



AGENDA APPELLATE RULES COMMITTEE

Thursday, September 7, 2017 12:00pm

1. **INFORMATION** - Introduction of new committee members, Utah Court of Appeals Judge Jill Pohlman, and Utah Assistant Solicitor General Christopher Ballard **(Tab 1)**. Reappointment of Judge Greg Orme, Rodney Parker, and Alan Mouritsen (Paul Burke, Chair)
2. **ACTION** - Approve minutes of May 4, 2017, meeting (Paul Burke) **(Tab 2)**
3. **INFORMATION** - Supreme Court action on rules package — Appellate Rule 24 and new Rule 24A **(FINAL APPROVAL)**, and Appellate Rules 21, 25, 25A, 30, 37, and 55, and new Form **(PUBLICATION)** (Paul Burke) **(Tab 3)**
4. **ACTION** - Proposed amendments to Appellate Rules 1, 52, 53, 54, 55, 56, 57, 58, and 59 expediting adoption appeals (Judge Orme) **(PUBLICATION)** **(Tab 4)**
5. **ACTION** - Proposed amendments to Appellate Rule 35 (Petition for Rehearing) (Judge Orme/James Ishida) **(PUBLICATION)** **(Tab 5)**
6. **INFORMATION** - Report from *Logue* Subcommittee (Lori Seppi)
7. Miscellaneous Matters

Next Advisory Committee Meeting Thursday October 7, 2017

MEETING SCHEDULE:

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

Tab 1



Judge Jill M. Pohlman was appointed to the Utah Court of Appeals in May 2016 by Governor Gary Herbert. Judge Pohlman graduated Magna Cum Laude from the University of Utah in 1993, and received her Juris Doctorate from the S.J. Quinney College of Law at the University of Utah in 1996, where she served on the Utah Law Review and graduated Order of the Coif. After law school, she clerked for the Honorable David K. Winder of the United States District Court for the District of Utah. Prior to her appointment, Judge Pohlman was a partner at the law firm of Stoel Rives LLP in Salt Lake City. She practiced there for 19 years during which she maintained a complex civil litigation practice, including administrative, trial, and appellate work. She was a member of the Utah Supreme Court's Ethics and Discipline Committee, during which time she acted as panel chair. She also served on the Utah Supreme Court's Diversion Committee. Judge Pohlman currently sits on the Utah Courts Committee on Judicial Outreach.

CHRISTOPHER D. BALLARD

EXPERIENCE

Utah Attorney General's Office

Assistant Solicitor General, Criminal Appeals Division

Salt Lake City, Utah
July 2000–present

- Brief and argue appeals at all levels of state and federal appellate courts
- Litigate civil state post-conviction and federal habeas corpus actions
- Conduct evidentiary hearings in state post-conviction actions
- Edit colleagues' briefs
- Mentor new attorneys
- Testify at legislative hearings
- Respond to press inquiries regarding my cases
- Attorney of the Quarter Award
- Best Brief Award, two-time recipient

Utah Fourth District Court

Law Clerk & Bailiff, Judge Ray M. Harding, Jr.

Provo, Utah
June 1999–July 2000

- Researched and drafted all written decisions and orders
- Consulted on all rulings
- Supervised juries and legal externs

Utah County Attorney's Office

Law Clerk

Provo, Utah
Oct 1998–May 1999

- Drafted appellate brief in a civil forfeiture case
- Researched issues and wrote memoranda as assigned

Strong & Hanni

Law Clerk

Salt Lake City, Utah
Jan 1998–Oct 1998

- Helped draft 10th Circuit brief in an employment discrimination case
- Researched issues and wrote memoranda as assigned

United States Attorney's Office

Law Clerk

Salt Lake City, Utah
June 1997–Aug 1997

- Drafted appellate brief on a speedy trial issue
- Researched issues and wrote memoranda as assigned

EDUCATION & BAR ADMISSIONS

J. Reuben Clark Law School, Brigham Young University

Juris Doctor, cum laude

Provo, Utah
April 1999

- Class standing: Top 15%
- National Moot Court Team Member
- Best oralist, best brief, National Moot Court Competition, regional final, 1998

Brigham Young University

Bachelor of Arts, cum laude, Political Science, English minor

Provo, Utah
August 1995

Utah State Bar, October 1999

United States District Court for the District of Utah, 2000

United States Court of Appeals for the Tenth Circuit, 2000

PROFESSIONAL SERVICE

Utah Journal of Criminal Law, Editorial Board	2014 - present
Utah State Bar Appellate Practice Section, Executive Board Member	2009 - 2011

SIGNIFICANT APPELLATE DECISIONS

State v. Houston, 2015 UT 40, 353 P.3d 55 (affirming the constitutionality of a life-without-parole sentence for a juvenile who committed aggravated murder)

State v. Guadarrama, 2015 UT App 77, 347 P.3d 857 (rejecting a constitutional challenge to a 25-years-to-life sentence for child rape)

State v. MacGuire, 2004 UT 4, 84 P.3d 1171 (recognizing a nonviable fetus as a person under Utah's aggravated murder statute)

State v. Lane, 2009 UT 35, 212 P.3d 529 (striking a workable balance between crime-victim rights and the State's prosecutorial authority)

State v. J.M.S. (In re J.M.S.), 2011 UT 75, 280 P.3d 410 (reversing an erroneous interpretation of Utah's abortion statutes)

State v. Mauchley, 2003 UT 10, 67 P.3d 477 (adopting the minority position and abandoning the *corpus delicti* rule)

COMMUNITY SERVICE

Shining Light Commonwealth School: Board member for this Utah non-profit corporation serving homeschooling families

Gathering Home Foundation: Board member for this 501(c)(3) organization dedicated to strengthening families

Dads' Retreat: Founder and Director of this annual event designed to strengthen and inspire fathers (DadsRetreat.org)

Marriage Enrichment Inc.: Serve with my wife as a lead couple for marriage enrichment weekends, founded by Dr. Victor Cline in 1978 (Marriage-Enrichment.org)

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

Updated July 25, 2017

Paul Burke - Chair
Ray, Quinney & Nebeker
36 South State Street, Suite 1400
Salt Lake City, Utah 84111
Tel: 801-323-3303
pburke@rqn.com
Term Appointed: July 1, 2005
Term Expires: July 1, 2021

James Ishida
Appellate Court Administrator
450 South State St.
Salt Lake City, Utah 84111
Tel: 801-578-3808
jamesi@utcourts.gov
Term Appointed: July 18, 2016
Term Expires: Staff

Christopher D. Ballard
Utah Attorney General's Office
160 East 300 South, 6th Floor
Salt Lake City, Utah 84114
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cballard@agutah.gov
Term Appointed: July 25, 2017
Term Expires: July 1, 2021

Troy Booher
Zimmerman Jones Booher
341 S. Main Street, Suite 400
Salt Lake City, Utah 84111
Tel: 801-924-0204
tbooher@zjappeals.com
Term Appointed: July 1, 2011
Term Expires: July 1, 2019

Lisa Collins
Utah Court of Appeals
450 South State St.
Salt Lake City, Utah 84111
Tel: 801-578-3907
lisaac@utcourts.gov
Term Appointed: April 1, 2017
Term Expires: Standing member

R. Shawn Gunnarson
Kirtan McConkie
60 E South Temple Ste 1800
Salt Lake City, Utah 84111
Tel: 801-328-3600
sgunnarson@kmclaw.com
Term Appointed: July 1, 2015
Term Expires: July 1, 2019

Alan S. Mouritsen
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, Utah 84111
Tel: 801-536-6927
amouritsen@parsonsbehle.com
Term Appointed: July 1, 2013
Term Expires: July 1, 2021

Judge Gregory Orme
Utah Court of Appeals
450 South State Street
Salt Lake City, Utah 84114
Tel: 801-578-3900
jorme@utcourts.gov
Term Appointed: July 1, 2001
Term Expires: July 1, 2021

Adam Pace - Recorder
Snow, Christensen & Martineau
P.O. Box 45000
Salt Lake City, Utah 84145-5000
Tel: 801-322-9265
amp@scmlaw.com
Term Appointed: N/A
Term Expires: Recording secretary

Rodney R. Parker
Snow, Christensen & Martineau
P.O. Box 45000
Salt Lake City, Utah 84145-5000
Tel: 801-521-9000
rparker@scmlaw.com
Term Appointed: July 1, 2013
Term Expires: July 1, 2021

Judge Jill M. Pohlman
Utah Court of Appeals
450 South State Street
Salt Lake City, Utah 84114
Tel: 801-578-3900
jpohlman@utcourts.gov
Term Appointed: August 2, 2017
Term Expires: July 1, 2019
[serving Judge Voros term]

Bridget K. Romano
Utah Attorney General's Office
160 East 300 South, 6th Floor
P.O. Box 140858
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bromano@agutah.gov
Term Appointed: November 1, 2011
Term Expires: November 1, 2019

Clark Sabey
Utah Supreme Court
450 South State Street
Salt Lake City, Utah 84114
Tel: 801-238-7962
clarks@utcourts.gov
Term Appointed: August 1, 2002
Term Expires: Standing member

Lori J. Seppi
Salt Lake Legal Defenders Association
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Tel: 801-532-5444
lseppi@sllda.com
Term Appointed: July 1, 2011
Term Expires July 1, 2019

Ann Marie Taliaferro
Brown, Bradshaw & Moffat
422 North 300 West
Salt Lake City, Utah 84103
Tel: 801-532-5297
ann@brownbradshaw.com
Term Appointed: July 1, 2011
Term Expires: July 1, 2019

Mary Westby
Utah Court of Appeals
450 South State St.

Salt Lake City, Utah 84111
Tel: 801-578-3894
maryw@utcourts.gov
Term Appointed: July 1, 2012
Term Expires: Standing member

Tab 2

**DRAFT MINUTES OF THE JUNE 1, 2017,
APPELLATE RULES COMMITTEE MEETING
WILL BE DISTRIBUTED SEPARATELY
BEFORE THE MEETING**

Tab 3



SUPREME COURT OF THE STATE OF UTAH ADVISORY COMMITTEES

July 7, 2017

HON. MATTHEW B. DURRANT
CHIEF JUSTICE

HON. THOMAS R. LEE
ASSOCIATE CHIEF JUSTICE

HON. CHRISTINE M. DURHAM
JUSTICE

HON. DENO G. HIMONAS
JUSTICE

HON. JOHN A. PEARCE
JUSTICE

CHAIRS OF ADVISORY COMMITTEES

PAUL C. BURKE
APPELLATE RULES

JONATHAN O. HAFEN
CIVIL RULES

PATRICK W. CORUM
CRIMINAL RULES

JOHN R. LUND
EVIDENCE RULES

CAROL L. C. VERDOIA
JUVENILE RULES

STEVEN G. JOHNSON
PROFESSIONAL CONDUCT RULES

Chief Justice Matthew B. Durrant
Utah Supreme Court
450 South State Street
P.O. Box 140210
Salt Lake City, UT 84114-0210

RE: *Proposed amendments to Appellate Rule 24 and new Rule 24A (FINAL APPROVAL), and proposed amendments to Appellate Rules 21, 25, 25A, 30, 37, and 55, and new Form (PUBLICATION)*

Dear Chief Justice Durrant:

The Appellate Rules Committee approved for final adoption a proposed amendment to Appellate Rule 24 and a new Rule 24A on briefs. The advisory committee recommends that the Supreme Court approve these proposals for final adoption.

The advisory committee also approved for publication proposed amendments to Appellate Rules 21, 25, 25A, 30, 37, and 55, and a new form to accompany the proposed amendment to Rule 21. The advisory committee recommends that the Supreme Court approve these proposals for public comment.

Finally, I recommend that Judge Greg Orme, Rodney Parker, and Alan Mouritsen be reappointed to new four-year terms on the advisory committee. I further recommend that Marian Decker, who has served with distinction on the committee since March 2002 and who is stepping down due to her new duties, be replaced by Christopher D. Ballard. Mr. Ballard, whose resume is attached, is an assistant solicitor general in the Criminal Appeals Division of the Attorney General's Office and comes highly recommended by Ms. Decker and the AG's Office.

Appellate Rules 24 and 24A (FINAL APPROVAL)

These proposals are a long time in the making.

The intent of these rule changes is to structure briefs in a way that will quickly orient the reader and remove unnecessary or repetitive information. As the Advisory Committee Note states: “[t]he 2017 amendments substantially change and alter 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.”

In November 2016, this Court approved for publication a proposed amendment to Appellate Rule 24 and new Appellate Rule 24A on briefs. The proposals were published on November 10, 2016, and the 45-day public comment period expired on December 25, 2016. We received three comments. The comments, which are attached, are mostly favorable. The committee carefully studied each comment, and it incorporated many of the suggestions into the proposed rules.

In reviewing the public comments, the committee uncovered a potential problem in subdivision (d) (References in briefs to parties and others). The last sentence of the subdivision, as published, read: “The surname of a minor must not be used nor may the surname of a minor’s biological, adoptive, or foster parent be used.” The advisory committee had intended to protect the names of minors from disclosure in briefs, but the committee later recognized that this mandate was unworkable for a number of reasons (including conflicting due process concerns in criminal cases where the defendant’s name must be used). A subcommittee was subsequently formed to rework the troublesome language, and it approved the following revision to accommodate the competing concerns: “The identity of minors should be protected by use of descriptive terms, initials, or pseudonyms. In child welfare appeals, the surname of a minor must not be used nor may a surname of a minor’s biological, adoptive, or foster parent be used.” The full committee approved the revision by email ballot on June 30, 2017.

Highlights of the proposed amendment to Rule 24 and new Rule 24A are as follows:

Appellate Rule 24 (Principal and reply briefs)

1. A jurisdictional statement is not required. This highlights the committee’s intent to include sections in the brief that play an important role, but to remove sections that play no role or are largely ignored. Accordingly, the jurisdictional statement was removed because the committee believed that jurisdictional issues were either resolved before briefing or constituted part of the legal argument on appeal.
2. A separate section in the brief designating that the text of relevant provisions is in an addendum is no longer required. The rule does require that the text of any relevant provision “of central importance cited in the brief but not reproduced in the brief” be included in an addendum. Appellate Rule 24(a)(12).
3. An introduction “describ[ing] the nature and context of the dispute and explain[ing] why the party should prevail on appeal” is required. Appellate Rule 24(a)(4).
4. The statement of the case section is worded differently to clarify what should be contained in that section. Appellate Rule 24(a)(6).
5. A party seeking attorney fees must explicitly state that request and the legal basis in the brief. Appellate Rule 24(a)(9).

6. The proposed rule allows a party discretion to summarize the party's position in the conclusion, and it requires a party to state the relief sought on appeal. Appellate Rule 24(a)(10).
7. A party must include a certificate of compliance indicating that the brief complies with the word count requirements of Rule 24 and the privacy requirements of Appellate Rule 21. Appellate Rule 24(a)(11).
8. The rule clarifies materials that should be included in an addendum and highlights that the addendum must be comply with the privacy concerns of Rule 21(g). Appellate Rule 24(a)(12).
9. Subdivision 24(d) outlines the manner in which parties should refer to parties and others in briefs. Appellate Rule 24(d).
10. The Supreme Court's Standing Order 4 regarding citations of opinions issued on or after January 1, 1999, is incorporated into the rule. Appellate Rule 24(f).
11. The procedure for requesting permission to file an over length brief is clarified. Appellate Rule 24(h).

Appellate Rule 24A (Briefs in cross-appeals)

The proposal to address briefs in cross-appeals in a separate rule is aimed at providing clarity and ease for practitioners. Briefing rules in cases involving cross-appeals can cause considerable confusion even for very experienced appellate attorneys. The proposed new Rule 24A is aimed at clearly articulating those briefing requirements.

Appellate Rule 21 (PUBLICATION)

For the past six months, this committee and the Civil Rules Committee have worked hard to craft substantially similar "prisoner mailbox rules," which this Court had requested in order to promote consistency, clarity, and certainty in inmate litigation. At its June 1, 2017, meeting, the advisory committee approved final revisions to Appellate Rule 21(f). These revisions are virtually identical to changes that the Civil Rules Committee made to its version of the prisoner mailbox rule.

The proposed amendments to Appellate Rule 21 are attached, along with supporting memoranda setting forth the history of the two amendments. Both advisory committees are now in the process of requesting authorization from this Court to publish their respective proposals for public comment.

Appellate Form to Rule 21 (PUBLICATION)

To provide guidance for inmates and others in complying with the revised prisoner mailbox rule, the advisory committee also approved a new form. The form walks the filer through the necessary steps and elicits the required information to comply with the rule. Though mindful of Code of Judicial Administration Rule 3-117,¹ and the charge of the Judicial Council's Committee on Forms, the advisory committee nonetheless recommends that this Court approve for publication the proposed new form as an exercise of its constitutional rulemaking authority. The form is tightly integrated with the proposed revisions to Rule 21, and it is needed to illustrate and implement the mandates of the amended rule. *Cf.* Federal Rule of Civil Procedure 4 (notice and waiver forms approved through the federal Rules Enabling Act process and appended to the rule).²

¹ Rule 3-117 "establish[es] a committee to determine the need for forms and to create forms for use by litigants in all court levels."

² *See* Committee Note to Federal Rule of Civil Procedure 4(d) ("[a]brogation of Rule 84 and the other official forms requires that former Forms 5 and 6 be directly incorporated into Rule 4").

Appellate Rules 25 and 25A (PUBLICATION)

At this Court's request, the advisory committee considered an amendment to Appellate Rule 25A, granting the Attorney General the right to appear at oral argument whenever an amicus brief has been filed pursuant to the rule. The committee had several questions — namely, how would the right be invoked and how time at oral argument would be allocated — which this Court later provided guidance. The advisory committee thereafter approved the proposal at its June 1, 2017, meeting.

Amended Rule 25 is a conforming amendment.

Appellate Rule 30 (PUBLICATION)

At its February 2, 2017, meeting, the advisory committee approved a technical amendment to Appellate Rule 30. The proposal, which deletes the word “dismissal” in the title, corrects an anomaly because nowhere in the rule does it mention the word or provide for dismissing an appeal.

Appellate Rule 37 (PUBLICATION)

The advisory committee made several changes to Appellate Rule 37.

Subdivision (a). The proposed changes are intended to clarify and simplify a party's obligation to bring to the court's attention those circumstances that render moot one or more issues presented for review on appeal.

Subdivision (b). Amended subdivision (b) provides that if all parties to an appeal agree that the appeal should be dismissed, and if they stipulate to a motion for voluntary dismissal, then the appeal must be promptly dismissed. The committee felt that the proposed change would encourage prompt and efficient settlements. It also felt that dismissal of the appeal is constitutionally appropriate when the parties have agreed to a voluntary dismissal because there is no longer a justiciable case or controversy. Finally, the committee considered deleting the last sentence on fees and costs, but instead it opted to simply rework the sentence to read: “The stipulation must specify the terms of payment of costs and fees, if any.”

Subdivision (c). The proposed amendment provides an efficient way for an attorney who is unable to contact his or her client to obtain the necessary affidavit to support a motion for voluntary dismissal, while still protecting the appellant's right to appeal. The proposal also requires the attorney to certify that he or she has reasonable grounds to believe that the appellant no longer wishes to pursue the appeal. The committee concluded that a certification from the attorney is appropriate because it safeguards the appellant's right to an appeal, and it also avoids having the attorney reveal confidential communications with the client in an affidavit.

Subdivision (d). The committee recommends deleting the current subdivision — “[a] suggestion of mootness or motion for voluntary dismissal shall be subject to the appellate court's approval” — for the same reasons mentioned in the earlier subdivision (b).

Appellate Rule 55 (PUBLICATION)

At its May 4, 2017, meeting, the advisory committee approved a proposed amendment to Appellate Rule 55 that would give the court discretion to dismiss an untimely filed petition in a child welfare case, rather than requiring dismissal. An appellate-judge member explained that the Court of Appeals had recently

changed its internal operating policy to stop dismissing appeals by default in criminal cases. Instead, the judge noted, the court issues an order to show cause why the case should not be dismissed, giving the appellant one last opportunity to pursue the appeal. He therefore proposed amending Rule 55 to accomplish a similar effect in child welfare cases. Another member agreed, pointing out that the Court of Appeals last year dismissed approximately 10% of petitions in child welfare appeals as untimely, which raises questions about whether clients are being served by the current rule.

Committee Membership

Judge Fred Voros, as the Court well knows, is retiring from the judiciary on August 1, 2017. The committee therefore appreciates and welcomes this Court's appointment of Judge Jill Pohlman to serve as Judge Voros's replacement.

Further, I recommend that Judge Greg Orme, Rodney Parker, and Alan Mouritsen be reappointed to new four-year terms on the advisory committee. Judge Orme has served ably on the committee since 2001, and he has significant appellate experience and institutional memory. The advisory committee would suffer a grievous loss if both Judge Voros and Judge Orme left the committee at the same time. Messrs. Parker and Mouritsen, who are concluding their first four-year term, have been active and thoughtful participants. Both have indicated a desire for a second term, and I wholeheartedly endorse their reappointment.

Finally, I note, with regret, that Marian Decker is stepping down due to her new duties at the Office of the Solicitor General. Ms. Decker and the Attorney General's Office highly recommend that she be replaced on the committee by Christopher D. Ballard. Mr. Ballard, whose resume is attached, is an assistant solicitor general in the Criminal Appeals Division of the Attorney General's Office. He is well regarded, and I support his appointment.

On behalf of the advisory committee, I would like to thank the Court for its support and consideration.

Sincerely,

/s/ Paul C. Burke

Paul C. Burke
Chair

Enclosures

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: July 7, 2017

RE: Proposed amendments to Appellate Rules 1, 52, 53, 54, 55, 56, 57, 58, and 59
expediting adoption and termination of parental rights appeals (**PUBLICATION**)

At the Utah Appellate Judges Conference on May 17, 2017, a panel of experienced, well-respected Juvenile Court judges offered several observations about the juvenile justice process in Utah, one of which was a lament that the appeals process is too long and time-consuming. In particular, the judges noted that the delay in adoption cases and cases terminating parental rights is particularly egregious.

In response, Judge Orme has prepared the attached draft of proposed rules amendments for the advisory committee's consideration.

Attachments

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 1. Scope of rules.

(a) Applicability of rules. These rules govern the procedure before the Supreme Court and the Court of Appeals of Utah in all cases. Applicability of these rules to the review of decisions or orders of administrative agencies is governed by Rule 18. When these rules provide for a motion or application to be made in a trial court or an administrative agency, commission, or board, the procedure for making such motion or application shall be governed by the Utah Rules of Civil Procedure, Utah Rules of Criminal Procedure, and the rules of practice of the trial court, administrative agency, commission, or board.

(b) Reference to "court." Except as provided in Rule 43, when these rules refer to a decision or action by the court, the reference shall include a panel of the court. The term "trial court" means the court or administrative agency, commission, or board from which the appeal is taken or whose ruling is under review. The term "appellate court" means the court to which the appeal is taken.

(c) Procedure established by statute. If a procedure is provided by state statute as to the appeal or review of an order of an administrative agency, commission, board, or officer of the state which is inconsistent with one or more of these rules, the statute shall govern. In other respects, these rules shall apply to such appeals or reviews.

(d) Rules not to affect jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the Supreme Court or Court of Appeals as established by law.

(e) Title. These rules shall be known as the Utah Rules of Appellate Procedure and abbreviated Utah R. App. P.

(f) Rules for appeals in child welfare proceedings. Appeals taken from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings, as well as appeals taken from district court adoption decrees and district court orders terminating parental rights, are governed by Rules 52 through 59, except for orders related to substantiation proceedings under Section 78-3a-320. Rules 9 and 23B do not apply. Due to the summary nature of child welfare appeals, Rule 10(a)(2)(A) does not apply. Other appellate rules apply if not inconsistent with Rules 52 through 59.

Rule 52. Child welfare appeals.

(a) Time for appeal. A notice of appeal from an order in a child welfare proceeding, as defined in Rule 1(f), must be filed within 15 days of the entry of the order appealed from.

(b) Time for appeal extended by certain motions.

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

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

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

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

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

(b)(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in paragraph (b), will be treated as filed after entry of the order and on the day thereof, except that the notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in paragraph (b)(1), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order.

(c) Time for cross-appeal. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 5 days after the first notice of appeal was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

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

Effective November 1, 2016

Rule 53. Notice of appeal.

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

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

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

Rule 54. Transcript of proceedings.

(a) Duty of appellant to request transcript. Within 4 days after filing the notice of appeal, the appellant shall file with the clerk of the appellate court a written request for transcript, specifying the entire proceeding or parts of the proceeding to be transcribed that are not already on file. Within the same period, the appellant shall file a copy with the clerk of the juvenile-trial court and serve the parties.

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

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

Rule 55. Petition on appeal.

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

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

(c) Format. All petitions on appeal shall substantially comply with the Petition on Appeal form that accompanies these rules. The petition shall not exceed 15 pages, excluding the attachments required by Rule 55(d)(6). The petition shall be typewritten, printed or prepared by photocopying or other duplicating or copying process that will produce clear, black and permanent copies equally legible to printing, on opaque, unglazed paper 8 " inches wide and 11 inches long. Paper may be recycled paper, with or without deinking. The printing must be double spaced, except for matter customarily single spaced and indented. Margins shall be at least one inch on the top, bottom and sides of each page. Page numbers may appear in the margins. Either a proportionally spaced or monospaced typeface in a plain, roman style may be used. A proportionally spaced typeface must be 13-point or larger for both text and footnotes. Examples are CG Times, Times New Roman, New Century, Bookman and Garamond. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes. Examples are Pica and Courier.

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

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

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

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

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

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

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

(d)(7) The petition on appeal shall have attached to it:

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

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

Rule 56. Response to petition on appeal.

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

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

Rule 57. Record on appeal; transmission of record.

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

(b) Within 7 days from the date of request from the appellate court, The record shall be transmitted by the juvenile trial court shall transmit the record as stated in 57(a) "as is," without pagination, clerk to the clerk of the Court of Appeals, upon completion of the transcript or, if there is no transcript, within 20 days after the filing of the notice of appeal.

Rule 58. Ruling.

- (a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion or ~~memorandum decision~~order. The Court of Appeals may ~~issue a decision or may instead~~ set the case for full briefing under rule 24. The Court of Appeals may order an expedited briefing schedule, ~~and~~ specify which issues shall be briefed, ~~and limit the length of~~ briefs. If the issue to be briefed is ineffective assistance of counsel, the Court of Appeals may order the ~~juvenile trial~~ court to appoint conflict counsel within 15 days for briefing and argument.
- (b) If the Court of Appeals affirms, reverses, or remands the ~~juvenile trial~~ court order, judgment, or decree, further review may be available pursuant to Rule 35 ~~may be sought~~, but refusal to grant full briefing shall not be a ground for such further review.

Rule 59. Extensions of time.

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

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

Tab 5

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: July 3, 2017

RE: Proposed Amendments to Appellate Rule 35 (**PUBLICATION**)

There are three separate proposals to amend Appellate Rule 35 (Petition for Rehearing).

- At our 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 June 7, 2017, court conference, suggested that this committee consider amending subdivision (e). The subdivision currently reads in part: “A petition for rehearing will not be granted in the absence of a response.” The suggestion would amend the rule to allow the court to grant a petition without a response where (a) the petition

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.

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

There are two alternative proposals for the committee's consideration. The first simply inserts the word "normally" in subdivision (e), which follows the approach taken by the California appellate courts in their Rule 8.268(b)(2) (Rehearing). The second proposes an amendment to Appellate Rule 30. Both proposals are attached.

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 normally 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.



California Rules of Court

Rule 8.268. Rehearing

(a) Power to order rehearing

- (1) On petition of a party or on its own motion, a reviewing court may order rehearing of any decision that is not final in that court on filing.
- (2) An order for rehearing must be filed before the decision is final. If the clerk's office is closed on the date of finality, the court may file the order on the next day the clerk's office is open.

(b) Petition and answer

- (1) A party may serve and file a petition for rehearing within 15 days after:
 - (A) The filing of the decision;
 - (B) A publication order restarting the finality period under rule 8.264(b)(3), if the party has not already filed a petition for rehearing;
 - (C) A modification order changing the appellate judgment under rule 8.264(c)(2); or
 - (D) The filing of a consent under rule 8.264(d).
- (2) A party must not file an answer to a petition for rehearing unless the court requests an answer. The clerk must promptly send to the parties copies of any order requesting an answer and immediately notify the parties by telephone or another expeditious method. Any answer must be served and filed within 8 days after the order is filed unless the court orders otherwise. **A petition for rehearing normally will not be granted unless the court has requested an answer.**
- (3) The petition and answer must comply with the relevant provisions of rule 8.204.
- (4) Before the decision is final and for good cause, the presiding justice may relieve a party from a failure to file a timely petition or answer.

(Subd (b) amended effective January 1, 2009; previously amended effective January 1, 2004, and January 1, 2007.)

(c) No extension of time

The time for granting or denying a petition for rehearing in the Court of Appeal may not be extended. If the court does not rule on the petition before the decision is final, the petition is deemed denied.

(d) Effect of granting rehearing

An order granting a rehearing vacates the decision and any opinion filed in the case and sets the cause at large in the Court of Appeal.

Rule 8.268 amended effective January 1, 2009; repealed and adopted as rule 25 effective January 1, 2003; previously amended effective January 1, 2004; previously amended and renumbered effective January 1, 2007.

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.



James Ishida <jamesi@utcourts.gov>

proposed language

Mary Westby <maryw@utcourts.gov>
To: James Ishida <jamesi@utcourts.gov>

Thu, Jun 15, 2017 at 3:03 PM

James

Below is what I have come up with in an effort to address the Court's concerns regarding corrections. I would not put this in rule 35. I suggest that this go into rule 30, which provides for the entry of decisions. It is a different target than a real petition for rehearing so I think a different placement is warranted. However, there would be a learning curve because rule 30 is not where a lawyer would look for guidance. Regardless, if a petition for rehearing came in with this sort of errata target, the court could construe it as a motion under rule 30, or where ever the rule goes.

Correction of non-substantive errors: The court may correct a clerical mistake, a typographical error, or other non-substantive mistake in an issued decision on its own motion with or without notice to the parties. Upon a party motion, the court may correct non-substantive errors without waiting for a response.

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.

(g) Correction of non-substantive errors. The court may correct a clerical mistake, a typographical error, or other non-substantive mistake in an issued decision on its own motion, with or without notice to the parties. Upon a party motion, the court may correct non-substantive errors without waiting for a response.