



AGENDA APPELLATE RULES COMMITTEE

Thursday, June 1, 2017 12:00pm

1. **ACTION** - Approve minutes of May 4, 2017, meeting (Paul Burke, Chair) **(Tab 1)**
2. **ACTION** - Proposed amendment to Appellate Rule 21: Conforming amendment to Civil Rule 6, Prisoner Mailbox Rule (Civil Rules Committee) **(PUBLICATION) (Tab 2)**
3. **ACTION** - Proposed amendments to Appellate Rules 25 and 25A allowing State to participate in oral argument when it files an amicus brief on constitutionality of state statute (Utah Supreme Court/Clark Sabey) **(PUBLICATION) (Tab 3)**
4. **INFORMATION** - Proposed amendment to Appellate Rule 35 (Petition for Rehearing) (James Ishida) **(Tab 4)**
5. **INFORMATION** - Report from *Logue* Subcommittee (Lori Seppi)
6. Miscellaneous Matters

Next Advisory Committee Meeting Thursday September 7, 2017

Have a Great Summer!

MEETING SCHEDULE:

September 7, 2017
October 5, 2017
November 2, 2017
December 7, 2017

Tab 1

**DRAFT MINUTES OF THE MAY 4, 2017,
APPELLATE RULES COMMITTEE MEETING
WILL BE DISTRIBUTED SEPARATELY
BEFORE THE MEETING**

Tab 2

Administrative Office of the Courts

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

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

TO: Appellate Rules Committee

FROM: James N. Ishida

DATE: May 25, 2017

RE: Proposed Amendment to Appellate Rule 21 (PUBLICATION)

On May 25, 2017, the Civil Rules Committee approved for publication a proposed amendment to Civil Rule 6, which includes its version of the “prisoner mailbox rule.” The proposal, which is attached, is close to what this Committee had tentatively approved at its last meeting on May 4, 2017. The principal difference between the two proposals is the Civil Rules Committee elected to include a definition of “inmate” in new paragraph (e)(1), which reads:

For purposes of Rule 45(i) and this paragraph (e), an inmate is a person confined to an institution or committed to a place of legal confinement.

This Committee had a lengthy email discussion several weeks ago on how to handle the inmate issue, however, there was no clear consensus at that time. But several members had previously suggested creating a separate definition of inmate, which the Civil Rules Committee emulated in paragraph (e)(1). In addition, there was a strong plurality that favored adopting whatever approach the Civil Rules Committee took regarding inmates, which promotes consistency and clarity.

Attachments: Proposed amendment to Appellate Rule 21 (Rev. May 4, 2017)
Proposed amendment to Civil Rule 6 (Approved May 25, 2017)
Email discussion of proposed amendment to Appellate Rule 21

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

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 or] a person in a place of legal confinement. Papers filed by [an inmate or] a person committed to a place of legal confinement ~~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 contemporaneously filed notarized statement or written declaration setting forth the date of deposit and stating that first-class postage has been, or is being, prepaid or that the [inmate or] person committed to a place of legal confinement has complied with any applicable requirements for legal mail set by the institution. Response time

32 will be calculated from the date the papers are received by the court. ~~Timely filing may be shown~~
33 ~~by a notarized statement or written declaration setting forth the date of deposit and stating that~~
34 ~~first-class postage has been prepaid.~~

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

Rule 6. Time.

(a) Computing time. The following rules apply in computing any time period specified in these rules, any local rule or court order, or in any statute that does not specify a 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 Rule 6(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 Rule 6(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, the filing must be made 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.

(b) Extending time.

43 (b)(1) When an act may or must be done within a specified time, the court may, for good cause,
44 extend the time:

45 (b)(1)(A) with or without motion or notice if the court acts, or if a request is made, before the
46 original time or its extension expires; or

47 (b)(1)(B) on motion made after the time has expired if the party failed to act because of
48 excusable neglect.

49 (b)(2) A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d) and (e),
50 and 60(c).

51 **(c) Additional time after service by mail.** When a party may or must act within a specified time after
52 service and service is made by mail under Rule 5(b)(3)(C), 3 days are added after the period would
53 otherwise expire under paragraph (a).

54 **(d) Additional time after filing for unrepresented parties.** When a party is unrepresented, does not
55 have an electronic filing account, and may or must act within a specified time after the filing of a
56 document and service of that document is made by mail under Rule 5(b)(3)(C), the period of time within
57 which the unrepresented party may or must act is calculated from the service date and not the filing date
58 of the document, and the extra 3 days under paragraph (c) would apply.

59 **(e) Filing or service by inmate.**

60 (e)(1) For purposes of Rule 45(i) and this paragraph (e), an inmate is a person confined to an
61 institution or committed to a place of legal confinement.

62 (e)(2) Papers filed or served by an inmate are timely filed or served if they are deposited in the
63 institution's internal mail system on or before the last day for filing or service. Timely filing or service
64 may be shown by a contemporaneously filed notarized statement or written declaration setting forth
65 the date of deposit and stating that first-class postage has been, or is being, prepaid, or that the
66 inmate has complied with any applicable requirements for legal mail set by the institution. Response
67 time will be calculated from the date the papers are received by the court, or for papers served on
68 parties that do not need to be filed with the court, the postmark date the papers were deposited in
69 U.S. mail.

70 (e)(3) The provisions of paragraph (e)(2) do not apply to service of process, which is governed by
71 Rule 4.



James Ishida <jamesi@utcourts.gov>

ACTION REQUESTED - Proposed Amendment to Appellate Rule 21

14 messages

James Ishida <jamesi@utcourts.gov>

Mon, May 15, 2017 at 5:06 PM

To: "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Romano <bromano@agutah.gov>, Clark Sabey <clarks@utcourts.gov>, James N Ishida <jamesi@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Troy Booher <tbooher@zjbappeals.com>

Cc: Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

Dear Appellate Rules Committee Members:

Attached is the revised version of the prisoner mailbox rule, which I believe incorporates the committee's final decision on the proposed amendment to URAP 21.

Two things of note. First, I've bracketed the word "inmate" in the text of the rule. Nancy Sylvester will be recommending to the Civil Rules Committee at its meeting next week that her committee retain "inmate" for clarity. I think her point is well taken. I know our members believed that the concept of a "confined person" would compass inmates and include others similarly situated. However, Nancy suggests that omitting "inmate" may be confusing, particularly to the inmate population who've grown accustomed to seeing it in the rule. And if the Civil Rules Committee adopts the proposal, then it may be ambiguous and confusing if the Civil mailbox rule refers to "inmate" while the Appellate rule does not.

Two, I've include language in the rule on the calculation of the response time for such filing. This committee had agreed to it in February, and the Civil Rules Committee has virtually identical language in its proposed amendment.

So, could you please let me know if you approve of the attached rule amendment to URAP 21, and whether you favor including or omitting the word "inmate" from the proposal, by COB Friday, May 26, 2017.

Many thanks,

James

P.S. I've also attached the proposed amendment to URAP 55, which the committee had approved at its last meeting on May 4. You had asked me to run the proposal past the Juvenile Rules Committee for its reactions. Katie Gregory, who staffs that committee, said that her committee thought the proposal is a good idea. Some members mentioned that automatic dismissal in the current rule seems "unduly harsh," and that our proposal is a fair, efficient way to handle tardy petitions.

--

James N. Ishida
Appellate Court Administrator
Administrative Office of the Courts
450 South State Street
Salt Lake City, UT 84114
jamesi@utcourts.gov
(801) 578-3834

2 attachments

URAP 21_REV May 4, 2017.pdf
153K



Rule 55 redline amendment 1.pdf
158K

Clark Sabey <clarks@utcourts.gov>

Mon, May 15, 2017 at 10:11 PM

To: "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Romano <bromano@agutah.gov>, James Ishida <jamesi@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Troy Booher <tbooher@zjbappeals.com>

Cc: Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I don't have a strong feeling but would slightly favor including "inmate" for the reasons Nancy has stated.

Clark

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Clark Sabey <clarks@utcourts.gov>

Mon, May 15, 2017 at 10:12 PM

To: "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Romano <bromano@agutah.gov>, James Ishida <jamesi@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Troy Booher <tbooher@zjbappeals.com>

Cc: Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

And I also approve the amendments as otherwise set forth in the proposal

[Quoted text hidden]

Judge Gregory Orme <jorme@utcourts.gov>

Mon, May 15, 2017 at 11:08 PM

To: Clark Sabey <clarks@utcourts.gov>

Cc: "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Romano <bromano@agutah.gov>, James Ishida <jamesi@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Troy Booher <tbooher@zjbappeals.com>, Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I endorse the proposed amendment to R55.

As to R21, what if we begin subsection (f) with a definition, and then use "inmate" thereafter:

Filing by a person in a place of legal confinement (hereafter, "inmate").

[Quoted text hidden]

R. Shawn Gunnarson <sgunnarson@kmclaw.com>

Tue, May 16, 2017 at 8:01 AM

To: James Ishida <jamesi@utcourts.gov>, "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Romano <bromano@agutah.gov>, Clark Sabey <clarks@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Troy Booher <tbooher@zjbappeals.com>

Cc: Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

On URAP 21, I prefer Judge Orme's approach of beginning the provision by defining an "inmate" as a "person in a place of legal confinement."

URAP 55 looks fine to me; I have no other suggestions to offer.

From: James Ishida [mailto:jamesi@utcourts.gov]

Sent: Monday, May 15, 2017 5:06 PM

To: Adam M. Pace; Alan Mouritsen; Ann Marie Taliaferro; Bridget Romano; Clark Sabey; James N Ishida; Judge Fred Voros; Judge Gregory Orme; Lisa Collins; Lori Seppi; Marian Decker; Mary Westby; Paul Burke; Rodney Parker; R. Shawn Gunnarson; Troy Booher

Cc: Judge James Blanch; Nancy Sylvester

Subject: ACTION REQUESTED - Proposed Amendment to Appellate Rule 21

[Quoted text hidden]

Troy L. Booher <tbooher@zjbappeals.com>

Tue, May 16, 2017 at 8:09 AM

To: James Ishida <jamesi@utcourts.gov>

Cc: "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Romano <bromano@agutah.gov>, Clark Sabey <clarks@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I prefer that our rule reflect the civil rule, so I vote to adopt whatever changes they make unless there is something special about appeals that requires our rule to be different.

Troy L. Booher

Sent from my iPhone

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<URAP 21_REV May 4, 2017.pdf>

<Rule 55 redline amendment 1.pdf>

Ann Marie Taliaferro <ann@brownbradshaw.com>

Tue, May 16, 2017 at 9:10 AM

To: "Troy L. Booher" <tbooher@zjbappeals.com>

Cc: James Ishida <jamesi@utcourts.gov>, "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Bridget Romano <bromano@agutah.gov>, Clark Sabey <clarks@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I agree. Make it consistent with the civil rules.

Ann Marie Taliaferro

Attorney at Law

Brown Bradshaw & Moffat

Sent from my iPhone

Please excuse typos

[Quoted text hidden]

Alan S. Mouritsen <AMouritsen@parsonsbehle.com>

Tue, May 16, 2017 at 9:14 AM

To: Ann Marie Taliaferro <ann@brownbradshaw.com>, "Troy L. Booher" <tbooher@zjbappeals.com>

Cc: James Ishida <jamesi@utcourts.gov>, "Adam M. Pace" <amp@scmlaw.com>, Bridget Romano <bromano@agutah.gov>, Clark Sabey <clarks@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I agree.



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From: Ann Marie Taliaferro [mailto:ann@brownbradshaw.com]

Sent: Tuesday, May 16, 2017 9:10 AM

To: Troy L. Booher <tbooher@zjbappeals.com>

Cc: James Ishida <jamesi@utcourts.gov>; Adam M. Pace <amp@scmlaw.com>; Alan S. Mouritsen <AMouritsen@parsonsbehle.com>; Bridget Romano <bromano@agutah.gov>; Clark Sabey <clarks@utcourts.gov>; Judge Fred Voros <jfvoros@utcourts.gov>; Judge Gregory Orme <jorme@utcourts.gov>; Lisa Collins <lisaac@utcourts.gov>; Lori Seppi <lseppi@sllda.com>; Marian Decker <mdecker@utah.gov>; Mary Westby <maryw@utcourts.gov>; Paul Burke <pburke@rqn.com>; Rodney Parker <rparker@scmlaw.com>; Shawn Gunnarson <sgunnarson@kmclaw.com>; Judge James Blanch <jblanch@email.utcourts.gov>; Nancy Sylvester <nancyjs@utcourts.gov>

Subject: Re: ACTION REQUESTED - Proposed Amendment to Appellate Rule 21

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Rodney R. Parker <rrp@scmlaw.com>

Tue, May 16, 2017 at 9:40 AM

To: "Alan S. Mouritsen" <AMouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, "Troy L. Booher" <tbooher@zjbappeals.com>

Cc: James Ishida <jamesi@utcourts.gov>, "Adam M. Pace" <AMP@scmlaw.com>, Bridget Romano <bromano@agutah.gov>, Clark Sabey <clarks@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I agree as well but may I register my personal protest to the use of the word "hereafter." I think it is an awkward and overused construction, and would prefer James' approach of just saying whatever it is we are saying, without assuming the reader can't follow it.

Rod

From: Alan S. Mouritsen [mailto:AMouritsen@parsonsbehle.com]

Sent: Tuesday, May 16, 2017 9:14 AM

To: Ann Marie Taliaferro <ann@brownbradshaw.com>; Troy L. Booher <tbooher@zjbappeals.com>

Cc: James Ishida <jamesi@utcourts.gov>; Adam M. Pace <AMP@scmlaw.com>; Bridget Romano <bromano@agutah.gov>; Clark Sabey <clarks@utcourts.gov>; Judge Fred Voros <jfvoros@utcourts.gov>; Judge Gregory Orme <jorme@utcourts.gov>; Lisa Collins <lisaac@utcourts.gov>; Lori Seppi <lseppi@sllda.com>; Marian Decker <mdecker@utah.gov>; Mary Westby <maryw@utcourts.gov>; Paul Burke <pburke@rqn.com>; Rodney R. Parker <rrp@scmlaw.com>; Shawn Gunnarson <sgunnarson@kmclaw.com>; Judge James Blanch <jblanch@email.utcourts.gov>; Nancy Sylvester <nancyjs@utcourts.gov>

Subject: RE: ACTION REQUESTED - Proposed Amendment to Appellate Rule 21

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Lori Seppi <lseppi@sllda.com>

Tue, May 16, 2017 at 10:22 AM

To: Judge Gregory Orme <jorme@utcourts.gov>

Cc: Clark Sabey <clarks@utcourts.gov>, "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Romano <bromano@agutah.gov>, James Ishida <jamesi@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Troy Booher <tbooher@zjbappeals.com>, Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I agree with Judge Orme's suggested change. Otherwise, I approve both amended rules.
Lori Seppi

Sent from my iPhone

[Quoted text hidden]

Lisa Collins <lisaac@utcourts.gov>

Tue, May 16, 2017 at 11:56 AM

To: Judge Gregory Orme <jorme@utcourts.gov>

Cc: Clark Sabey <clarks@utcourts.gov>, "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <amouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Romano <bromano@agutah.gov>, James Ishida <jamesi@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Troy Booher <tbooher@zjbappeals.com>, Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I vote for Judge Orme's approach on R21. R55 looks good.

Lisa A. Collins
Clerk of Court
Utah Court of Appeals
Transcript Manager
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P.O. Box 140230
Salt Lake City, Utah 84114
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801-578-3907

[Quoted text hidden]

Marian Decker <mdecker@agutah.gov>

Tue, May 16, 2017 at 12:20 PM

To: James Ishida <jamesi@utcourts.gov>, "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <AMouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Hintze <Bromano@agutah.gov>, Clark Sabey <clarks@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Mary Westby <maryw@utcourts.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Troy Booher <tbooher@zjbappeals.com>
Cc: Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I like Judge Orme's suggestion with regard to rule 21, as modified by Rodney. I also approve the changes to rule 55.

Marian Decker

Appeals Section Director

Assistant Solicitor General

Utah Attorney General's Office

160 East 300 South, 6th Floor

PO Box 140854

Salt Lake City, Utah 84114-0854

(801) 366-0180

From: James Ishida <jamesi@utcourts.gov>

Sent: Monday, May 15, 2017 5:06:24 PM

To: Adam M. Pace; Alan Mouritsen; Ann Marie Taliaferro; Bridget Hintze; Clark Sabey; James N Ishida; Judge Fred Voros; Judge Gregory Orme; Lisa Collins; Lori Seppi; Marian Decker; Mary Westby; Paul Burke; Rodney Parker; Shawn Gunnarson; Troy Booher

Cc: Judge James Blanch; Nancy Sylvester

Subject: ACTION REQUESTED - Proposed Amendment to Appellate Rule 21

[Quoted text hidden]

Mary Westby <maryw@utcourts.gov>

Tue, May 16, 2017 at 1:19 PM

To: Marian Decker <mdecker@agutah.gov>

Cc: James Ishida <jamesi@utcourts.gov>, "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <AMouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Hintze <Bromano@agutah.gov>, Clark Sabey <clarks@utcourts.gov>, Judge Fred Voros <jfvoros@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Troy Booher <tbooher@zjbappeals.com>, Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I'm with Marian and Rod.

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Judge Fred Voros <jfvoros@utcourts.gov>

Tue, May 16, 2017 at 1:58 PM

To: Mary Westby <maryw@utcourts.gov>

Cc: Marian Decker <mdecker@agutah.gov>, James Ishida <jamesi@utcourts.gov>, "Adam M. Pace" <amp@scmlaw.com>, Alan Mouritsen <AMouritsen@parsonsbehle.com>, Ann Marie Taliaferro <ann@brownbradshaw.com>, Bridget Hintze <Bromano@agutah.gov>, Clark Sabey <clarks@utcourts.gov>, Judge Gregory Orme <jorme@utcourts.gov>, Lisa Collins <lisaac@utcourts.gov>, Lori Seppi <lseppi@sllda.com>, Marian Decker <mdecker@utah.gov>, Paul Burke <pburke@rqn.com>, Rodney Parker <rparker@scmlaw.com>, Shawn Gunnarson <sgunnarson@kmclaw.com>, Troy Booher <tbooher@zjbappeals.com>, Judge James Blanch <jblanch@email.utcourts.gov>, Nancy Sylvester <nancyjs@utcourts.gov>

I don't support the parenthetical ("inmate") for a couple of reasons.

First, I can't think of any other rule where we add a short name in a parenthetical. That seems more like a feature of contracts, briefs, and opinions.

Second, rather than saying "a person in a place of legal confinement ('inmate')," why not just say "inmate"? Or, if there is some confusion about the limits of the category (e.g., does it include juveniles in detention? psychiatric patients under civil commitment?) we should define the term.

Third, I agree that we should use the same nomenclature as the civil rule.

Otherwise I support both proposals.

J. Frederic Voros, Jr.
Presiding Judge
Utah Court of Appeals
450 South State Street
Post Office Box 140230
Salt Lake City, Utah 84114-0230
[Quoted text hidden]

Tab 3



James Ishida <jamesi@utcourts.gov>

Proposed Amendments to Rules 25A and 25

Clark Sabey <clarks@utcourts.gov>

Wed, Apr 19, 2017 at 10:45 AM

To: James Ishida <jamesi@utcourts.gov>, Paul Burke <pburke@rqn.com>

The Court has asked me to forward to the Committee a proposed amendment to Rule 25A that grants the Attorney General (or local attorney in cases involving ordinances) the right to appear at oral argument whenever an amicus brief has been filed pursuant to the Rule. The proposed amendment to Rule 25 simply cross-references the Rule 25A change.

Paul and James, I am assuming you are the right individuals to send this to. I can send it to the full Committee prior to the next meeting if you think it would be helpful, but I am guessing it will be fairly non-controversial as to the substance and (hopefully) will only need minor tinkering with respect to form. Let me know if I should send it to anyone else.

Thanks,

Clark

2 attachments

**Proposed Rule 25 Amendment 2017-05.doc**

15K

**Proposed Rule 25A Amendment 2017-05.doc**

18K

Rule 25A. 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) When a party challenges the constitutionality of a statute in an appeal or petition for review in which the Attorney General has not appeared, every party must serve its principal brief and any subsequent brief on the Attorney General on or before the date the brief is filed.

(a)(2) When a party challenges the constitutionality of a county or municipal ordinance in an appeal or petition for review in which the responsible county or municipal attorney has not appeared, every party must serve its principal brief and any subsequent brief on the county or municipal attorney on or before the date the brief is filed.

(a)(3) If an appellee or cross-appellant is the first party to challenge the constitutionality of a statute or ordinance, the appellant must serve its principal brief on the Attorney General or the county or municipal attorney no more than 7 days after receiving the appellee's or the cross-appellant's brief and must serve its reply brief on or before the date it is filed.

(a)(4) Every party must serve its brief on the Attorney General by email or mail at the following address and must file proof of service with the court.

Email

notices@agutah.gov

Mail

Office of the Utah Attorney General

Attn: Utah Solicitor General

320 Utah State Capitol

P.O. Box 142320

Salt Lake City, Utah 84114-2320

(a)(5) If a party does not serve a brief as required by this rule and supplemental briefing is ordered as a result of that failure, a court may order that party to pay the costs, expenses, and attorney fees of any other party resulting from that failure.

(b) Notice by the Attorney General or county or municipal attorney; amicus brief.

(b)(1) Within 14 days after service of the brief that presents a constitutional challenge the Attorney General or other government attorney will notify the appellate court whether it intends

31 to file an amicus brief. The Attorney General or other government attorney may seek up to an
32 additional 7 days' extension of time from the court. Should the Attorney General or other
33 government attorney decline to file an amicus brief, that entity should plainly state the reasons
34 therefor.

35 (b)(2) If the Attorney General or other government attorney declines to file an amicus brief,
36 the briefing schedule is not affected.

37 (b)(3) If the Attorney General or other government attorney intends to file an amicus brief,
38 that brief will come due 30 days after the notice of intent is filed. Each governmental entity may
39 file a motion to extend that time as provided under Rule 22. On a governmental entity filing a
40 notice of intent, the briefing schedule established under Rule 13 is vacated, and the next brief of
41 a party will come due 30 days after the amicus brief is filed.

42 (c) Call for the views of the Attorney General or county or municipal attorney. Any time a
43 party challenges the constitutionality of a statute or ordinance, the appellate court may call for
44 the views of the Attorney General or of the county or municipal attorney and set a schedule for
45 filing an amicus brief and supplemental briefs by the parties, if any.

46 (d) If the Attorney General or county or municipal attorney files an amicus brief, the Attorney
47 General or county or municipal attorney will be permitted to participate at oral argument.

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

A brief of an amicus curiae or of a guardian ad litem representing a minor who is not a party to the appeal may be filed only by leave of court granted on motion or at the request of the court. The motion for leave may be accompanied by a proposed amicus brief, provided it complies with applicable rules and the number of copies specified by Rule 26(b) are submitted to the court. A motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae or the guardian ad litem is desirable. Except for a motion for leave to participate in support of, or in opposition to, a petition for writ of certiorari filed pursuant to Rule 50(f), the motion for leave shall be filed at least 21 days prior to the date on which the brief of the party whose position as to affirmance or reversal the amicus curiae or guardian ad litem will support is due, unless the court for cause shown otherwise orders. Parties to the proceeding may indicate their support for, or opposition to, the motion. Any response of a party to a motion for leave shall be filed within 7 days of service of the motion. If leave is granted, an amicus curiae or guardian ad litem shall 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 run from the timely service of the amicus or guardian ad litem brief or from the timely service of the brief of the party whose position the amicus curiae or guardian ad litem supports, whichever is later. Except as provided by Rule 25A, 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.

Tab 4

Administrative Office of the Courts

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

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

TO: Appellate Rules Committee

FROM: James N. Ishida

DATE: May 26, 2017

RE: Proposed Amendment to Appellate Rule 35 (Petition for Rehearing)

This is an information item only. There are several pending and potentially future proposals to amend Appellate Rule 35 (Petition for Rehearing).

- At the April 6, 2017, committee meeting, Judge Orme suggested that subdivision (k) be amended to read that untimely and consecutive petitions will “not be considered by the court” instead of “will not be received by the clerk.”

- At the May 16, 2017, Supreme Court Conference, I recommended that three Supreme Court Standing Orders be incorporated into the Utah Rules of Appellate Procedure, including Standing Order 2 (as to petitions for rehearing).¹

- The Supreme Court, at its next court conference on June 7, 2017, will be considering a proposal to amend subdivision (e). The subdivision currently reads in part: “A petition for rehearing will not be granted in the absence of a response.” The proposal would amend the rule

¹In 2011, I had prepared a report to the US Judicial Conference Committee on Rules of Practice and Procedure that analyzed when it was appropriate to put court directives in a standing order vs. a local rule. My research indicated that it was appropriate to use a court standing order where the subject matter: (1) involves internal court administration and has no discernable impact on parties or their attorneys; (2) is temporary and requires action for too short a time period to make a local rule practical; and (3) requires prompt action to address an emergency. Under this analytical framework, the directives in Standing Order 2 should be placed in a procedural rule because they regulate appellate practice, are not temporary, and would affect attorneys and their parties.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

to allow the court to grant a request where (a) the petition seeks an innocuous change, and (b) the opposing party receives notice of the court's intent to grant the request absent a timely objection.

The proposal(s) to amend Appellate Rule 35 will be brought back to this Committee as an action item on a future agenda. Depending on decisions made by the Supreme Court, there will be one, two, or three suggested amendments to Rule 35 for this Committee's consideration.

Attachments: Utah Appellate Rule 35
Utah Supreme Court Standing Order 2

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 that has received plenary review by the Court and where in which the court has issued an opinion, memorandum decision, or per curiam decision. No other petitions for rehearing will be received or considered.

(b) Time for filing. A petition for rehearing may 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 order.

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

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

(e) Response. No response to a petition for rehearing will be received unless requested by the court. Any response shall 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) Length. Except by order of the court, a petition for rehearing and any response requested by the court shall not exceed 15 pages.

(i) Color of cover. The cover of a petition for rehearing shall be tan; that of any response to a petition for rehearing filed by a party, white; and that of any response filed by an amicus curiae, green. All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover.

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

32 (k) Untimely or consecutive petitions. Petitions for rehearing that are not timely presented under
33 this rule and consecutive petitions for rehearing will not be ~~received by the clerk~~considered by
34 the court.

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

Utah Supreme Court Standing Order No. 2

(As to petitions for rehearing)

Effective January 16, 2003

The Court hereby issues the following instructions to the clerk of the Court which are intended to replace the Court's existing Standing Order No. 2: Petitions for Rehearing will be accepted pursuant to Rule 35 of the Utah Rules of Appellate Procedure in cases which have received plenary review by the Court and a full opinion has been published, either as a signed opinion or per curiam.

The substance of Rule 35 provided concise instructions for rehearings, and further provides that untimely or consecutive petitions will not be received by the clerk.

The clerk is further instructed to refuse to accept petitions for rehearing, motions for reconsideration, or an instrument similarly captioned in the categories of actions next named: interlocutory appeals which have been denied (Rule 5), motions for summary disposition which have been granted or denied (Rule 10), petitions for writs of certiorari which have been denied (Rule 49), and motions to remand for findings under Rule 23B when granted or denied.