

Agenda

Advisory Committee on Rules of Appellate Procedure

January 4, 2018

12:00 to 1:30 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

ACTION: Welcome, introduction of Cathy Dupont, Rule 11-101(4) introductions, and approval of November 2, 2017 minutes	Tab 1	Paul Burke, Chairman
INFORMATION: Subcommittee on challenging the constitutionality of a statute: Civil Rule 24 , Appellate Rule 25A , Criminal Rule 12(i) (pending)	Tab 2	Nancy Sylvester
ACTION: Reducing brief word to page ratio; briefing attorney fees. Rules 24 and 24A and Form 8	Tab 3 & handout	Cathy Dupont
ACTION: Expediting adoption appeals. Rules 1, 52, 53, 54, 55, 56, 57, 58, 59	Tab 4	Judge Greg Orme, Nancy Sylvester
DISCUSSION: Rescheduling May meeting		Paul Burke

Committee Webpage: <https://www.utcourts.gov/utc/appellate-procedure/>

Meeting schedule:

February 1, 2018

March 1, 2018

April 5, 2018

May 3, 2018

June 7, 2018

September 6, 2018

October 4, 2018

November 1, 2018

December 6, 2018

Tab 1

MINUTES

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

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

Judicial Council Room
Thursday, November 2, 2017
12:00 p.m. to 1:30 p.m.

PRESENT

Christopher Ballard
Paul Burke- Chair
Lisa Collins
R. Shawn Gunnarson
Alan Mouritsen
Judge Gregory Orme
Judge Jill Pohlman
Adam Pace – Recording Secretary
Rodney Parker
Bridget Romano
Clark Sabey
Lori Seppi
Nancy Sylvester-Staff
Ann Marie Taliaferro

EXCUSED

Troy Booher
Mary Westby

1. Welcome and approval of minutes

Paul Burke

Mr. Burke welcomed the committee to the meeting and invited a motion to approve the minutes from the September meeting.

Judge Pohlman moved to approve the minutes from the September meeting. Ms. Romano seconded the motion and it passed unanimously.

2. Logue subcommittee report

Lori Seppi

Ms. Seppi reported that the *Logue* subcommittee’s recommendation is to take no action at this time. The subcommittee is concerned that if the rules are revised to address the concern stated in *Logue* it will create a procedural bar against motions for new trial based on newly discovered evidence in post-conviction relief cases where the defendant fails to file the motion on appeal. This would create an unreasonable burden on indigent appellate defense attorneys who are

already struggling due to limited resources. The subcommittee thinks that criminal defendants will be better served by having counsel file a motion for new trial based on newly discovered evidence in a case for post-conviction relief, where the attorney has an opportunity to conduct discovery and has the time and resources necessary to properly investigate the claim.

Mr. Burke asked if the Supreme Court's concern is being left unaddressed if no changes are made to the rules. Ms. Seppi said that the subcommittee felt the Court's concern was outweighed by the other concerns summarized above. Ms. Seppi also pointed out that Utah Code § 78B-9-402 (Petition for determination of factual innocence) allows criminal defendants to seek a new trial based on newly discovered evidence, but it is unclear whether the statute permits the petition before a direct appeal is concluded.

Mr. Gunnarson suggested that the committee explain in its report to the Court that, although it is recommending no changes be made to the rules at this time, if changes are made in the future it may be necessary for the legislature to amend the statutory framework that creates the procedural bar that the subcommittee was concerned with.

Ms. Seppi moved to adopt the recommendation of the subcommittee to take no action at this time, and to provide the Supreme Court with the committee's report and a suggestion that the legislature might want to visit this issue in the future. Mr. Gunnarson seconded the motion and it passed unanimously.

Mr. Burke thanked Ms. Seppi for her work on the *Logue* subcommittee over the past year.

3. Proposed technical amendments to Rules 26(a) and 29(d) Paul Burke

Ms. Sylvester introduced proposed technical amendments to Rules 26(a) and 29(d) to conform to the recent amendment to Rule 24. Judge Pohlman proposed using the term "principal brief" throughout Rule 26, where appropriate, to be consistent with the terminology used in Rule 24.

Mr. Gunnarson moved to adopt the proposed amendments with the additional change suggested by Judge Pohlman and to send them to the Supreme Court. Mr. Mouritsen seconded the motion and it passed unanimously.

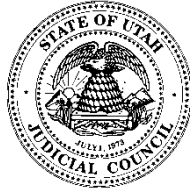
4. Other business

The committee did not discuss other business.

5. Adjourn

The meeting adjourned at 1:30 p.m. The next meeting will be held on January 4, 2018.

Tab 2



Administrative Office of the Courts

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

MEMORANDUM

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

To: Appellate Rules Committee
From: Nancy Sylvester *Nancy J. Sylvester*
Date: December 21, 2017
Re: INFORMATION: Constitutionality of a Statute Subcommittee

A subcommittee has formed to attempt to match the language, where it's appropriate, between Civil Rule 24, Appellate Rule 25A, and Criminal Rule 12(i) (pending). Those rules are attached for your information.

**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 24. Intervention.

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

(c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the parties as provided in Rule 5. The motions shall state the grounds therefor and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought.

(d) Constitutionality of statutes and ordinances.

(d)(1) If a party challenges the constitutionality of a statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality shall notify the Attorney General of such fact. The court shall permit the state to be heard upon timely application.

(d)(2) If a party challenges the constitutionality of a county or municipal ordinance in an action in which the county or municipal attorney has not appeared, the party raising the question of constitutionality shall notify the county or municipal attorney of such fact. The court shall permit the county or municipality to be heard upon timely application.

(d)(3) Failure of a party to provide notice as required by this rule is not a waiver of any constitutional challenge otherwise timely asserted.

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 to file an amicus brief. The Attorney General or other government attorney may seek up to an

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

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

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

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

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

Effective May 1, 2018

1 **Rule 12. Motions.**

2 (a) **Motions.** An application to the court for an order shall be by motion, which, unless
3 made during a trial or hearing, shall be in writing and in accordance with this rule. A
4 motion shall state succinctly and with particularity the grounds upon which it is made
5 and the relief sought. A motion need not be accompanied by a memorandum unless
6 required by the court.

7 (b) **Request to Submit for Decision.** If neither party has advised the court of the filing nor
8 requested a hearing, when the time for filing a response to a motion and the reply has
9 passed, either party may file a request to submit the motion for decision. If a written
10 Request to Submit is filed it shall be a separate pleading so captioned. The Request to
11 Submit for Decision shall state the date on which the motion was served, the date the
12 opposing memorandum, if any, was served, the date the reply memorandum, if any,
13 was served, and whether a hearing has been requested. The notification shall contain a
14 certificate of mailing to all parties. If no party files a written Request to Submit, or the
15 motion has not otherwise been brought to the attention of the court, the motion will
16 not be considered submitted for decision.

17 (c) **Time for filing specified motions.** Any defense, objection or request, including request
18 for rulings on the admissibility of evidence, which is capable of determination without
19 the trial of the general issue may be raised prior to trial by written motion.

20 (c)(1) The following shall be raised at least 7 days prior to the trial:

21 (c)(1)(A) defenses and objections based on defects in the indictment or
22 information;

23 (c)(1)(B) motions to suppress evidence;

24 (c)(1)(C) requests for discovery where allowed;

25 (c)(1)(D) requests for severance of charges or defendants;

26 (c)(1)(E) motions to dismiss on the ground of double jeopardy; or

27 (c)(1)(F) motions challenging jurisdiction, unless good cause is shown
28 why the issue could not have been raised at least 7 days prior to trial.

29 (c)(2) Motions for a reduction of criminal offense at sentencing pursuant to Utah
30 Code Section 76-3-402(1) shall be in writing and filed at least 14 days prior to the
31 date of sentencing unless the court sets the date for sentencing within ten days

32 of the entry of conviction. Motion for a reduction of criminal offense pursuant
33 to Utah Code Section 76-3-402(2) may be raised at any time after sentencing
34 upon proper service of the motion on the appropriate prosecuting entity.

35

36 (d) **Motions to Suppress.** A motion to suppress evidence shall:

37 (d)(1) describe the evidence sought to be suppressed;

38 (d)(2) set forth the standing of the movant to make the application; and

39 (d)(3) specify sufficient legal and factual grounds for the motion to give the opposing
40 party reasonable notice of the issues and to enable the court to determine what
41 proceedings are appropriate to address them.

42 If an evidentiary hearing is requested, no written response to the motion by the non-moving
43 party is required, unless the court orders otherwise. At the conclusion of the evidentiary
44 hearing, the court may provide a reasonable time for all parties to respond to the issues of fact
45 and law raised in the motion and at the hearing.

46 (e) **Timing of rulings.** A motion made before trial shall be determined before trial unless
47 the court for good cause orders that the ruling be deferred for later determination.
48 Where factual issues are involved in determining a motion, the court shall state its
49 findings on the record.

50 (f) **Failure to raise defenses or objections.** Failure of the defendant to timely raise
51 defenses or objections or to make requests which must be made prior to trial or at the
52 time set by the court shall constitute waiver thereof, but the court for cause shown may
53 grant relief from such waiver.

54 (g) **Record.** A verbatim record shall be made of all proceedings at the hearing on motions,
55 including such findings of fact and conclusions of law as are made orally.

56 (h) **Dismissal based on defect in procedure.** If the court grants a motion based on a defect
57 in the institution of the prosecution or in the indictment or information, it may also
58 order that bail be continued for a reasonable and specified time pending the filing of a
59 new indictment or information. Nothing in this rule shall be deemed to affect provisions
60 of law relating to a statute of limitations.

61 (i) **Motions challenging the constitutionality of statutes and ordinances.**

62

63 (i)(1) If a party in a court of record challenges the constitutionality of a statute in an
64 action in which the Attorney General has not appeared, the party raising the question of

65 constitutionality shall serve the pleadings on the Attorney General by either email or
66 mail at the following:

67 Email

Mail

68 notices@agutah.gov

Office of the Attorney General

69 Attn: Utah Solicitor General

70 320 Utah State Capitol

71 P.O. Box 142320

72 Salt Lake City, UT 84114-2320

73

74 The court shall permit the state to be heard upon application within 14 days after
75 service of the notice.

76

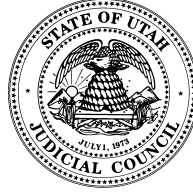
77 (i)(2) If a party challenges the constitutionality of a county or municipal ordinance in an
78 action in which the responsible county or municipal attorney has not appeared, the
79 party raising the question of constitutionality shall notify the county or municipal
80 attorney of such fact. The court shall permit the county or municipality to be heard
81 upon application within 14 days after service of the notice.

82 (i)(3) Failure of a party to provide notice as required by this rule is not a waiver of any
83 constitutionality challenge otherwise timely asserted.

Tab 3

Administrative Office of the Courts

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



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

MEMORANDUM

TO: Advisory Committee on Appellate Rules

FROM: Catherine Dupont

DATE: December 21, 2017

RE: Amendments to Rules 24 and 24A

The Supreme Court and the Court of Appeals requested an amendment to Rules 24(g)(i) and 24A(g)(i) to adjust the words to page ratio in briefs submitted to the court. The Appellate Courts also asked for greater clarity in the briefs when a party is making a request for attorney fees.

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

1 **Rule 24. Principal and reply briefs.**

2 (a) **Principal briefs.** Principal briefs must contain under appropriate headings and in the order
3 indicated:

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

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

6 (a)(1)(B) listed separately, all parties to the proceeding in the court or agency whose judgment
7 or order is under review that are not parties in the appellate court proceeding.

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

10 (a)(3) A table of authorities. The table of authorities must list all cases alphabetically
11 arranged, rules, statutes, and other authorities cited, with references to the pages on which they
12 are cited.

13 (a)(4) An introduction. The introduction should describe the nature and context of the dispute
14 and explain why the party should prevail on appeal.

15 (a)(5) A statement of the issue. The statement of the issue must set forth the issue presented
16 for review, including for each issue:

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

18 (a)(5)(B) citation to the record showing that the issue was preserved for review; or a statement
19 of grounds for seeking review of an issue not preserved.

20 (a)(6) A statement of the case. The statement of the case must include, with citations to the
21 record:

22 (a)(6)(A) the facts of the case, to the extent necessary to understand the issues presented for
23 review;

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

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

27 (a)(7) A summary of the argument. The summary of the argument must contain a succinct
28 statement of the arguments made in the body of the brief.

29 (a)(8) An argument. The argument must explain, with reasoned analysis supported by
30 citations to legal authority and the record, why the party should prevail on appeal.

31 (a)(9) A claim for attorney fees. A party seeking attorney fees for work performed on appeal
32 must state the request explicitly, in a separate section of the brief, and ~~set forth the legal basis for~~
33 ~~an award~~ explain, with reasoned analysis supported by legal authority, why the party should be
34 awarded attorney fees.

35 (a)(10) A short conclusion. The conclusion may summarize the party's position and must state
36 the specific relief sought on appeal.

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

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

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

41 (a)(12) An addendum. Subject to Rule 21(g), the addendum must contain a copy of:

42 (a)(12)(A) any constitutional provision, statute, rule, or regulation of central importance cited
43 in the brief but not reproduced verbatim in the brief;

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

46 (a)(12)(C) materials in the record that are the subject of the dispute and that are of central
47 importance to the determination of the issues presented for review, such as challenged jury
48 instructions, transcript pages, insurance policies, leases, search warrants, or real estate purchase
49 contracts.

50 (b) **Reply brief.** The appellant or petitioner may file a reply brief. A reply brief must be limited
51 to responding to the facts and arguments raised in the appellee's or respondent's principal brief.

52 The reply brief must include:

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

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

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

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

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

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

61 (d) **References in briefs to parties and others.** Parties and other persons and entities should be
 62 referred to consistently by the term, phrase, or name most pertinent to the issues on appeal.
 63 These may include descriptive terms based on the person or entity's role in the dispute, or the
 64 designations used in the trial court or agency, or the names of parties. Unless germane to an issue
 65 on appeal, a party should not be described solely by the party's procedural role in the case. The
 66 identity of minors should be protected by use of descriptive terms, initials, or pseudonyms. In
 67 child welfare appeals, the surname of a minor must not be used nor may a surname of a minor's
 68 biological, adoptive, or foster parent be used.

69 (e) **References to the record.**

70 (e)(1) Statements of fact and references to proceedings in the court or agency whose judgment
 71 or order is under review must be supported by citation to the record. A citation must identify the
 72 page of the record as marked by the clerk.

73 (e)(2) A reference to an exhibit must set forth the exhibit number. If the reference is to
 74 evidence the admissibility of which is in controversy, the reference must set forth the pages of
 75 the record at which the evidence was identified, offered, and received or rejected.

76 (f) **References to legal authority.** A reference to an opinion of the Utah Supreme Court or the
 77 Utah Court of Appeals issued on or after January 1, 1999, must include the universal citation
 78 (e.g., 2015 UT 99, 3; or 2015 UT App 320, 6).

79 (g) **Length of briefs.**

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

82

Type of brief	Page limit	Word limit
Legality of death sentence	60	28,000 25,000
Legality of death sentence, reply brief	30	14,000 12,500
Other cases, principal brief	30	14,000 12,500

Other cases, reply brief	15	7,000 <u>6,250</u>
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84 (g)(2) Headings, footnotes, and quotations count toward the page or word limit, but the table
85 of contents, table of authorities, and addendum, and any certificates of counsel do not.

86 (h) **Permission to file over length brief.** Although over length briefs are disfavored, a party may
87 file a motion for leave to file a brief that exceeds the page, or word limitations of this rule. The
88 motion must state with specificity the issues to be briefed, the number of additional pages, or
89 words requested, and good cause for granting the motion. A motion filed at least 7 days before
90 the brief is due or seeking three or fewer additional pages, or 1,400 or fewer additional words
91 need not be accompanied by a copy of the proposed brief. Otherwise, a copy of the proposed
92 brief must accompany the motion. If the motion is granted, the responding party is entitled to an
93 equal number of additional pages, or words without further order of the court. Whether the
94 motion is granted or denied, the court will destroy the proposed brief.

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

98 (j) **Notice of supplemental authorities.** When authority of central importance to an issue comes
99 to the attention of a party after briefing or oral argument but before decision, that party may file a
100 notice of supplemental authority setting forth:

101 (j)(1) the citation to the authority;

102 (j)(2) a reference either to the page of the brief or to a point argued orally to which the
103 authority applies; and

104 (j)(3) relevance of the authority. The body of the notice must not exceed 350 words. Any
105 other party may file a response no later than 7 days after service of the notice. The body of the
106 response must not exceed 350 words.

1 **24A. Briefs in cross-appeals.**

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

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

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

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

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

17 (f) **No further briefs.** No further briefs maybe filed except with leave of the appellate court.

18 (g) **Length of briefs.**

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

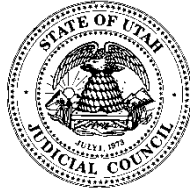
21

Type of brief	Page Limit	Word Limit
Appellant's Principle brief	30	14,000 <u>12,500</u>
Cross-appellant's principle brief	45	21,000 <u>18,750</u>
Appellant's reply brief	30	14,000 <u>12,500</u>
Cross-appellant's reply brief	15	7,000 <u>6,250</u>

22
23 (g)(2) Headings, footnotes, and quotations count toward the page or word limit, but the table
24 of contents, table of authorities, and addendum do not.

25 (h) **Applicability of Rule 24.** Except as provided in this rule, Rule 24 applies to briefs in a cross
26 appeal.

Tab 4



Administrative Office of the Courts

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

MEMORANDUM

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

To: Appellate Rules Committee
From: Nancy Sylvester *Nancy J. Sylvester*
Date: December 21, 2017
Re: Expedited Adoption Appeals: Rules 1, 4, 52, 53, 54, 55, 56, 57, 58, 59

At your September meeting, your committee took up a set of proposed amendments to Appellate Rules 1, 52, 53, 54, 55, 56, 57, 58, and 59 dealing with expedited adoption appeals. Judge Orme had prepared them. [Here](#) are the materials from that meeting and below is the pertinent section of your meeting [minutes](#). It appears that the committee was waiting on feedback from the Juvenile Rules Committee. The Juvenile Rules Committee's staff person, Katie Gregory, informed me that the committee discussed the rules at length but ultimately did not recommend any changes.

With respect to the edits proposed at your meeting, I incorporated them into the attached rule drafts, with some stylistic editing. I also drafted new amendments to Rule 4 based on Mr. Ballard's suggestion.

September Minutes

Proposed amendments to Appellate Rules expediting adoption appeals- -Judge Orme

The committee discussed the draft of proposed amendments to Appellate Rules 1, 52, 53, 54, 55, 56, 57, 58, and 59 prepared by Judge Orme. The purpose of these amendments is to expedite adoption and termination of parental rights appeals from the district courts and put them on the same footing as appeals from child welfare proceedings in the juvenile courts. Ms. Romano suggested that Appellate Rules 53 and 54 should refer simply to the "clerk of the court" rather than to the "clerk of the trial court." Judge Orme agreed that the word "trial" is not necessary. Ms. Collins said that the reference in Rule 53 is needed because parties may get confused about where to file the notice of appeal.

**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.**

Mr. Booher commented that the amendments may create a trap for the unwary because the time for appeals is being shortened from 30 days to 15 days, and parties in district court proceedings may not realize this because they will not think to look at the changes in Appellate Rule 1. Judge Orme agreed that this is a potential problem and said that there should be an educational component to inform people about this change. Ms. Romano suggested that district court judges should advise parties about the deadline when presiding over adoption proceedings. Mr. Ballard suggested including a cross-reference to Appellate Rule 1 in Appellate Rule 4 to draw attention to the change. Mr. Booher agreed, and pointed out that Rule 4 already contains a similar reference to the shorter time to file a notice of appeal in unlawful detainer actions.

Mr. Sabey and Ms. Taliaferro also agreed that this change should be made.

Mr. Booher asked if parties should be able to request an extension of time to file a notice of appeal, similar to what is provided in Rule 4(e). Ms. Westby said that allowing extensions would cause delay that would defeat the purpose of the amendments, which is to expedite the appeals. Judge Orme suggested having a transition period for one year that allows parties to file notice of appeal within either 15 or 30 days. Ms. Westby suggested that it would be better for the court to grant requests for extension of time during the transition period, to avoid confusion over the jurisdictional deadline.

Ms. Collins suggested that the court's forms for ruling on these matters should be updated to include language about the changes.

Mr. Booher asked if divorce decree orders ever terminate parental rights, and if so, whether they should be included. Ms. Romano said it is possible, but not likely. Ms. Collins agreed that would be very rare.

Ms. Collins suggested deleting language in the last sentence of Appellate Rule 54(a) which reads: "Within the same period, the appellant shall file a copy with the clerk of the juvenile court...." She explained that the court does not need copies of the transcripts to be filed anymore, but service on the parties is still required. Mr. Booher suggested leaving the last sentence, and just deleting the language "file a copy with the clerk of the juvenile court and." Mr. Burke and Ms. Collins agreed with this suggestion.

Mr. Ishida said that he sent the proposed amendments to the juvenile rules committee and he is waiting for their feedback. Mr. Burke invited a motion to table discussion of this matter until the next meeting to allow time to receive the feedback and to prepare a new draft incorporating the committee's proposed changes.

Ms. Collins moved to table discussion of this issue until the next meeting. Ms. Romano seconded the motion and it passed unanimously.

1 **Rule 1. Scope of rules.**

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

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

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

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

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

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

1 **Rule 4. Appeal as of right: when taken.**

2 **(a) Appeal from final judgment and order.** In a case in which an appeal is permitted as a
3 matter of right from the trial court to the appellate court, the notice of appeal required by
4 Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the
5 judgment or order appealed from.

6 ~~(a)(1) However, w~~When a judgment or order is entered in a statutory forcible entry or
7 unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk
8 of the trial court within 10 days after the date of entry of the judgment or order appealed
9 from.

10 (a)(2) When a judgment or order is entered in juvenile court related to abuse, neglect,
11 dependency, termination, and adoption proceedings, or an adoption decree or order
12 terminating parental rights is entered in the district court, the notice of appeal required by
13 Rule 3 shall be filed with the clerk of the trial court within 15 days after the date of entry of
14 the judgment or order appealed from.

15 Alternative:

16 (a)(2) When a judgment or order is entered in juvenile or district court pursuant to
17 Rule 1(f), the notice of appeal required by Rule 3 shall be filed with the clerk of the trial
18 court in accordance with the time frame set forth in Rule 52.

19 **(b) Time for appeal extended by certain motions.**

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

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

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

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

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

31 (b)(1)(E) A motion for relief under Rule 60(b) of the Utah Rules of Civil Procedure if
32 the motion is filed no later than 28 days after the judgment is entered;

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

35 (b)(1)(G) A motion for a new trial under Rule 24 of the Utah Rules of Criminal
36 Procedure.

37 (b)(2) A notice of appeal filed after announcement or entry of judgment, but before entry
38 of an order disposing of any motion listed in paragraph (b), shall be treated as filed after
39 entry of the order and on the day thereof, except that such a notice of appeal is effective to
40 appeal only from the underlying judgment. To appeal from a final order disposing of any

41 motion listed in paragraph (b), a party must file a notice of appeal or an amended notice of
42 appeal within the prescribed time measured from the entry of the order.

43 **(c) Filing prior to entry of judgment or order.** A notice of appeal filed after the
44 announcement of a decision, judgment, or order but before entry of the judgment or order shall
45 be treated as filed after such entry and on the day thereof.

46 **(d) Additional or cross-appeal.** If a timely notice of appeal is filed by a party, any other
47 party may file a notice of appeal within 14 days after the date on which the first notice of appeal
48 was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule,
49 whichever period last expires.

50 **(e) Motion for extension of time.**

51 (e)(1) The trial court, upon a showing of good cause, may extend the time for filing a
52 notice of appeal upon motion filed before the expiration of the time prescribed by paragraphs
53 (a) and (b) of this rule. Responses to such motions for an extension of time are disfavored
54 and the court may rule at any time after the filing of the motion. No extension shall exceed
55 30 days beyond the prescribed time or 14 days beyond the date of entry of the order granting
56 the motion, whichever occurs later.

57 (e)(2) The trial court, upon a showing of good cause or excusable neglect, may extend the
58 time for filing a notice of appeal upon motion filed not later than 30 days after the expiration
59 of the time prescribed by paragraphs (a) and (b) of this rule. The court may rule at any time
60 after the filing of the motion. That a movant did not file a notice of appeal to which
61 paragraph (c) would apply is not relevant to the determination of good cause or excusable
62 neglect. No extension shall exceed 30 days beyond the prescribed time or 14 days beyond the
63 date of entry of the order granting the motion, whichever occurs later.

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

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

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

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

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

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

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

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

92 **Advisory Committee Note**

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

95 Effective November 1, 2016.
96

1 **Rule 52. Child welfare appeals.**

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

4 (b) Time for appeal extended by certain motions.

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

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

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

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

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

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

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

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

26

1 **Rule 53. Notice of appeal.**

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

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

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

20

1 **Rule 54. Transcript of proceedings.**

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

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

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

14

1 **Rule 55. Petition on appeal.**

2 (a) Filing; dismissal for failure to timely file. The appellant shall file with the clerk of the Court
3 of Appeals an original and four copies of the petition on appeal. The petition on appeal must be
4 filed with the appellate clerk within 15 days from the filing of the notice of appeal or the
5 amended notice of appeal. If the petition on appeal is not timely filed, the appeal shall be
6 dismissed. It shall be accompanied by proof of service. The petition shall be deemed filed on the
7 date of the postmark if first-class mail is utilized. The appellant shall serve a copy on counsel of
8 record of each party, including the Guardian ad Litem, or, if the party is not represented by
9 counsel, then on the party at the party's last known address, in the manner prescribed in Rule
10 21(c).

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

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

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

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

- 30 (d)(2) The entry date of the judgment or order on appeal.
- 31 (d)(3) The date and disposition of any post-judgment motions.
- 32 (d)(4) A concise statement of the material adjudicated facts as they relate to the issues presented
33 in the petition on appeal.
- 34 (d)(5) A statement of the legal issues presented for appeal, how they were preserved for appeal,
35 and the applicable standard of review. The issue statements should be concise in nature, setting
36 forth specific legal questions. General, conclusory statements such as "the ~~juvenile-trial~~ court's
37 ruling is not supported by law or the facts" are not acceptable.
- 38 (d)(6) The petition should include supporting statutes, case law, and other legal authority for
39 each issue raised, including authority contrary to appellant's case, if known.
- 40 (d)(7) The petition on appeal shall have attached to it:
- 41 (d)(7)(A) a copy of the order, judgment, or decree on appeal;
- 42 (d)(7)(B) a copy of any rulings on post-judgment motions.

1 **Rule 56. Response to petition on appeal.**

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

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

1 **Rule 57. Record on appeal; transmission of record.**

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

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

1 **Rule 58. Ruling.**

2 (a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals
3 may rule by opinion or ~~memorandum decision~~order. The Court of Appeals may ~~issue a decision~~
4 ~~or may~~instead set the case for full briefing under rule 24. The Court of Appeals may order an
5 expedited briefing schedule, ~~and~~ specify which issues shall be briefed, ~~and~~ limit the length of
6 briefs. If the issue to be briefed is ineffective assistance of counsel, the Court of Appeals may
7 order the ~~juvenile trial~~ court to appoint conflict counsel within 15 days for briefing and
8 argument.

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

1 **Rule 59. Extensions of time.**

- 2 | (a) Extension of time to appeal. The ~~juvenile-trial~~ court, upon a showing of good cause or
3 excusable neglect, may extend the time for filing a notice of appeal upon motion filed prior to the
4 expiration of time prescribed by Rule 52. No extension shall exceed 10 days past the prescribed
5 time or 10 days from the date of entry of the order granting the motion, whichever occurs later.
- 6 (b) Extension of time to file petition on appeal or response. The Court of Appeals for good cause
7 shown may extend the time for filing a petition on appeal or a response to the petition on appeal
8 upon motion filed prior to the expiration of the time for which the extension is sought. No
9 extension shall exceed 10 days past the original due date or 10 days from the date of entry of the
10 order granting the motion, whichever occurs later. The motion shall comply with Rule 22(b)(4).