency whose judgment or order is ~~sought to be reviewed,~~ under review that are not parties in the appellate court proceeding ~~except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover~~.

(a)(2) A table of contents.~~, including the contents of the addendum, with page references~~ The table of contents must list the sections of the brief with page numbers and the items in the addendum with the item number.

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

(a)(4) An introduction. ~~A brief statement showing the jurisdiction of the appellate court.~~ The introduction should describe the nature and context of the dispute and explain why the party should prevail on appeal.

(a)(5) A statement of the issue. ~~A~~ The statement of the issues ~~s~~ must set forth the issue 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~~ for review; or ~~(a)(5)(B)~~ a statement of grounds for seeking review of an issue not preserved ~~in the trial court~~.

~~(a)(6)~~ ~~Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be~~

~~set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.~~

~~(a)(7)~~ (a)(6) A statement of the case. The statement ~~shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to~~ of the case must include, with citations to the record:

(a)(6)(A) the facts of the case, to the extent necessary to understand the issues presented for review: ~~shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.~~

(a)(6)(B) the procedural history of the case, to the extent necessary to understand the issues presented for review; and

(a)(6)(C) the disposition in the court or agency whose judgment or order is under review.

~~(a)(8)~~ (a)(7) A ~~S~~summary of the argument~~s~~. The summary of the argument~~s~~, ~~suitably paragraphed, shall be~~ must contain a succinct ~~condensation~~ statement of the arguments ~~actually~~ made in the body of the brief. ~~It shall not be a mere repetition of the heading under which the argument is arranged.~~

~~(a)(9)~~(a)(8) An argument. The argument ~~shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court~~ must explain, with reasoned analysis supported by citations to ~~the authorities, statutes,~~ legal authority and ~~parts of~~ the record, ~~relied on~~ why the party should prevail on appeal. ~~A party challenging a fact finding must first marshal all record evidence that supports the challenged finding.~~

(a)(9) A claim for attorney fees. A party seeking ~~to recover~~ attorney~~'s~~ fees ~~incurred~~ for work performed on appeal ~~shall~~ must state the request explicitly and set forth the legal basis for ~~such~~ an award.

(a)(10) A short conclusion. The conclusion may summarize the party's

position and must state ~~stating~~ the ~~precise~~ specific relief sought on appeal.

(a)(11) A certificate of compliance. The filer must certify that the brief complies with:

(a)(11)(A) paragraph (g), governing the number of pages or words (the filer may rely on the word count of the word processing system used to prepare the brief); and

(a)(11)(B) Rule 21, governing public and private records.

~~**(a)(11)**~~**(a)(12) An addendum.** ~~to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The~~ Subject to Rule 21(g), the addendum ~~shall~~ must contain a copy of:

~~(a)(11)(A)~~(a)(12)(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)(12)(B) the order, judgment, opinion, or decision under review and any related minute entries, findings of fact, and conclusions of law; and

(a)(12)(C) materials in ~~(a)(11)(C) those parts of~~ the record ~~on appeal~~ that are the subject of the dispute and that are of central importance to the determination of the ~~appeal~~issues presented for review, such as ~~the~~ challenged jury 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~~ pages, insurance policies, leases, search warrants, or real estate purchase contracts.

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

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

~~**(b)(2)** an addendum, except to provide material not included in the addendum of~~

~~the appellant. The appellee may refer to the addendum of the appellant.~~

~~(c)~~ **(b) Reply brief.** The appellant or petitioner may file a reply brief ~~in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal~~. ~~Reply~~ A reply briefs ~~shall~~ must be limited to ~~answering any new matter set forth~~ responding to the facts and arguments raised in the ~~opposing~~ appellee's or respondent's principal brief. The ~~content of the~~ reply brief ~~shall conform to the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule.~~ must include:

(b)(1) a table of contents, as required by paragraph (a)(2);

(b)(2) a table of authorities, as required by paragraph (a)(3);

(b)(3) an argument, as required by paragraph (a)(8);

(b)(4) a conclusion, as required by paragraph (a)(10); and

(b)(5) a certificate of compliance, as required by paragraph (a)(11).

(c) No further briefs; joining or adopting the brief of another party. No further briefs may be filed except with leave of the appellate court. More than one party may join in a single brief. Any party may adopt by reference any part of the brief or another.

(d) References in briefs to parties and others. ~~Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.~~ Parties and other persons and entities should be referred to consistently by the term, phrase, or name most pertinent to the issues on appeal. These may include descriptive terms based on the person or entity's role in the dispute, or the designations used in the trial court or agency, or the names of parties. Unless germane to an issue on appeal, a party should not be described solely by the party's procedural role in the case. The surname of a minor must not be used without consent from the minor, nor may the surnames of a minor's biological, adoptive, or foster parents be used.

(e) References ~~in briefs~~ to the record.

(e)(1) Statements of fact and references to proceedings in the court or agency whose judgment or order is under review must be supported by citation to the record. ~~References shall be made to~~ A citation must identify the page~~s~~ 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)~~ marked by the clerk. ~~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)(2) ~~R~~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) References to legal authority. A reference to an opinion of the Utah Supreme Court or the Utah Court of Appeals issued on or after January 1, 1999, must include the universal citation (e.g., 2015 UT 99, ¶ 3; or 2015 UT App 320, ¶ 6).

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

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

(g)(1) Unless a brief complies with the following page limits, it must comply with the following word limits:

Type of brief	Page limit	Word limit
Legality of death sentence, principal brief	60	28,000
Legal of death sentence, reply brief	30	14,000
Other cases, principal brief	30	14,000
Other cases, reply brief	15	7,000

(g)(2) Headings, footnotes, and quotations count toward the page or word limit, but the table of contents, table of authorities, and addendum do not.

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

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

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

~~present the issues raised in the cross-appeal.~~

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

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

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

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

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

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

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

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

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

(h) Permission ~~for~~ to file over length brief. ~~While such motions are~~ Although overlength briefs are disfavored, ~~the court for good cause shown may upon~~ a party may file a motion ~~permit a party~~ for leave to file a brief that exceeds the page, or word~~,~~

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

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

(i) Sanctions. The court on motion or on its own initiative may strike or disregard a brief that contains burdensome, irrelevant, immaterial, or scandalous matters, and the court may assess attorney fees for the violation.

(j) ~~Citation~~ Notice of supplemental authorities. When ~~pertinent and significant authorities~~ authority of central importance to an issue comes to the attention of a party after ~~that party's brief has been filed, or after~~ briefing or oral argument but before decision, ~~a~~ that party may ~~promptly advise the clerk of the appellate court, by letter~~ file a notice of supplemental authority setting forth:

(j)(1) the citations to the authority;~~. 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~~

(j)(2) a reference either to the page of the brief or to a point argued orally to which the ~~citations pertain,~~ authority applies;~~but the letter shall state~~ and

(j)(3) ~~the reasons for the supplemental citations~~ relevance of the authority.

The body of the ~~letter~~ notice must not exceed 350 words. Any other party may file a response ~~shall be made within seven~~ no later than 7 days ~~of filing and shall be similarly limited~~ after service of the notice. The body of the response must not exceed 350 words.

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

Advisory Committee Notes

~~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.~~

2017 amendments

The 2017 amendments substantially change the organization and content of briefs. An important objective of the amendments is to present the party's case in logical order, in measured increments, and without unnecessary repetition. The principal brief of each party must meet the same requirements.

Paragraph (a)(4). A party's principal brief should include an introduction. The author should focus the introduction on the important features of the case. The introduction to one case may be only a few sentences, while a more complex case may require a few paragraphs or

perhaps a few pages. The objective of the introduction is to give the reader a sense of the forest before detailing the trees.

Paragraph (a)(6). The statement of the case should describe the facts surrounding the dispute and procedural history of the litigation, but only to the extent that these are necessary to understand the issues. Describing a fact or circumstance or proceeding that has no bearing on the issues adds words of no value and distracts the reader. When stating a fact or describing a proceeding, a concise narrative is sometimes a better presentation than a numbered, itemized list. The party must cite to the places in the record that support the statement.

Paragraph (a)(8). The 2017 amendments remove the reference to marshaling. *State v. Nielsen*, 2014 UT 10, 326 P.3d 645, holds that the failure to marshal is not a technical deficiency resulting in default, but is a manner in which an appellant may carry its burden of persuasion when challenging a finding or verdict.

Paragraph (a)(11). The certificate of compliance is expanded to include not only compliance with the limit on the length of the brief, but also compliance with the public/private record requirements of Rule 21. Briefs, including the addendum containing trial court records, are public documents, increasingly available on the Internet. However, many trial court records are not public. If the author needs to include a non-public document in an addendum or non-public information in the body of the brief, Rule 21 requires that an identical, public brief be filed, but with the non-public information removed.

Paragraph (b). The purpose of a reply brief is to respond to the facts and arguments presented in an appellee's principal brief, not to reiterate points already made in the appellant's principal brief, nor to introduce new matters that should have been raised in that brief. Although not required, it is good practice to identify the point that is being responded to.

Paragraph (d). Describing the actors in a dispute and litigation presents a challenge to the author of a brief. Consistency promotes clarity; having chosen a term, phrase, name, or initials to define a party, person, or entity, the author should use it throughout a brief.

The name of a minor is often a private record and caution should be used to avoid including other names or information from which a minor might be identified. A minor's surname should be used only with the informed consent of a mature minor. The author may file a private brief for the parties and the court using the minor's name while simultaneously filing an otherwise identical public brief with the minor's name omitted, redacted, reduced to initials, or substituted with a placeholder name. A minor may be referred to by a descriptive term such as "the child," "the 11-year old," or "the sister." The biological, adoptive, or foster parents of minors may be referred to by their relation to the minor, such as "mother," "adoptive parent," or "foster father."

While the name of an adult is usually a public record, the author should recognize the intrusion into the lives of victims, witnesses, and others who are not principals in the dispute caused by a brief published on the Internet. Also, the use of names is disfavored when clarity and discretion can be promoted by use of a reference based on the person's role in the dispute or the case. Parties and other persons and entities should generally be referred to by their role in the dispute, such as "employee," "Defendant Employer," or "the Taxpayer." Descriptions such as "witness" or "neighbor" can also be useful while respecting the interests of non-parties. The reference chosen should be the one most relevant to the matters on appeal.

Paragraph (g). Because of the increasing rarity of monospaced font, the 2017 amendments eliminated the number of lines as a measure of a brief's length. And to improve the clarity of Rule 24, the 2017

amendments moved the requirements for briefs in a cross-appeal to Rule 24A.

Rule 24A. Briefs in cross-appeals.

(a) Party designation. The party first filing a notice of appeal is the appellant. The party filing a second or subsequent notice of appeal is the cross-appellant. The parties may change the designation of parties by stipulation filed with the court, or the court may order a different designation of parties. Each party is entitled to file two briefs.

(b) Appellant's principal brief. The appellant must file a principal brief that presents the issues raised in the appeal.

(c) Cross-appellant's principal brief. The cross-appellant must then file one brief, that first responds to the appellant's issues raised in the appeal and then, in the same brief, presents the issues raised in the cross-appeal. The brief may include a single introduction, statement of the issue, statement of the case, and conclusion.

(d) Appellant's reply brief. The appellant must then file one brief that first replies to the cross-appellant's response to the issues raised in the appeal and then responds to the issues raised in the cross-appeal.

(e) Cross-appellant's reply brief. The cross-appellant may file a reply brief that replies to the appellant's response to the issues raised in cross-appeal.

(f) No further briefs. No further briefs may be filed except with leave of the appellate court.

(g) Length of briefs.

(g)(1) Unless a brief complies with the following page limits, it must comply with the following word limits:

Type of brief	Page limit	Word limit
Appellant's principal brief	30	14,000
Cross-appellant's principal brief	45	21,000
Appellant's reply brief	30	14,000
Cross-appellant's reply brief	15	7,000

(g)(2) Headings, footnotes, and quotations count toward the page or word limit, but the table of contents, table of authorities, and addendum do not.

(h) Applicability of Rule 24. Except as provided in this rule, Rule 24 applies to

briefs in a cross-appeal.

Tab 3

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

December 5, 2016

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM TO: Appellate Rules Committee

FROM: James N. Ishida

RE: Discussion on Proposed Amendment to Civil Rule 5

On December 5, 2016, the Supreme Court approved for publication a proposal from the Civil Rules Committee, recommending that Civil Rule 5 be amended to include a new subdivision (g), which has been popularly described as the "prisoner mailbox rule." The proposal was intended to mirror its counterpart in the Utah Rules of Appellate Procedure — Rule 21(f).

The Supreme Court, however, added one wrinkle to the Civil Rules proposal. The Court wanted to clarify when the clock starts to run on filing a responsive document. Therefore, the Court added the following language at the end of proposed new subdivision (g):

"*Response time will be calculated from the date the papers are received by the court.*"

This new language is not in Appellate Rule 21(f). The Court had asked that the Civil Rules proposal be submitted to this Committee for its consideration as to whether conforming changes should be made to Appellate Rule 21(f).

Attachments: Proposed Amendment to Civil Rule 5
Appellate Rule 21

Rule 5. Service and filing of pleadings and ~~other~~ papers.

(a) When service is required.

(a)(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(a)(1)(A) a judgment;

(a)(1)(B) an order that states it must be served;

(a)(1)(C) a pleading after the original complaint;

(a)(1)(D) a paper relating to disclosure or discovery;

(a)(1)(E) a paper filed with the court other than a motion that may be heard ex parte; and

(a)(1)(F) a written notice, appearance, demand, offer of judgment, or similar paper.

(a)(2) Serving parties in default. No service is required on a party who is in default except that:

(a)(2)(A) a party in default must be served as ordered by the court;

(a)(2)(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

(a)(2)(C) a party in default for any reason must be served with notice of any hearing to determine the amount of damages to be entered against the defaulting party;

(a)(2)(D) a party in default for any reason must be served with notice of entry of judgment under Rule 58A(d); and

(a)(2)(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.

(a)(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(b)(1) Whom to serve. If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if

(b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice; or

(b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

(b)(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(b)(3) Methods of service. A paper is served under this rule by:

(b)(3)(A) except in the juvenile court, submitting it for electronic filing if the person being served has an electronic filing account;

(b)(3)(B) emailing it to the email address provided by the person or to the email address on file with the Utah State Bar, if the person has agreed to accept service by email or has an electronic filing account;

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

(b)(3)(D) handing it to the person;

(b)(3)(E) 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;

(b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(b)(3)(G) any other method agreed to in writing by the parties.

(b)(4) When service is effective. Service by mail or electronic means is complete upon sending.

(b)(5) Who serves. Unless otherwise directed by the court:

(b)(5)(A) every paper required to be served must be served by the party preparing it; and

(b)(5)(B) an order or judgment prepared by the court will be served by the court.

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(c)(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

(c)(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(c)(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(c)(4) a copy of the order must be served upon the parties.

(d) Certificate of service. A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served.

(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer 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 or declaration;

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

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

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

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

Advisory Committee Notes

Rule 21. Filing and service.

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

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

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

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

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

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

(g) Filings containing other than public information and records. If a filing, 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 case law.

Advisory Committee Notes

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

Records are classified 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 case law, 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.

Effective May 1, 2016

Tab 4

Utah State Courts

James Ishida <jamesi@utcourts.gov>

Logue Subcommittee Meeting Notes

Nancy Sylvester <nancyjs@utcourts.gov> Fri, Jan 27, 2017 at 4:38 PM
To: James Ishida <jamesi@utcourts.gov>
Cc: Kent Holmberg <kholmberg@utah.gov>, Mark Field <markfield@utah.gov>, Lori Seppi <lseppi@sllda.com>, Professor Jensie Anderson <jensie.anderson@law.utah.edu>, Jeff Gray <jgray@utah.gov>, Brent Johnson <brentj@utcourts.gov>, Paul Burke <pburke@rqn.com>

Dear subcommittee members,

Attached are my notes from today's meeting (please correct me if you see something that is not quite right).

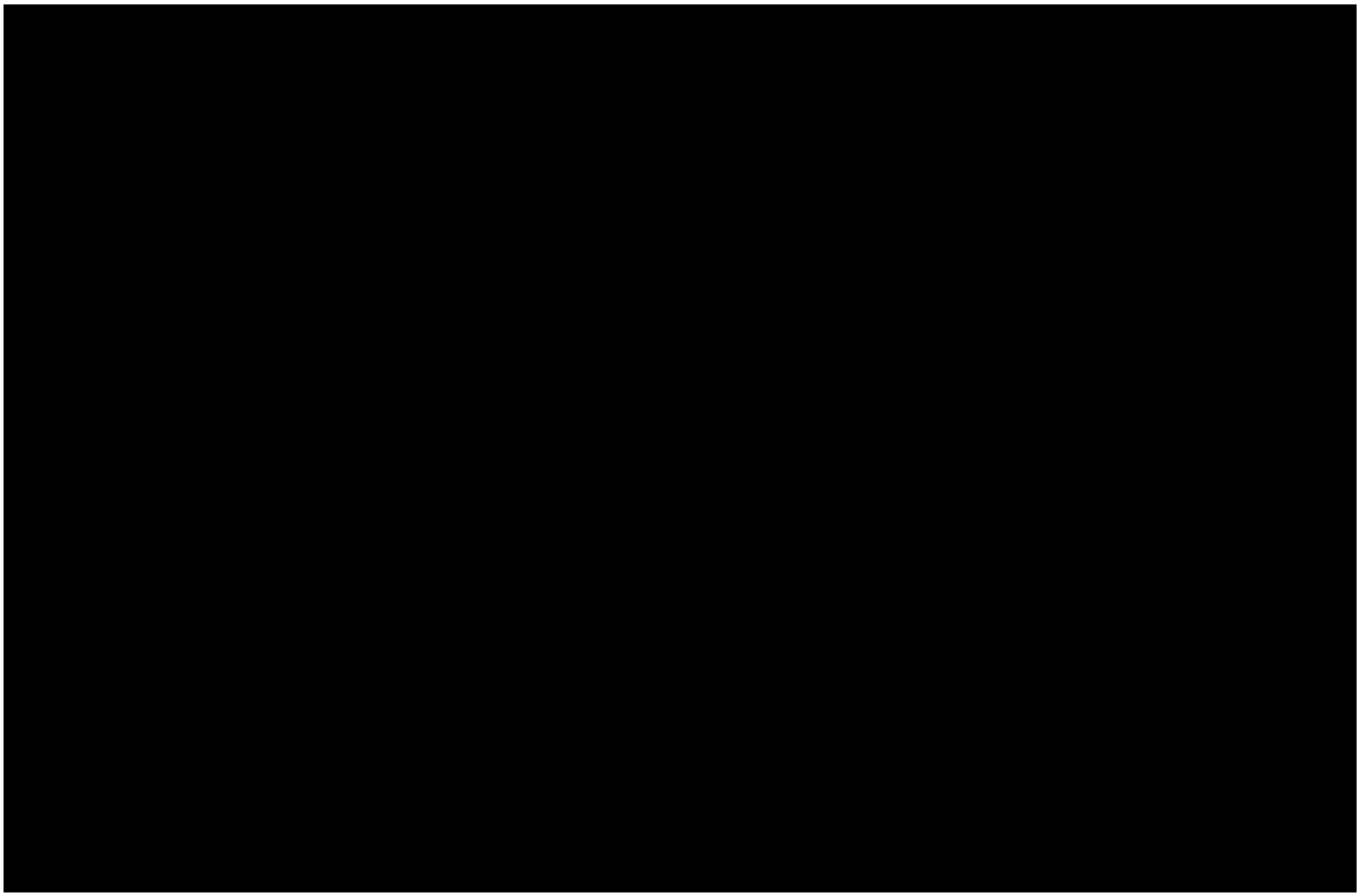
As you saw in the calendar reminder for the March 10 meeting, that meeting may not be necessary depending on what the subcommittee gets done via email. The proposal right now is to amend Criminal Rule 24(c), tracking some of the language from Civil Rule 60(b)(2) and (c), with the cut off for filing the new trial motion being the eve of oral argument.

Mark will take the first stab at Rule 24(c).

And Kent: we should chat about the Civil Rules Committee's perspective when you have a chance. Hopefully today went well.

Thanks!

Nancy



This opinion is subject to revision before publication in the Pacific Reporter

2016 UT 44

IN THE

SUPREME COURT OF THE STATE OF UTAH

DANNY LOGUE,
Petitioner,

v.

COURT OF APPEALS, STATE OF UTAH, and THIRD DISTRICT COURT,
Respondents.

No. 20160498
Filed October 20, 2016

Fourth District, Provo
The Honorable Derek P. Pullan
No. 111401543

On Petition for Extraordinary Writ

Attorneys:

Herschel Bullen, Salt Lake City, for petitioner

Sean D. Reyes, Att'y Gen., Tyler R. Green, Solic. Gen.,
Thomas B. Brunker, Deputy Solic. Gen., Mark C. Field, Asst. Solic. Gen.,
Salt Lake City, for respondents

Nancy J. Sylvester, Salt Lake City, for respondent
Administrative Office of the Courts

PER CURIAM:

¶ 1 In a petition for extraordinary relief, Danny Logue asks us to direct the district court to entertain a motion for a new trial based on newly discovered evidence, despite the fact that the time for filing such a motion has already expired. We deny Mr. Logue's petition for two reasons: (1) it fails to comply with the pleading requirements prescribed in rule 19(b) of the Utah Rules of Appellate Procedure, and (2) Mr. Logue has failed to carry his burden of showing that the newly

discovered impeachment evidence in this case justifies our granting extraordinary relief.

¶ 2 After a fourteen-day jury trial, Mr. Logue was convicted of aggravated murder, possession of a dangerous weapon by restricted person, and obstruction of justice. Brandon Wright was one of the State's witnesses at trial. He testified that Mr. Logue admitted to the aggravated murder in 2014 when they were both serving prison time on the same cell block. The jury also heard evidence of Mr. Wright's lengthy criminal record, including his prior gang affiliation.

¶ 3 Mr. Logue was sentenced on May 14, 2015. He filed a motion for a new trial, which was denied on December 9, 2015. On December 28, 2015, he filed his notice of appeal. Approximately three months later, while Mr. Logue's appeal was pending, Mr. Wright walked into a police station and confessed to an unrelated twenty-year-old murder.

¶ 4 Mr. Logue now petitions for extraordinary relief based on Mr. Wright's confession. Mr. Logue argues that unless we exercise our authority to issue an extraordinary writ, he will be unable to seek a new trial based on this newly discovered evidence until after he has exhausted his direct appeal—a process that could take months or years.

¶ 5 We broadly take Mr. Logue's point. Rule 24(c) of the Utah Rules of Criminal Procedure generally requires that a motion for new trial be made "not later than 14 days after entry of the sentence." The Utah Rules of Civil Procedure likewise require litigants to seek relief from judgment based on new evidence no later than ninety days from the entry of judgment against them. *See* UTAH R. CIV. P. 60(b)(2), (c).[1] Moreover, it appears that Mr. Logue may not petition for postconviction relief until he exhausts his direct appeal. *See* UTAH CODE §§ 78B-9-102(1), 78B-9-107(1)–(2).[2] Thus, it appears that criminal defendants, like Mr. Logue, who discover new evidence more than ninety days after sentencing must await the conclusion of their appeal

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[1] The Utah Rules of Civil Procedure may apply in criminal proceedings when "there is no other applicable statute or rule." UTAH R. CIV. P. 81(e).

[2] Because Mr. Logue does not seek to raise a claim of factual innocence, we do not reach whether factual innocence claims may be exempt from this limitation. *See* UTAH CODE § 78B-9-402.

before attempting to seek relief based on this evidence, even if it would likely entitle them to a new trial.

¶ 6 We share Mr. Logue's concerns that there may be a period of time during which defendants in Mr. Logue's shoes are procedurally unable to press potentially meritorious claims. We nevertheless deny Mr. Logue's petition because we conclude that Mr. Logue failed to carry his burden of showing that the newly discovered impeachment evidence in this case justifies our issuing an extraordinary writ. *See Kettner v. Snow*, 375 P.2d 28, 30 (Utah 1962) ("[T]he burden of showing facts to justify [granting extraordinary relief] is upon him who seeks such relief."). Mr. Logue contends that Mr. Wright's posttrial confession to an unrelated murder shows that he "seriously perjured himself by the material omission of the fact that he had committed a murder in Washington State for which he had not been brought to justice." But Mr. Logue has not explained how Mr. Wright's omission of this fact amounts to perjury. Moreover, the jury knew that Mr. Wright had a lengthy criminal record, including prior affiliation with a prison gang. Mr. Logue has not persuaded us that the jury's assessment of Mr. Wright's credibility would have been significantly affected by the additional information that he had committed an unsolved serious crime. *See State v. Pinder*, 2005 UT 15, ¶ 66, 114 P.3d 551 (newly discovered evidence does not warrant a new trial if it is merely cumulative); *see also State v. Boyd*, 2001 UT 30, ¶ 28, 25 P.3d 985 ("As a general rule, newly discovered evidence does not warrant a new trial where its only use is impeachment."); *State v. Worthen*, 765 P.2d 839, 851 (Utah 1988) (denying motion for new trial when newly discovered evidence had only "minor impeachment value").[3]

¶ 7 We accordingly decline to exercise our discretion to grant Mr. Logue's petition for extraordinary relief. But we will direct the appropriate standing committee on the rules of procedure to consider

[3] We also note that Mr. Logue did not comply with rule 19(b) of the Utah Rules of Appellate Procedure. This rule requires a petition for an extraordinary writ to contain, among other things, "[a] statement of the reasons why no other plain, speedy, or adequate remedy exists and why the writ should issue." UTAH R. APP. P. 19(b)(4). Mr. Logue's petition does not even attempt to explain why his inability to pursue a new trial until after he has exhausted his appeal deprived him of a "plain, speedy, or adequate remedy." Indeed, nowhere in Mr. Logue's petition does the phrase "plain, speedy, or adequate remedy" even appear.

revising them so that they do not act as a categorical bar to motions for new trials in cases like these.

Tab 5

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

January 18, 2017

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMO TO: Appellate Rules Committee

FROM: James N. Ishida JNI

RE: Proposed Amendment to Appellate Rule 30

In May 2016, Judge Voros proposed amending the title in URAP 30 to delete the word "dismissal" because nowhere in the rule does it address dismissals.

In researching the evolution of Rule 30, I was unable to uncover how or why the word "dismissal" was included in the title of the rule.

Attachment: Redline Appellate Rule 30

Rule 30. Decision of the court: ~~dismissal;~~ notice of decision.

(a) Decision in civil cases. The court may reverse, affirm, modify, or otherwise dispose of any order or judgment appealed from. If the findings of fact in a case are incomplete, the court may order the trial court or agency to supplement, modify, or complete the findings to make them conform to the issues presented and the facts as found from the evidence and may direct the trial court or agency to enter judgment in accordance with the findings as revised. The court may also order a new trial or further proceedings to be conducted. If a new trial is granted, the court may pass upon and determine all questions of law involved in the case presented upon the appeal and necessary to the final determination of the case.

(b) Decision in criminal cases. If a judgment of conviction is reversed, a new trial shall be held unless otherwise specified by the court. If a judgment of conviction or other order is affirmed or modified, the judgment or order affirmed or modified shall be executed.

(c) Decision and opinion in writing; entry of decision. When a judgment, decree, or order is reversed, modified, or affirmed, the reasons shall be stated concisely in writing and filed with the clerk. Any justice or judge concurring or dissenting may likewise give reasons in writing and file the same with the clerk. The entry by the clerk in the records of the court shall constitute the entry of the judgment of the court.

(d) Decision without opinion. If, after oral argument, the court concludes that a case satisfies the criteria set forth in Rule 31(b), it may dispose of the case by order without written opinion. The decision shall have only such effect as precedent as is provided for by Rule 31(f).

(e) Notice of decision. Immediately upon the entry of the decision, the clerk shall give notice to the respective parties and make the decision public in accordance with the direction of the court.

(f) Citation of decisions. Published decisions of the Supreme Court and the Court of Appeals, and unpublished decisions of the Court of Appeals issued on or after October 1, 1998, may be cited as precedent in all courts of the State. Other unpublished decisions may also be cited, so long as all parties and the court are supplied with accurate copies at the time all such decisions are first cited.

Tab 6

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

January 20, 2017

MEMO TO: Appellate Rules Committee

FROM: James N. Ishida

RE: Proposal to Remove Illustrative Forms from Appellate Rules

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This is a proposal for the Advisory Committee's consideration to remove the 17 illustrative forms[1] currently appended to the Utah Rules of Appellate Procedure.

I. Background

On December 19, 2016, Utah Code of Judicial Administration (UCJA) Rule 1-205 was amended, creating a new Judicial Council Standing Committee on Court Forms. The charge of this new committee is defined in UCJA Rule 3-117, which provides, among other things, that "[t]he committee shall create forms as it deems necessary for use by parties and practitioners, including forms for the Online Court Assistance Program."

On January 3, 2017, the Advisory Committee on Civil Rules published for public comment a proposal to abrogate Civil Rule 84 (Forms). If approved, the proposal would effectively remove the illustrative Appendix of Forms from the Civil Rules. The Advisory Committee explained that "[s]ince the task of creating and updating court forms will now reside with the newly formed Judicial Council Standing Committee on Forms under UCJA Rules 1-205 and 3-117, the Supreme Court's Advisory Committee on the Rules of Civil Procedure will no

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[1]On April 1, 1990, the Utah Supreme Court approved consolidating the Rules of the Utah Supreme Court and the Rules of the Utah Court of Appeals into a single set of rules called the Utah Rules of Appellate Procedure. At the same time, sample forms and checklists were included that were intended "as an aid to the practitioner." *See* Introductory Note of Supreme Court Advisory Committee on Appellate Rules (1990).

longer create forms."[2] The comment period ends on February 17, 2017.

II. Suggested Approaches

The Committee has several options. It could make an immediate recommendation to the Supreme Court that the illustrative forms appended to the Appellate Rules be removed, which would track the approach taken by the Civil Rules Committee. It could also wait until after the public comment period ends on the proposal to abrogate Civil Rule 84 and see how the Civil Rules Committee proceeds. Or it could elect to do nothing and retain the illustrative appellate form. But there are countervailing considerations to doing nothing, which I'll share with the committee at its next meeting.

Attachments: UCJA Rules 1-205 and 3-117

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[2]The U.S. Advisory Committee on the Federal Rules of Civil Procedure did something similar a few years ago when it abrogated Federal Rule of Civil Procedure 84. That committee explained:

> *Rule 84 was adopted when the Civil Rules were established in 1938 "to indicate, subject to the provisions of these rules, the simplicity and brevity of statement which the rules contemplate." The purpose of providing illustrations for the rules, although useful when the rules were adopted, has been fulfilled. Accordingly, recognizing that there are many excellent alternative sources for forms, including the website of the Administrative Office of the United States Courts, the websites of many district courts, and local law libraries that contain many commercially published forms, Rule 84 and the Appendix of Forms are no longer necessary and have been abrogated. The abrogation of Rule 84 does not alter existing pleading standards or otherwise change the requirements of Civil Rule 8.*

Thus, following the abrogation of Federal Civil Rule 84, there are no illustrative forms appended to the Civil Rules, with one exception. Under Federal Civil Rule 4, there is a form appended at the end of the rule. The federal advisory committee felt the retention of that form was appropriate because it was deeply integrated and intertwined in the rule itself.

Rule 1-205. Standing and ad hoc committees.

Intent:

To establish standing and ad hoc committees to assist the Council and provide recommendations on topical issues.

To establish uniform terms and a uniform method for appointing committee members.

To provide for a periodic review of existing committees to assure that their activities are appropriately related to the administration of the judiciary.

Applicability:

This rule shall apply to the internal operation of the Council.

Statement of the Rule:

(1) Standing committees.

(1)(A) Establishment. The following standing committees of the Council are hereby established:

(1)(A)(i) Technology Committee;

(1)(A)(ii) Uniform Fine Schedule Committee;

(1)(A)(iii) Ethics Advisory Committee;

(1)(A)(iv) Judicial Branch Education Committee;

(1)(A)(v) Court Facility Planning Committee;

(1)(A)(vi) Committee on Children and Family Law;

(1)(A)(vii) Committee on Judicial Outreach;

(1)(A)(viii) Committee on Resources for Self-represented Parties;

(1)(A)(ix) Language Access Committee;

(1)(A)(x) Guardian ad Litem Oversight Committee;

(1)(A)(xi) Committee on Model Utah Civil Jury Instructions;

(1)(A)(xii) Committee on Model Utah Criminal Jury Instructions; ~~and~~

(1)(A)(xiii) Committee on Pretrial Release and Supervision~~.~~;

(1)(A)(xiv) Committee on Court Forms.

(1)(B) Composition.

(1)(B)(i) The Technology Committee shall consist of one judge from each court of record, one justice court judge, one lawyer recommended by the Board of Bar Commissioners, two court executives, two court clerks and two staff members from the Administrative Office.

(1)(B)(ii) The Uniform Fine/Bail Schedule Committee shall consist of one district court judge who has experience with a felony docket, three district court judges who have experience with a misdemeanor docket, one juvenile court judge and three justice court judges.

(1)(B)(iii) The Ethics Advisory Committee shall consist of one judge from the Court of Appeals, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6,

7, or 8, one juvenile court judge, one justice court judge, and an attorney from either the Bar or a college of law.

(1)(B)(iv) The Judicial Branch Education Committee shall consist of one judge from an appellate court, one district court judge from Judicial Districts 2, 3, or 4, one district court judge from Judicial Districts 1, 5, 6, 7, or 8, one juvenile court judge, the education liaison of the Board of Justice Court Judges, one state level administrator, the Human Resource Management Director, one court executive, one juvenile court probation representative, two court clerks from different levels of court and different judicial districts, one data processing manager, and one adult educator from higher education. The Human Resource Management Director and the adult educator shall serve as non-voting members. The state level administrator and the Human Resource Management Director shall serve as permanent Committee members.

(1)(B)(v) The Court Facility Planning Committee shall consist of one judge from each level of trial court, one appellate court judge, the state court administrator, a trial court executive, and two business people with experience in the construction or financing of facilities.

(1)(B)(vi) The Committee on Children and Family Law shall consist of one Senator appointed by the President of the Senate, one Representative appointed by the Speaker of the House, the Director of the Department of Human Services or designee, one attorney of the Executive Committee of the Family Law Section of the Utah State Bar, one attorney with experience in abuse, neglect and dependency cases, one attorney with experience representing parents in abuse, neglect and dependency cases, one representative of a child advocacy organization, one mediator, one professional in the area of child development, one representative of the community, the Director of the Office of Guardian ad Litem or designee, one court commissioner, two district court judges, and two juvenile court judges. One of the district court judges and one of the juvenile court judges shall serve as co-chairs to the committee. In its discretion the committee may appoint non-members to serve on its subcommittees.

(1)(B)(vii) The Committee on Judicial Outreach shall consist of one appellate court judge, one district court judge, one juvenile court judge, one justice court judge, one state level administrator, a state level judicial education representative, one court executive, one Utah State Bar representative, one communication representative, one law library representative, one civic community representative, and one state education representative. Chairs of the Judicial Outreach Committee's subcommittees shall also serve as members of the committee.

(1)(B)(viii) The Committee on Resources for Self-represented Parties shall consist of two district court judges, one juvenile court judge, one justice court judge, three clerks of court – one from an appellate court, one from an urban district and one from a rural district – one member of the Online Court Assistance Committee, one representative from the Self-Help Center, one representative from the Utah State Bar, two representatives from legal service organizations that serve low-income clients, one private attorney experienced in providing services to self-represented parties, two law school representatives, the state law librarian, and two community representatives.

(1)(B)(ix) The Language Access Committee shall consist of one district court judge, one juvenile court judge, one justice court judge, one trial court executive, one court clerk, one interpreter coordinator, one probation officer, one prosecuting attorney, one defense attorney, two certified interpreters, one approved interpreter, one expert in the field of linguistics, and one American Sign Language representative.

(1)(B)(x) The Guardian ad Litem Oversight Committee shall consist of seven members with experience in the administration of law and public services selected from public, private and non-profit organizations.

(1)(B)(xi) The Committee on Model Utah Civil Jury Instructions shall consist of two district court judges, four lawyers who primarily represent plaintiffs, four lawyers who primarily represent defendants, and one person skilled in linguistics or communication.

(1)(B)(xii) The Committee on Model Utah Criminal Jury Instructions shall consist of two district court judges, one justice court judge, four prosecutors, four defense counsel, one professor of criminal law, and one person skilled in linguistics or communication.

(1)(B)(xiii) The Committee on Pretrial Release and Supervision shall consist of two district court judges, one juvenile court judge, two justice court judges, one prosecutor, one defense attorney, one county sheriff, one representative of counties, one representative of a county pretrial services agency, one representative of the Utah Insurance Department, one representative of the Utah Commission on Criminal and Juvenile Justice, one commercial surety agent, one state senator, one state representative, and the court's general counsel or designee.

(1)(B)(xiv) The Committee on Court Forms shall consist of one district court judge, one juvenile court judge, one justice court judge, one court clerk, one appellate court staff attorney, one representative from the Self-Help Center, the State Law Librarian, the Court Services Director, one member selected by the Online Court Assistance Committee, one representative from a legal service organization that serves low-income clients, one paralegal, and one representative from the Utah State Bar.

(1)(C) The Judicial Council shall designate the chair of each standing committee. Standing committees shall meet as necessary to accomplish their work. Standing committees shall report to the Council as necessary but a minimum of once every year. Council members may not serve, participate or vote on standing committees. Standing committees may invite participation by others as they deem advisable, but only members designated by this rule may make motions and vote. All members designated by this rule may make motions and vote unless otherwise specified. Standing committees may form subcommittees as they deem advisable.

(1)(D) At least once every six years, the Management Committee shall review the performance of each committee. If the Management Committee determines that committee continues to serve its purpose, the Management Committee shall recommend to the Judicial Council that the committee continue. If the Management Committee determines that modification of a committee is warranted, it may so recommend to the Judicial Council.

(1)(D)(i) Notwithstanding subsection (1)(D), the Guardian ad Litem Oversight Committee, recognized by Section 78A-6-901, shall not terminate.

(2) Ad hoc committees. The Council may form ad hoc committees or task forces to consider topical issues outside the scope of the standing committees and to recommend rules or resolutions concerning such issues. The Council may set and extend a date for the termination of any ad hoc committee. The Council may invite non-Council members to participate and vote on ad hoc committees. Ad hoc committees shall keep the Council informed of their activities. Ad hoc committees may form sub-committees as they deem advisable. Ad hoc committees shall disband upon issuing a final report or recommendations to the Council, upon expiration of the time set for termination, or upon the order of the Council.

(3) General provisions.

(3)(A) Appointment process.

(3)(A)(i) Administrator's responsibilities. The state court administrator shall select a member of the administrative staff to serve as the administrator for committee appointments. Except as otherwise provided in this rule, the administrator shall:

(3)(A)(i)(a) announce expected vacancies on standing committees two months in advance and announce vacancies on ad hoc committees in a timely manner;

(3)(A)(i)(b) for new appointments, obtain an indication of willingness to serve from each prospective appointee and information regarding the prospective appointee's present and past committee service;

(3)(A)(i)(c) for reappointments, obtain an indication of willingness to serve from the prospective reappointee, the length of the prospective reappointee's service on the committee, the attendance record of the prospective reappointee, the prospective reappointee's contributions to the committee, and the prospective reappointee's other present and past committee assignments; and

(3)(A)(i)(d) present a list of prospective appointees and reappointees to the Council and report on recommendations received regarding the appointment of members and chairs.

(3)(A)(ii) Council's responsibilities. The Council shall appoint the chair of each committee. Whenever practical, appointments shall reflect geographical, gender, cultural and ethnic diversity.

(3)(B) Terms. Except as otherwise provided in this rule, standing committee members shall serve staggered three year terms. Standing committee members shall not serve more than two consecutive terms on a committee unless the Council determines that exceptional circumstances exist which justify service of more than two consecutive terms.

(3)(C) Members of standing and ad hoc committees may receive reimbursement for actual and necessary expenses incurred in the execution of their duties as committee members.

(3)(D) The Administrative Office shall serve as secretariat to the Council's committees.

Rule 3-117. Committee on Court Forms

Intent:

To establish a committee to determine the need for forms and to create forms for use by litigants in all court levels.

Applicability:

This rule shall apply to the judiciary.

Statement of the Rule:

(1) The committee shall conduct a comprehensive review of the need for court forms to assist parties and practitioners in all court levels.

(2) The committee shall create forms as it deems necessary for use by parties and practitioners, including forms for the Online Court Assistance Program.

(3) Process for form creation.

(3)(a) The committee shall adopt procedures for creating new forms or making substantive amendments to existing forms, and procedures for expediting technical or non-substantive amendments to forms.

(3)(b) Forms should be written in plain language and reference the statutes and rules to which the forms apply.

(3)(c) The committee shall solicit input from other interested groups as it deems appropriate. The committee may establish subcommittees using non-committee members to facilitate its work.

(3)(d) The committee may recommend to the Judicial Council mandatory use of particular forms. However the Judicial Council's designation of a form as mandatory is not binding on a decision-maker asked to review the legal correctness of the form.

(3)(e) The Office of General Counsel shall staff the committee and shall review all forms for legal correctness before final approval by the committee.

(4) The State Law Librarian shall be responsible for maintaining and archiving the forms.