Agenda

Advisory Committee on Rules of Appellate Procedure

November 1, 2018

12:00 to 2:00 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Admin. Office of the Courts, Suite N31

ACTION: Welcome, and approval of October 4, 2018 Minutes	Tab 1	Paul C. Burke, Chairman
ACTION: Report from Finality of Judgement Work Group and discussion of proposed amendment to URCP 58A and URCP 73	Tab 2	Judge Jill Pohlman, Paul C Burke and Alan Mouritsen,
ACTION: Discussion of comments to published amendments to Rules 46 and 49 and comment suggesting an amendment to Rule 47	Tab 3	Paul C. Burke and Clark Sabey
UPDATE: Report on Supreme Court Conference action on Rules 23B, 25, 50 and 51		Paul C. Burke
Other Business		Paul C. Burke

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

Meeting schedule:

December 6, 2018

January 3, 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, October 4, 2018
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Christopher Ballard	Rodney Parker
Troy Booher	
Paul Burke- Chair	
Lisa Collins	
Cathy Dupont- Staff	
R. Shawn Gunnarson	
Alan Mouritsen	
Judge Gregory Orme	
Judge Jill Pohlman	
Adam Pace – Recording Secretary	
Bridget Romano	
Clark Sabey	
Lori Seppi	
Ann Marie Taliaferro	
Mary Westby	

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

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

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

2. Report from Finality of Judgment Work Group and discussion of proposed amendment to URCP 58A and URAP 4. **Paul Burke**
Alan Mouritsen

Mr. Burke and Mr. Mouritsen have been part of a subcommittee tasked with proposing amendments to Utah's procedural rules to bring them more in line with the federal rules. Their work on that subcommittee led to the proposal before the committee today about amending appellate Rule 4. Mr. Mouritsen explained that the court wants to change Rule 4 to make it so that motions or claims for attorney's fees do not automatically toll the time for appeal (as the rule does now), and instead to treat attorney's fees as a collateral issue that does not toll the time for appeal unless the district court expressly decides that the time for an appeal should be extended.

Mr. Sabey asked why the district court should have the option to extend the time for appeal. Mr. Mouritsen and Mr. Burke said that there are some cases where attorney's fees are the main issue in dispute, so the district court should have discretion to recognize those situations and extend the time for appeal when it is warranted.

Ms. Romano asked if the proposed amendment to Rule 4 fixes the problem with finality that arose in *McQuarrie v. McQuarrie*, 2017 UT App 209. She doesn't think it does. Ms. Westby agreed, and suggested that the reference to civil Rule 73 in appellate Rule 4(b)(1)(F) should be deleted in order to make that provision apply to all claims for attorney's fees (not just those brought under civil Rule 73).

Mr. Booher said that he thinks that the *McQuarrie* case was improperly decided and he questioned whether the issues of finality and appealability are being conflated. The proposed amendments seem to re-entangle finality (with respect to triggering post-judgment deadlines and enforceability of a judgment) with appealability, which is a problem in his view. He thinks this creates more of a quagmire for practitioners to figure out whether they need to ask the district court to enter an order extending the time for appeal.

Judge Orme asked whether it would be a better approach to allow parties to appeal from a final judgment when there has been a judgment awarding fees, but the amount of the fees has not yet been determined. The appeal would include the right to appeal the amount of attorney's fees that is later determined. Mr. Booher said there are practical problems that arise if that approach is followed—for example with contingency fee contracts, where the plaintiff's rate increases from 33% to 40% once a notice of appeal is filed. If the rule requires a defendant to file a notice of appeal before the issue of attorney's fees is finally decided, that can reduce settlement leverage.

Mr. Burke asked Mr. Booher how he would fix this. Mr. Booher said that he doesn't think anything needs to be fixed. He likes the way Rule 4 and related civil rules are now. They provide clear guidelines that when a judgment is entered, it triggers post-trial motion deadlines; it triggers Civil Rule 62(a) so the judgment can be enforced within 14 days; but it does not trigger the deadline to appeal if a motion or claim for attorney's fees has been filed, because the deadline to appeal is tolled under Rule 4(b). This gives parties the opportunity to wait and see how the attorney's fee issue comes out, and evaluate whether it is worth it to appeal.

Mr. Mouritsen said that his understanding is that the court doesn't want attorney fee issues delaying the appellate process. Mr. Sabey said he is not sure that is what the court wants.

Mr. Gunnarson suggested created a new rule to address the situation that arose in *McQuarrie*, rather than revising the existing rules. Mr. Sabey suggested that if the committee is reacting to a directive from the court in revising Rule 4, it should be clear what the directive is.

Mr. Booher agreed with the suggestion to eliminate the reference to civil Rule 73 in Rule 4(b), and suggested revising civil Rule 58A to say that any outstanding issues concerning attorney fees do not affect the finality of a judgment, but does qualify to toll the time to appeal under Rule 4(b).

Judge Orme asked if that approach would give practitioners the option to file a notice of appeal immediately when a judgment is entered, or to wait until after the attorney's fee issue is decided. Mr. Booher said it would, just like filing a Rule 59 motion early. But if you file a notice of appeal early, it doesn't really matter because the appeal is going to be stayed anyways until the attorney fee issue is decided.

Mr. Burke suggested remanding this issue back to the subcommittee for further consideration. He invited Mr. Booher and Judge Pohlman to join the subcommittee so they can provide their insights. The subcommittee will work to see if it can reach a consensus on the approach to take with the proposed amendment to Rule 4. If the subcommittee cannot reach a consensus, it will propose two alternatives for the committee to consider at a future meeting. The committee agreed with this approach.

3. Proposed amendment to Rule 48(e) and (f) and Rule 4. Judge Pohlman

Judge Pohlman introduced proposed amendments to Rule 48(e) and (f), and Rule 4. She explained that there is a mistake in Rule 48(e)(1), where it says that a party, upon a showing of good cause, may extend the time for filing a petition or a cross-petition for a writ of certiorari upon a motion filed *not later than 30 days after* the expiration of the time prescribed in the rule. Rule 48(e)(1) was meant to address the situation where a party files a motion for an extension *before* the time expired, not after. This is clear if you look at Rule 48(e)(2), which addresses the situation where a party requests an extension *after* the time has expired. *The committee agreed that lines 27-28 of Rule 48(e)(1) should be amended to read: "…upon motion filed before the expiration of the time prescribed…."*

Judge Pohlman proposed revising Rule 48(f) to require only two copies of the petition to be filed, rather than seven. Ms. Collins suggested, and the committee agreed, that the language in Rule 48(f) requiring an original signature should also be deleted. *The committee agreed that Rule 48(f) should be amended to read: "Two copies of the petition for a writ of certiorari must be filed with the Clerk of the Supreme Court."*

Judge Pohlman proposed revising Rule 48(e)(2) to include a sentence indicating that the Court may rule at any time after the filing of a motion. Mr. Burke said he didn't favor that language. He thinks the court should wait for a response before ruling on a motion in that situation. Judge Pohlman agreed, and withdrew the proposal.

Judge Pohlman proposed revising Rule 48(e)(2) to require "good cause *and* excusable neglect" rather than "good cause *or* excusable neglect." The committee discussed the differences between the two. Judge Orme said that he can think of some situations where good cause is excusable neglect, but that is not always the case. Ms. Seppi said she doesn't want the standard changed to require both. Mr. Sabey said that the language should be left alone in Rule 48 unless the committee is also going to change it in Rule 4. The committee discussed whether the reference to excusable neglect in Rule 48(e)(2) should be deleted, but several members of the committee opposed that suggestion. Mr. Burke said that there is case-law that discusses the differences between good cause and excusable neglect, which may be disturbed by the amendment Mr. Burke also said that he thinks it is important to leave the reference to excusable neglect in Rule 48(e)(2), because that sends a signal that something more than good cause may be required. The committee ultimately decided to leave the language alone.

Mr. Burke summarized the final proposal to amend lines 27-28 and 40-41 of Rule 48 as proposed, and to reject the proposed changes to lines 33 and 36-37.

Judge Pohlman moved to amend Rule 48 as summarized above. Mr. Gunnarson seconded the motion and it passed unanimously.

4. Information: Report from Court Conference on Rule 24 and 24A. Approval to send Rules 23B, 25, 49, 50, and 51 out for public comment. — **Judge Orme, Cathy Dupont**

Ms. Dupont reported that the proposed amendments to Rules 23B, 25, 49, 50, and 51 have been sent out for public comment, but she has not seen any comments yet. The next court conference is set for October 29. Mr. Burke said that he would like to be able to report to the court at that conference what the committee is doing about the proposed amendments to Rule 4 (Item 1 above).

Mr. Ballard asked what happens if the public makes comments. Ms. Dupont said that the comments will be brought to the committee to discuss at a future meeting.

Judge Orme reported on his meeting with the court about word limits for briefs. Mr. Burke, Mr. Sabey, Ms. Dupont, and Judge Pohlman were also present for that meeting. The court is amenable to the committee's suggestion to defer this issue pending a one-year opportunity after the amendment to Rule 24 took effect to see if it resolves the court's concern about briefs being too long. Ms. Collins will do a statistical analysis to compare the average length of briefs before and after the amendment took place to see if they are getting shorter. The issue will probably come back to the committee for consideration in February or March, 2019.

5. Other business

The committee did not discuss other business.

6. Adjourn

The meeting was adjourned. The next meeting will be held on November 1, 2018.

Tab 2

Administrative Office of the Courts

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

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

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester (with edits by Cathy Dupont for URAP
Date: October 18, 2018
Re: Finality: Civil Rules 73 and 58A and Appellate Rule 4

The Finality Working Group, composed of representatives from both the Civil and Appellate Rules Committees, met on October 17 to discuss a solution to the Court of Appeals' interpretation of Civil Rules 58A and 73 and Appellate Rule 4 in *McQuarrie v. McQuarrie*, 2017 UT App 209.[1] The working group discussed the Court of Appeals' opinion that Rule 73 governs only post-judgment motions for attorney fees and that the current language of Rule 73(b)(1) creates a basis for that interpretation where it says, "The motion [for attorney fees] must…specify the judgment *and* the statute, rule, contract, or other basis entitling
the party to the award…." (emphasis added).

To eliminate this interpretation and emphasize that all requests for attorney fees must go through Rule 73 no matter when they are raised, the working group amended paragraph (b)(1) as follows: "The motion must…specify the statute, rule, contract, *judgment*, or other basis entitling the party to the award…."(emphasis added). So "judgment" becomes just one potential basis for attorney fees, rather than being a mandatory part of any motion for fees.

In addition to amending Rule 73, the working group proposed two other potential solutions to the *McQuarrie* problem: 1) adopting the federal approach that motions for attorney fees never toll the time for appeal without leave of court; or 2) leaving Rules 58A and 4 in the default position of motions for attorney fees automatically tolling the time for appeal until the dispositive order on the motion is entered. The two potential solutions reflect different policy options, and because the working group is not sure which policy the Court supports, the working group recommends taking both options to the Supreme Court for its consideration.

[1] The Court of Appeals affirmed its interpretation of these rules in *Chaparro v. Torero*, 2018 UT App 181. This suggests a potential basis for recommending to the Supreme Court expedited adoption of draft Civil Rule 58A and Appellate Rule 4.

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Rule 73. Attorney fees.

(a) **Time in which to claim.** Attorney fees must be claimed by filing a motion for attorney fees no later than 14 days after the judgment is entered, except as provided in paragraph (f) of this rule, or in accordance with Utah Code § 75-3-718, and no objection to the fee has been made.

(b) **Content of motion.** The motion must:

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

(b)(2) disclose, if the court orders, the terms of any agreement about fees for the services for which the claim is made;

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

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

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

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

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

(e) **Fees claimed in complaint.** If a party claims attorney fees under paragraph (f), the complaint must state the basis for attorney fees, cite the law or attach a copy of the contract authorizing the award, and state that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

(f) **Fees.** Attorney fees awarded under this rule may be augmented upon submission of a motion and supporting affidavit meeting the requirements of paragraphs (b) and (c) within a reasonable time after the fees were incurred, except as provided in paragraphs (f)(1), (f)(2) and (f)(3), and only where the augmented fees sought exceed those already awarded.

(f)(1) **Fees upon entry of uncontested judgment.** When a party seeks a judgment, the responding party does not contest entry of judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has complied with paragraph (e) of this rule, the request for judgment may include a request for attorney fees, and the clerk or the court shall allow any amount requested up to $350.00 for such attorney fees without a supporting affidavit.

(f)(2) **Fees upon entry of judgment after contested proceeding.** When a party seeks a judgment, the responding party contests the judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has established its right to attorney fees, the request

for judgment may include a request for attorney fees, and the clerk or the court shall allow any amount requested up to $750 for such attorney fees without a supporting affidavit.

(f)(3) **Post Judgment Collections.** When a party has established its entitlement to attorney fees under any paragraph of this rule, and subsequently:

(f)(3)(A) applies for any writ pursuant to Rules 64, 64A, 64B, 64C, 64D, or 64E; or

(f)(3)(B) files a motion pursuant to Rules 64(c)(2) or 58C or pursuant to Utah Code § 35A-4-314,

the party may request as part of its application for a writ or its motion that the party's judgment be augmented according to the following schedule, and the clerk or the court shall allow such augmented attorney fees request without a supporting affidavit if it approves the writ or motion:

Action	Attorney Fees Allowed
Application for any writ under Rules 64, 64A, 64B, 64C, or 64E, and first application for a writ under Rule 64D to any particular garnishee;	$75.00
Any subsequent application for a writ under Rule 64D to the same garnishee;	$25.00
Any motion filed with the court under Rule 64(c)(2), Utah Code § 35A-4-314, or Rule 58C;	$75.00
Any subsequent motion under Rule 64(c)(2), Utah Code § 35A-4-314, or Rule 58C filed within 6 months of the previous motion.	$25.00

(f)(4) **Fees in excess of the schedule.** If a party seeks attorney fees in excess of the amounts set forth in paragraphs (f)(1), (f)(2), or (f)(3), the party shall comply with paragraphs (a) through (c) of this rule.

(f)(5) **Objections.** Nothing in this paragraph shall be deemed to eliminate any right a party may have to object to any claimed attorney fees.

Advisory Committee Notes

New 2019 Committee Note

Rule 73 has been amended in response to *McQuarrie v. McQuarrie*, 2017 UT App 209, and *Chaparro v. Torero*, 2018 UT App 181, to clarify that it applies to all motions for attorney fees, not just post-judgment motions.

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

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

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

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

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

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

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

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

(c) Preparing a judgment.

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

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

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

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

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

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

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

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

(e) Time of entry of judgment.

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

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

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

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

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

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

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

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

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

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

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

The clerk must sign the judgment for the specified sum.

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

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

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

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

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

Advisory Committee Note

Effective November 1, 2016.

Rule 4. Appeal as of right: when taken.

(a) Appeal from final judgment and order. In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) Time for appeal extended by certain motions.

(b)(1) If a party timely files in the trial court any of the following, 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;

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

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

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

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

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

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

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

(e) Motion for extension of time.

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

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

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

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

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

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

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

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

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

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

Advisory Committee Note

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

Effective November 1, 2016.

Rule 73. Attorney fees.

(a) **Time in which to claim.** Attorney fees must be claimed by filing a motion for attorney fees no later than 14 days after the judgment is entered, except as provided in paragraph (f) of this rule, or in accordance with Utah Code § 75-3-718, and no objection to the fee has been made.

(b) **Content of motion.** The motion must:

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

(b)(2) disclose, if the court orders, the terms of any agreement about fees for the services for which the claim is made;

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

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

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

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

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

(e) **Fees claimed in complaint.** If a party claims attorney fees under paragraph (f), the complaint must state the basis for attorney fees, cite the law or attach a copy of the contract authorizing the award, and state that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

(f) **Fees.** Attorney fees awarded under this rule may be augmented upon submission of a motion and supporting affidavit meeting the requirements of paragraphs (b) and (c) within a reasonable time after the fees were incurred, except as provided in paragraphs (f)(1), (f)(2) and (f)(3), and only where the augmented fees sought exceed those already awarded.

(f)(1) **Fees upon entry of uncontested judgment.** When a party seeks a judgment, the responding party does not contest entry of judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has complied with paragraph (e) of this rule, the request for judgment may include a request for attorney fees, and the clerk or the court shall allow any amount requested up to $350.00 for such attorney fees without a supporting affidavit.

(f)(2) **Fees upon entry of judgment after contested proceeding.** When a party seeks a judgment, the responding party contests the judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has established its right to attorney fees, the request

for judgment may include a request for attorney fees, and the clerk or the court shall allow any amount requested up to $750 for such attorney fees without a supporting affidavit.

(f)(3) **Post Judgment Collections.** When a party has established its entitlement to attorney fees under any paragraph of this rule, and subsequently:

(f)(3)(A) applies for any writ pursuant to Rules 64, 64A, 64B, 64C, 64D, or 64E; or

(f)(3)(B) files a motion pursuant to Rules 64(c)(2) or 58C or pursuant to Utah Code § 35A-4-314,

the party may request as part of its application for a writ or its motion that the party's judgment be augmented according to the following schedule, and the clerk or the court shall allow such augmented attorney fees request without a supporting affidavit if it approves the writ or motion:

Action	Attorney Fees Allowed
Application for any writ under Rules 64, 64A, 64B, 64C, or 64E, and first application for a writ under Rule 64D to any particular garnishee;	$75.00
Any subsequent application for a writ under Rule 64D to the same garnishee;	$25.00
Any motion filed with the court under Rule 64(c)(2), Utah Code § 35A-4-314, or Rule 58C;	$75.00
Any subsequent motion under Rule 64(c)(2), Utah Code § 35A-4-314, or Rule 58C filed within 6 months of the previous motion.	$25.00

(f)(4) **Fees in excess of the schedule.** If a party seeks attorney fees in excess of the amounts set forth in paragraphs (f)(1), (f)(2), or (f)(3), the party shall comply with paragraphs (a) through (c) of this rule.

(f)(5) **Objections.** Nothing in this paragraph shall be deemed to eliminate any right a party may have to object to any claimed attorney fees.

Advisory Committee Notes

New 2019 Committee Note

Rule 73 has been amended in response to *McQuarrie v. McQuarrie*, 2017 UT App 209, and *Chaparro v. Torero*, 2018 UT App 181, to clarify that it applies to all motions for attorney fees, not just post-judgment motions.

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

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

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

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

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

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

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

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

(c) Preparing a judgment.

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

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

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

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

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

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

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

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

(e) Time of entry of judgment.

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

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

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

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

(f) Award of costs or attorney fees. ~~A motion or claim for attorney fees does not affect the finality of a judgment for any purpose, but under Rule of Appellate Procedure 4, the time in which to file the notice of appeal runs from the disposition of the motion or claim.~~ The entry of judgment is not delayed, nor is the time for appeal extended, by a claim for costs or motion for attorney fees unless the court, upon motion or its own initiative, extends the time for appeal pursuant to Rule 4(b)(1)(F) of the Utah Rules of Appellate Procedure before a notice of appeal has been filed and becomes effective.

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

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

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

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

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

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

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

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

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

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

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

Advisory Committee Note

[ADD 2018 NOTE]

Rule 4. Appeal as of right: when taken.

(a) Appeal from final judgment and order. In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(b) Time for appeal extended by certain motions.

(b)(1) If a party timely files in the trial court any of the following, 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;

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

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

(b)(1)(F) A motion or claim for attorney fees under Rule 73, or a claim for costs under Rule 54 of the Utah Rules of Civil Procedure, but only if the district court extends the time for appeal under Rule 58A(f)of the Utah Rules of Civil Procedure; or

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

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

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

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

(e) Motion for extension of time.

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

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

days beyond the prescribed time or 14 days beyond the date of entry of the order granting the motion, whichever occurs later.

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

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

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

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

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

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

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

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

Advisory Committee Note

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

Tab 3

« Utah Rules of Evidence – Comment Period Closes November 10, 2018

Rules Governing the State Bar – Comment Period Closed September 21, 2018 »

UTAH COURTS

View more posts from this author

One thought on "Rules of Appellate Procedure – Comment Period Closed October 13, 2018"

William Hains
October 12, 2018 at 9:28 pm

Please consider these adjustments to your proposed amendments.

Rule 23B: on line 24, change "shall" to "must" for consistency, and change "order or remand" to "order of remand" to correct a typographical error.

Rule 46: add "or procedural rule" after "constitutional or statutory provision." It seems like important rulings on the rules of procedure and evidence would fall into the same category. I realize that Rule 46 contains an illustrative list, but it doesn't hurt to add procedural rules since they are in a class by themselves. Once that triad is included, litigants can argue that anything else is the functional equivalent to one of those three (like city or county ordinances).

Rule 46: keep the current subsection (3). All the other types of issues identified in the current rule can be raised under the new list of factors, which appropriately place the emphasis on the importance of the issue to other cases. For example, petitioners can use the new factors to argue that the mere fact of conflict among court of appeals cases (one of the old factors) presents an important question about the proper interpretation of a rule that is likely to affect future cases. But the exercise of the court's supervisory powers seems to be in a class by itself. Although a petition for extraordinary relief could arguably be used to invoke the supreme court's powers to correct such issues, the standard for extraordinary relief is different than for certiorari. And by omitting the current subsection (3), it leaves the matter unclear as to whether that type of issue can be raised in a petition for certiorari, and if it can, that can present a bar to raising it in a petition for

- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0304
- CJA01-0305
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0104
- CJA03-0109
- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
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- CJA03-0304.01
- CJA03-0305
- CJA03-0306
- CJA03-0306.01
- CJA03-0306.02
- CJA03-0306.03
- CJA03-0306.04
- CJA03-0306.05
- CJA03-0401
- CJA03-0402
- CJA03-0403
- CJA03-0404
- CJA03-0406

extraordinary relief, where a petitioner must prove that she has no other plain, speedy, or adequate remedy.

Rule 49: on lines 46-48, omit the words "first" and ". There shall follow" and combine the two sentences as follows: "The statement shall indicate briefly the course of the proceedings, its disposition in the lower courts, and a statement of the facts relevant to the issues presented for review." This would eliminate the requirement that litigants present their statement of the case in a particular order. The ordering requirement constrains advocates' ability to present their cases in the most persuasive and helpful way. A similar change was made to the briefing requirements in rule 24 when it rewrote the description of the statement of the case and moved some of its elements to the new introduction section. As an alternative to this suggestion, the committee could propose wording similar to the changes made in rule 24.

Rule 47: at the end of subsection (a), add the following sentence: "Unless the language or context of the rule requires otherwise, every reference in Rules 45 through 51 to a petition or petitioner includes a cross-petition or cross-petitioner, respectively." The committee has not proposed any alteration to Rule 47, but as I reviewed the changes to Rule 50 I realized that the rule does not explicitly authorize or address any response or reply to a cross-petition. I think we read "petition(er)" as including "cross-petition(er)" in Rules 45 through 51. And I don't think anyone would argue that it doesn't. So this amendment may not be necessary. But this change is in line with the overarching purpose of the committee's proposed rule amendments–to conform the rules to current practice.

- CJA03-0407
- CJA03-0408
- CJA03-0410
- CJA03-0411
- CJA03-0412
- CJA03-0413
- CJA03-0414
- CJA03-0418
- CJA04-0103
- CJA04-0106
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- CJA04-0509
- CJA04-0510
- CJA04-0510.01
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- CJA04-0510.03
- CJA04-0510.04
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- CJA04-0510.06
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- CJA04-0613
- CJA04-0701
- CJA04-0702
- CJA04-0704
- CJA04-0801
- CJA04-0901
- CJA04-0902
- CJA04-0903

Rule 46. Considerations governing review of certiorari.

(a) Review by a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for special and important reasons. The primary consideration is whether a decision on the question presented is likely to have significant precedential value. The possibility of an error in the Court of Appeals' or another tribunal's decision, without more, ordinarily will not justify review. The following, while neither controlling nor wholly measuring the Supreme Court's discretion, indicate the character of reasons that typically will be considered:

~~(1) When a panel of the Court of Appeals has rendered a decision in conflict with a decision of another panel of the Court of Appeals on the same issue of law;~~

~~(2) When a panel of the Court of Appeals has decided a question of state or federal law in a way that is in conflict with a decision of the Supreme Court;~~

~~(3) When a panel of The Court of Appeals has rendered a decision that has so far departed from the accepted and usual course of judicial proceedings or has so far sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's power of supervision.~~

(1) The petition presents a question regarding the proper interpretation of, or ambiguity in, a constitutional or statutory provision that is likely to affect future cases.

(2) The petition presents a legal question of first impression in Utah that is likely to recur in future cases.

(3) The petition provides an opportunity to resolve confusion or inconsistency in a legal standard set forth in a decision of the Court of Appeals, or in a prior decision of the Supreme Court, that is likely to affect future cases.

(4) ~~When~~ The petition challenges a decision of the Court of Appeals with regard to a legal issue that has not been addressed ~~has decided an important question~~

~~of municipal, state, or federal law which has not been, but should be, settled~~ by the Supreme Court and that is likely to recur in future cases.

(b) After a petition for certiorari has been filed, the panel that issued the opinion of the Court of Appeals may issue a minute entry recommending that the Supreme Court grant the petition. Parties shall not request such a recommendation by motion or otherwise.

Rule 49. Petition for writ of certiorari.

(a) Contents. The petition for a writ of certiorari shall contain, in the order indicated:

(a)(1) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in the Supreme Court contains the names of all parties.

(a)(2) A table of contents with page references.

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

(a)(4) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. General conclusions, such as "the decision of the Court of Appeals is not supported by the law or facts," are not acceptable. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Supreme Court.

(a)(5) A reference to the official and unofficial reports of any opinions issued by the Court of Appeals.

(a)(6) A concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked, showing:

(a)(6)(A) the date of the entry of the decision sought to be reviewed;

(a)(6)(B) the date of the entry of any order respecting a rehearing and the date of the entry and terms of any order granting an extension of time within which to petition for certiorari;

(a)(6)(C) reliance upon Rule 47(c), where a cross-petition for a writ of certiorari is filed, stating the filing date of the petition for a writ of certiorari in connection with which the cross-petition is filed; and

(a)(6)(D) the statutory provision believed to confer jurisdiction on the Supreme Court.

(a)(7) Controlling provisions of constitutions, statutes, ordinances, and regulations set forth verbatim with the appropriate citation. If the controlling provisions involved are lengthy, their citation alone will suffice and their pertinent text ~~shall~~ may be set forth in the appendix referred to in subparagraph (10) of this paragraph.

(a)(8) A statement of the case. The statement shall first indicate briefly ~~the nature of the case,~~ the course of the proceedings, and its disposition in the lower courts. There shall follow a statement of the facts relevant to the issues presented for review. All statements of fact and references to the proceedings below shall be supported by citations to the record on appeal or to the opinion of the Court of Appeals.

(a)(9) With respect to each question presented, a direct and concise argument explaining the special and important reasons as provided in Rule 46 for the issuance of the writ.

(a)(10) An appendix containing, in the following order:

(a)(10)(A) copies of all opinions, including concurring and dissenting opinions, and all orders, including any order on rehearing, delivered by the Court of Appeals in rendering the decision sought to be reviewed;

(a)(10)(B) copies of any other opinions, findings of fact, conclusions of law, orders, judgments, or decrees that were rendered in the case or in companion cases by the Court of Appeals and by other courts or by administrative agencies and that are relevant to the questions presented. Each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of its entry; and

(a)(10)(C) any other judicial or administrative opinions or orders that are relevant to the questions presented but were not entered in the case that is the subject of the petition. If the material that is required by subparagraphs (7) and (10) of this paragraph is voluminous, they may be separately presented.

(b) Form of petition. The petition for a writ of certiorari shall comply with the form of a brief as specified in Rule 27.

(c) No separate ~~brief~~ memorandum. All contentions in support of a petition for a writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph (a)(9) of this rule. The petitioner shall not file a separate ~~brief~~ memorandum in support of a petition for a writ of certiorari. If the petition is granted, the petitioner will be notified of the date on which the brief in support of the merits of the case is due.

(d) Page limitation. The petition for a writ of certiorari shall be as short as possible, but may not exceed 20 pages, excluding the subject index, the table of authorities, ~~any verbatim quotations required by subparagraph (a)(7) of this rule~~, and the appendix.

(e) Absence of accuracy, brevity, and clarity. The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

Rule 47. Transmission of record; joint and separate petitions; cross-petitions; parties.

(a) Joint and separate petitions; cross-petitions. Parties interested jointly, severally, or otherwise in a decision may join in a petition for a writ of certiorari; any one or more of them may petition separately; or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari and involve identical or closely related questions, it will suffice to file a single petition for a writ of certiorari covering all the cases. A cross-petition for writ of certiorari shall not be joined with any other filing.

(b) Parties. All parties to the proceeding in the Court of Appeals shall be deemed parties in the Supreme Court, unless the petitioner notifies the Clerk of the Supreme Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the proceeding below, and a party noted as no longer interested may remain a party by notifying the clerk, with service on the other parties, that the party has an interest in the petition.

(c) Transmission of record. When a petition for writ of certiorari is granted, the Clerk of the Supreme Court shall notify the Clerk of the Court of Appeals to transmit the record on appeal to the Supreme Court.