

Agenda

Advisory Committee on Rules of Appellate Procedure

November 7, 2019

12:00 to 1:30 p.m.

Scott M. Matheson Courthouse

450 South State Street, Salt Lake City, UT

Executive Dining W18A

ACTION: Welcome and approval of October 2019 minutes	Tab 1	Paul C. Burke, Chairman
DISCUSSION AND ACTION: Review advisory committee notes that Judge Orme recommends repealing (Notes for Rules 4, 11, 12, 14, 29, 31, 42, and 43).	Tab 2	Judge Orme, Alan Mouritsen, Rodney Parker
DISCUSSION AND ACTION: Continue discussion of Rule 5 (interlocutory review)	Tab 3	Judicial Efficiency Subcommittee: Mary Westby, Christopher Ballard, Judge Pohlman, Troy Booher, Nathalie Skibine, Patrick Burt, Lisa Collins, Lori Seppi
DISCUSSION AND ACTION: Proposed amendments to Rule 10.	Tab 4	Judicial Efficiency Subcommittee: Mary Westby, Christopher Ballard, Judge Pohlman, Troy Booher, Nathalie Skibine, Patrick Burt, Lisa Collins, Lori Seppi
DISCUSSION AND ACTION: proposed amendments to Rule 35 (petition to modify/petition for rehearing).	Tab 5	Clark Sabey
DISCUSSION: Other business		Paul C. Burke

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

Meeting schedule:

December 5, 2019
January 2, 2020
February 6, 2020
March 5, 2020
April 2, 2020

May 7, 2020
June 4, 2020
July 2, 2020
August 6, 2020
September 3, 2020

October 1, 2020
November 5, 2020
December 3, 2020

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 Commission Room
Thursday, October 3, 2019
12:00 pm to 1:30 pm

PRESENT

Christopher Ballard
Troy Bocher—Emeritus Member
Paul Burke—Chair
Tyler Green (by phone)
Michael Judd—Recording Secretary
Larissa Lee—Staff
Alan Mouritsen
Judge Gregory Orme
Judge Jill Pohlman
Clark Sabey
Nathalie Skibine
Scarlet Smith
Nancy Sylvester—Staff
Mary Westby

EXCUSED

Patrick Burt
Lisa Collins
R. Shawn Gunnarson
Rodney Parker

1. **Welcome and approval of September 2019 minutes** **Paul Burke**

Mr. Burke welcomed the committee and introduced Larissa Lee, the new Appellate Courts Administrator, and Michael Judd, the committee's new Recording Secretary. Mr. Burke invited a motion to approve the minutes from the September 2019 meeting

Judge Pohlman moved to approve the minutes from the September 2019 meeting. Judge Orme seconded the motion and it passed unanimously.

2. **Discussion and Action:** Lisa Collins
Continued Discussion of Rule 21(a) Mary Westby
(Incorporating Standing Order No. 11) Nancy Sylvester

The committee continued its discussion of Rule 21(a), working toward an amendment that will incorporate Utah Supreme Court Standing Order No. 11, which relates to the filing of documents by email. The committee reviewed, revised, and finalized the provisions in paragraph (a), and it also made several additional changes to Rule 21, including the rule's treatment of electronic signatures for email filings. The committee noted that the proposed changes to Rule 21 do not incorporate Standing Order No. 11's requirement that paper copies of an emailed brief be delivered no more than 7 days after filing by email. The committee noted that it may make most sense to include that requirement in an amendment to Rule 24.

Judge Orme moved to recommend that the version of Rule 21(a) that the committee wordsmithed together at the September 2019 meeting be recommended to the Supreme Court. Judge Pohlman seconded the motion and it passed unanimously. (In light of the potential changes to Rule 24, it may be useful to hold off on sending Rule 21 to the Supreme Court until that "paper briefs" issue is resolved.)

3. **Discussion and Action:** Mary Westby
Discussion of Rule 5
Designating the record on interlocutory appeal

The proposed revision of Rule 5 relates to the efforts of the judicial efficiency subcommittee. Ms. Westby discussed with the committee a number of changes to Rule 5, including the addition of proposed paragraph (j), which provides that the trial court will not prepare or transmit the record, but rather that the record on appeal consist of the order appealed and several categories of related materials. Mr. Booher recommended that a provision be included that allows the parties to refer in their briefs to other parts of the record, as the record is defined in Rule 11(a). Ms. Westby indicated that additional, related proposed rule changes were in the process of being prepared.

Judge Pohlman moved to adopt the changes to Rule 5 but to withhold circulating the changes until further edits could be proposed. Judge Orme seconded the motion and it passed unanimously.

4. **Discussion:** **Judge Orme**
Alan Mouritsen
Rodney Parker
Advisory Committee Notes Project

Judge Orme reported to the committee that he had reviewed the full set of Advisory Committee Notes and that those Notes fall into three categories: some should be retained in full, some should be edited for relevance, and others should be repealed in their entirety. Judge Orme proposed that he work with Ms. Lee to make a table categorizing the Notes and making recommendations as to how each Note should be addressed. The committee plans to address the Notes category by category, over successive future meetings.

5. **Discussion:** **Lisa Collins**
Mary Westby
Unrepresented litigants and the appellate rules

Ms. Westby briefly discussed with the committee the packets created for unrepresented litigants in the appellate courts. Ms. Westby noted that while the packets could be accessed through the appellate courts website, they may be difficult to locate. The committee believes that committee members may be able to work with Jessica Van Buren and Jason Ralston to identify a solution to that accessibility problem.

6. **Discussion:** **Christopher Ballard** **Troy Booher**
Mary Westby **Nathalie Skibine**
Judge Pohlman
Judicial Efficiency

The committee briefly discussed continuing efforts to make recommendations that promote judicial efficiency, including their efforts to identify certain classes of cases best suited to be addressed in efficiency-promoting rule changes.

7. **Discussion:**

Paul Burke

Other Business

Mr. Burke noted that Mr. Burt has asked to participate as a member of the judicial efficiency subcommittee, and Mr. Burke encouraged other committee members interested in certain subcommittees to follow Mr. Burt's lead in expressing that interest and joining a subcommittee.

8. **Adjourn**

Mr. Ballard moved to adjourn the meeting. Judge Pohlman seconded the motion and it passed unanimously. The committee is scheduled to meet again on November 7, 2019.

Tab 2

Rule Title	Rule text (double click to view full text)	Committee Note	Recommendation
Rule 4. Appeal as of right: when taken. Effective November 1, 2016	(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;	Paragraph (f) was adopted to implement the holding and procedure outlined in Manning v. State, 2005 UT 61, 122 P.3d 628.	Repeal
Rule 11. The record on appeal.	(a) Composition of the record on appeal. The original papers and exhibits filed in the trial court, including the presentence report in criminal matters, the transcript of proceedings, if any, the index prepared by the clerk of the trial court, and the docket sheet, shall constitute the record on appeal in all cases. A copy of the record certified by the clerk of the trial court to conform to the original may be substituted for the original as the record on appeal. Only those papers prescribed under paragraph (d) of this rule shall be transmitted to the appellate court. (b) Pagination and indexing of record. (b)(1) Immediately upon filing of the notice of appeal, the clerk of the trial court shall securely fasten the record in a trial court case file, with collation in the following order: (b)(1)(A) the index prepared by the clerk; (b)(1)(B) the docket sheet; (b)(1)(C) all original papers in chronological order; (b)(1)(D) all published depositions in chronological order; (b)(1)(E) all transcripts prepared for appeal in chronological order;	The rule is amended to make applicable in the Supreme Court a procedure of the Court of Appeals for preparing a transcript where the record is maintained by an electronic recording device. The rule is modified slightly from the former Court of Appeals rule to make it the appellant's responsibility, not the clerk's responsibility, to arrange for the preparation of the transcript.	Repeal
Rule 12. Transmission of the record.	(a) Duty to prepare and file transcript; request for enlargement of time; notice to appellate court. (a)(1) Upon receipt of a request for a transcript, the clerk of the appellate court shall assign the preparation of the transcript to the court reporter who reported the proceedings or, if recorded on video or audio equipment, to an official court transcriber and notify the requesting party of the assignment. By stipulation of the parties approved by the appellate court, a person other than an official court transcriber may transcribe a recorded hearing. (a)(2) A party requesting a transcript shall make satisfactory arrangements for paying the fee to the reporter or transcriber and notify the clerk of the appellate court of the date on which satisfactory arrangements were made. The transcript shall be completed and filed within 30 days after that date. (a)(3) The reporter or transcriber may request from the clerk of the appellate court an enlargement of time in which to file the transcript. The request for enlargement of time shall be in writing and shall contain the elements stated in CIA 5-201(1). If filed prior to the expiration of the transcript preparation period, the request shall make a showing of good cause. If filed after the expiration of the period, the request shall make a showing of extraordinary circumstances beyond the control of the reporter or transcriber. The reporter or transcriber shall provide a copy of the request to the parties. The clerk of the appellate court shall provide written notice of the disposition of the request for enlargement of time to the reporter or transcriber and the parties. (a)(4) Upon completion of the transcript, the reporter and, if applicable, the transcriber shall certify that the transcript is a true and correct record of the court.	The amendment keeps the requirement that the court reporter acknowledge the receipt of the request for transcript. Formerly, that acknowledgment was to appear at the foot of the request itself. Rule 12 now treats the acknowledgment as a separate document. The content of the acknowledgment includes a statement regarding the satisfactory arrangement for payment. Until satisfactory arrangements for payment have been made, the reporter is under no obligation to prepare the transcript. Rule 12 is amended to impose upon the court reporters the same standard of "good cause" and the same procedures now applicable to parties in seeking an extension of time for preparation of the transcript.	Repeal
Rule 14. Review of administrative orders: how obtained; intervention. Effective Nov. 1, 2016	(a) Petition for review of order; joint petition. When a statute provides for judicial review by or appeal to the Supreme Court or the Court of Appeals of an order or decision of an administrative agency, board, commission, committee, or officer (hereinafter the term "agency" shall include agency, board, commission, committee, or officer), a party seeking review must file a petition for review with the clerk of the appellate court within the time prescribed by statute, or if there is no time prescribed, then within 30 days after the date of the written decision or order. The petition must specify the parties seeking review and must designate the respondent(s) and the order or decision, or part thereof, to be reviewed. In each case, the agency must be named respondent. The State of Utah is a respondent if required by statute, even if not designated in the petition. If two or more persons are entitled to petition for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner. (b) Service of petition. The petitioner must serve the petition on the respondents and all parties to the proceeding before the agency in a manner provided by Rule 21. (c) Intervention. Any person may file with the clerk of the appellate court a motion to intervene. The motion must contain a concise statement of the interest of the moving party and the grounds on which intervention is sought. A motion to intervene must be filed within 40 days of the date on which the	The provisions for service, proof of service, and paying filing fees, formerly found in this rules, have been consolidated in Rule 21.	Repeal
Rule 29. Oral argument. Effective November 15, 2017	(a)(1) In cases before the Supreme Court. Oral argument will be held unless the Supreme Court determines that it will not aid the decisional process. (a)(2) In cases before the Court of Appeals. Oral argument will be allowed in all cases in which the court determines that oral argument will significantly aid the decisional process. (b)(1) Notice by Supreme Court; request for cancellation or continuance. Not later than 30 days prior to the date on which a case is calendared, the clerk shall give notice of the time and place of oral argument, and the time to be allowed each side. If all parties to a case believe oral argument will not benefit the court, they may file a joint motion to cancel oral argument not later than 15 days from the date of the clerk's notice. The court will grant the motion only if it determines that oral argument will not aid the decisional process. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit of counsel specifying the grounds for the motion. A motion to continue filed not later than 15 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances. (b)(2) Notice by Court of Appeals; waiver of argument; continuance. Not later than 30 days prior to the date on which a case is calendared, the clerk shall give notice to all parties that oral argument is to be permitted, the time and place of oral argument, and the time to be allowed each side. Any party may waive oral	The 2013 amendments to rules 29(a) and (b) reflect current practices. The amendment to Rule 29(c) clarifies that this provision is not intended to place any limitation on the scope or timing of the questions posed by an appellate court during argument.	Repeal
Rule 31. Expedited appeals decided after oral argument without written opinion.	(a) Motion and stipulation for expedited hearing. After the filing of all briefs in an appeal, a party may move for an expedited decision without a written opinion. The motion shall be in the form prescribed by Rule 23 and shall describe the nature of the case, the issues presented and any special reasons the parties may have for an expedited decision. The court may dispose of any qualified case under this rule upon its own motion before or after oral argument. (b) Cases which qualify for expedited decision. The following are matters which the court may consider for expedited decision without opinion: (1) appeals involving uncomplicated factual issues based primarily on documents; (2) summary judgments; (3) dismissals for failure to state a claim; (4) dismissals for lack of personal or subject matter jurisdiction; and (5) judgments or orders based on uncomplicated issues of law. (c) In all motions brought under this rule, the substantive rules of law should be deemed settled, although the parties may differ as to their application. (d) Appeals ineligible for expedited decision. The court will not grant a motion for an expedited appeal in cases raising substantial constitutional issues, issues of significant public interest, issues of law of first impression, or complicated issues of fact or law.	Rule 31(b) is amended to permit either party to request an expedited decision after oral argument without the necessity of a stipulation by the other party. The rule expressly permits the court to invoke the rule on its own motion. Criminal cases are no longer automatically exempt from disposition under this rule. Criminal cases must meet the qualification criteria of rules 31(b) and (c) in order to be disposed under this rule.	Repeal

<p>Rule 42. Transfer of case from Supreme Court to Court of Appeals.</p>	<p>(a) Discretion of Supreme Court to transfer. At any time before a case is set for oral argument before the Supreme Court, the Court may transfer to the Court of Appeals any case except those cases within the Supreme Court's exclusive jurisdiction. The order of transfer shall be issued without opinion, written or oral, as to the merits of the appeal or the reasons for the transfer.</p> <p>(b) Notice of order of transfer. Upon entry of the order of transfer the Clerk of the Supreme Court shall give notice of entry of the order of transfer by mail to each party to the proceeding and to the clerk of the trial court. Upon entry of the order of transfer, the Clerk of the Supreme Court shall transfer the original of the order and the case, including the record and file of the case from the trial court, all papers filed in the Supreme Court, and a written statement of all docket entries in the case up to and including the order of transfer, to the Clerk of the Court of Appeals.</p> <p>(c) Receipt of order of transfer by Court of Appeals. Upon receipt of the original order of transfer from the Clerk of the Supreme Court, the Clerk of the Court of Appeals shall enter the appeal upon the Court of Appeals docket. The Clerk of the Court of Appeals shall immediately give notice to each party to the proceeding and to the clerk of the trial court that the appeal has been docketed and that all further filings will be made with the Clerk of the Court of Appeals. The notice shall state the docket number assigned to the case in the Court of Appeals.</p> <p>(d) Filing or transfer of appeal record. If the record on appeal has not been filed with the Clerk of the Supreme Court as of the date of the order of transfer, the</p>	<p>Former Rules 4A and 4B have been renumbered as Rules 42 and 43 respectively and included in a new title governing the certification and transfer of cases between courts. The amendments make uniform the practices followed by the two appellate courts in transferring cases.</p>	<p>Repeal</p>
<p>Rule 43. Certification by the Court of Appeals to the Supreme Court.</p>	<p>(a) Transfer. In any case over which the Court of Appeals has original appellate jurisdiction, the court may, upon the affirmative vote of four judges of the court, certify a case for immediate transfer to the Supreme Court for determination.</p> <p>(b) Procedure for transfer.</p> <p>(1) The Court of Appeals may, on its own motion, decide whether a case should be certified. Any party to a case may, however, file and serve an original and eight copies of a suggestion for certification not exceeding five pages setting forth the reasons why the party believes that the case should be certified. The suggestion may not be filed prior to the filing of a docketing statement. Within ten days of service, an adverse party may file and serve an original and eight copies of a statement not in excess of five pages either supporting or opposing the suggestion for certification.</p> <p>(2) Upon entry of the order of certification, the Clerk of the Court of Appeals shall immediately transfer the case, including the record and file of the case from the trial court, all papers filed in the Court of Appeals, and a written statement of all docket entries in the case up to and including the certification order, to the Clerk of the Supreme Court. The Clerk of the Court of Appeals shall promptly notify all parties and the clerk of the trial court that the case has been transferred.</p> <p>(3) Upon receipt of the order of certification, the Clerk of the Supreme Court shall enter the appeal upon the docket of the Supreme Court. The clerk of the</p>	<p>Former Rules 4A and 4B have been renumbered as Rules 42 and 43 respectively and included in a new title governing the certification and transfer of cases between courts. The amendments make uniform the practices followed by the two appellate courts in transferring cases.</p>	<p>Repeal</p>

Tab 3

1 **Rule 5. Discretionary appeals from interlocutory orders.**

2 (a) **Petition for permission to appeal.** An appeal from an interlocutory order may be sought by
3 any party by filing a petition for permission to appeal from the interlocutory order with the clerk
4 of the appellate court with jurisdiction over the case within 20 days after the entry of the order of
5 the trial court, with proof of service on all other parties to the action. A timely appeal from an
6 order certified under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court
7 determines is not final may, in the discretion of the appellate court, be considered by the
8 appellate court as a petition for permission to appeal an interlocutory order. The appellate court
9 may direct the appellant to file a petition that conforms to the requirements of paragraph (c) of
10 this rule.

11 (b) **Fees and filing of petition.** The petitioner must file with the clerk of the appellate court an
12 original paper petition or an emailed petition, together with the fee required by statute. A petition
13 filed by email in the Utah Supreme Court must be sent to supremecourt@utcourts.gov. A petition
14 filed by email in the Utah Court of Appeals must be sent to courtsofappeals@utcourts.gov. The
15 petitioner must serve the petition on the opposing party and notice of the filing of the petition on
16 the trial court. If an order is issued granting permission to appeal, the clerk of the appellate court
17 will immediately give notice of the order by email or mail to the respective parties and will
18 transmit a certified copy of the order, together with a copy of the petition, to the trial court where
19 the petition and order will be filed instead of a notice of appeal.

20 (c) **Content of petition.**

21 (c)(1) The petition must contain:

22 (c)(1)(A) A concise statement of facts material to a consideration of the issue presented and the
23 order sought to be reviewed;

24 (c)(1)(B) The issue presented expressed in the terms and circumstances of the case but without
25 unnecessary detail, and a demonstration that the issue was preserved in the trial court. Petitioner
26 must state the applicable standard of appellate review and cite supporting authority;

27 (c)(1)(C) A statement of the reasons why an immediate interlocutory appeal should be permitted,
28 including a concise analysis of the statutes, rules or cases believed to be determinative of the
29 issue stated; and

30 (c)(1)(D) A statement of the reason why the appeal may materially advance the termination of
31 the litigation.

32 (c)(2) If the appeal is subject to assignment by the Supreme Court to the Court of Appeals, the
33 phrase "Subject to assignment to the Court of Appeals" must appear immediately under the title
34 of the document, i.e. Petition for Permission to Appeal. ~~Appellant~~Petitioner may then set forth in
35 the petition a concise statement why the Supreme Court should decide the case.

36 (c)(3) The petitioner must attach a copy of the order of the trial court from which an appeal is
37 sought and any related findings of fact and conclusions of law and opinion. Other documents that
38 may be relevant to determining whether to grant permission to appeal may be referenced by
39 identifying trial court docket entries of the documents.

40 (d) **Page limitation.** A petition for permission to appeal must not exceed 20 pages, excluding
41 41 table of contents, if any, and the addenda.

42 (e) **Service in criminal and juvenile delinquency cases.** Any petition filed by a defendant in a
43 criminal case originally charged as a felony or by a juvenile in a delinquency proceeding must be
44 served on the Criminal Appeals Division of the Office of the Utah Attorney General.

45 (f) **Response; no reply.** No petition will be granted in the absence of a request by the court for a
46 response. No response to a petition for permission to appeal will be received unless requested by
47 the court. Within 14 days after an order requesting a response, any other party may oppose or
48 concur with the petition. Any response to a petition for permission to appeal is subject to the
49 same page limitation set out in paragraph (d). An original paper response or an emailed response
50 must be filed in the appellate court. A response filed by email in the Utah Supreme Court must
51 be sent to supremecourt@utcourts.gov. A response filed by email in the Utah Court of Appeals
52 must be sent to courtofappeals@utcourts.gov. The respondent must serve the response on the
53 petitioner. The petition and any response will be submitted without oral argument unless

54 otherwise ordered. No reply in support of a petition for permission to appeal will be permitted
55 unless requested by the court.

56 (g) **Grant of permission.** An appeal from an interlocutory order may be granted only if it
57 appears that the order involves substantial rights and may materially affect the final decision or
58 that a determination of the correctness of the order before final judgment will better serve the
59 administration and interests of justice. The order permitting the appeal may set forth the
60 particular issue or point of law which will be considered and may be on such terms, including the
61 filing of a bond for costs and damages, as the appellate court may determine. The clerk of the
62 appellate court will immediately give the parties and trial court notice by mail or by email of any
63 order granting or denying the petition. If the petition is granted, the appeal will be deemed to
64 have been filed and docketed by the granting of the petition. All proceedings subsequent to the
65 granting of the petition will be as, and within the time required, for appeals from final judgments
66 except that no docketing statement under Rule 9 is required unless the court otherwise orders, no
67 cross-appeal may be filed under rule 4(d), ~~and no record will be prepared or transmitted under~~
68 ~~rules 11 and 12.~~

69 (h) **Stays pending interlocutory review.** The appellate court will not consider an application for
70 a stay pending disposition of an interlocutory appeal until the petitioner has filed a petition for
71 interlocutory appeal.

72 (i) **Cross-petitions not permitted.** A cross-petition for permission to appeal a non-final order is
73 not permitted by this rule. All parties seeking to appeal from an interlocutory order must comply
74 with paragraph (a) of this rule.

75 (j) **Record on appeal.**

76 (j)(1) The ~~record on appeal consists of the order appealed, any associated findings and~~
77 ~~conclusions, memorandum decisions, or opinions, motions and memoranda leading to the order,~~
78 ~~and transcripts of related hearings. The~~ trial court will not prepare or transmit the record under
79 rule 11(b) or 12(b). The record on appeal is as defined in rule 11(a).

80 (j)(2) Citations ~~must~~ to the record may identify documents by name and date. A short form may
81 be used after the first citation. Alternatively, a party may prepare a paginated appendix of

82 | [relevant documents from the trial court record and cite to the paginated appendix. If a party](#)
83 | [prepares a paginated appendix, it should file that appendix separately when it files its principal](#)
84 | [brief.](#)

85 | (j)(2) If a hearing was held regarding the order on appeal, within five days after the grant of
86 | permission to appeal, the appellant must order the transcript of the hearing as provided in rule
87 | 11(e)(1).

88 | ~~(j)(3) The parties may refer in their briefs to any other part of the record as defined in Rule 11(a).~~

Tab 4

1 **Rule 10. ~~Motion~~ Procedures for summary disposition or simplified appeal process.**

2 (a) Time for filing; grounds for motion for summary disposition.

3 (a)(1) A party may move at any time to dismiss the appeal or the petition for review on the basis
4 that the appellate court lacks jurisdiction.

5 (a)(2) ~~Within 10 days a~~ After the docketing statement ~~or an order granting a petition under Rule~~
6 ~~5(e) is served, a party may move:~~

7 ~~(a)(2)(A) To affirm the order or judgment which is the subject of review on the basis that the~~
8 ~~grounds for review are so insubstantial as not to merit further proceedings and consideration by~~
9 ~~the appellate court; or~~

10 ~~(a)(2)(B) To reverse the order or judgment which is the subject of review on the basis of~~
11 ~~manifest error.~~

12 ~~(b) Number of copies; form of motion. For matters pending in the Supreme Court, an original~~
13 ~~and seven copies of a motion made pursuant to this rule shall be filed with the Clerk of the~~
14 ~~Supreme Court. For matters pending in the Court of Appeals, an original and four copies shall be~~
15 ~~filed with the Clerk of the Court of Appeals. The motion shall be in the form prescribed by Rule~~
16 ~~23.~~

17 ~~(c) Filing of response. The party moved against shall have 10 days from the service of such a~~
18 ~~motion in which to file a response. For matters pending in the Supreme Court, an original~~
19 ~~response and seven copies shall be filed in the Supreme Court. For matters pending in the Court~~
20 ~~of Appeals, an original response and four copies shall be filed in the Court of Appeals.~~

21 ~~(d) Submission of motion; suspension of further proceedings. Upon the filing of a response or the~~
22 ~~expiration of time therefor, the motion shall be submitted to the court for consideration and an~~
23 ~~appropriate order. The time for taking other steps in the appellate procedure is suspended~~
24 ~~pending disposition of a motion to affirm or reverse or dismiss.~~

25 ~~(e) Ruling of court. has been filed. T~~he court, upon its own motion, and on such notice as it
26 directs, may dismiss an appeal or petition for review if the court lacks jurisdiction; or may

27 summarily affirm the judgment or order which is the subject of review, if it plainly appears that
28 no substantial question is presented; or may summarily reverse in cases of manifest error.

29 ~~(f) Deferral of ruling.~~(a)(3) The time for taking other steps in the appellate process is suspended
30 pending disposition of a motion for summary disposition to affirm, reverse, or dismiss.

31 (a)(4) As to any issue raised by a motion for summary disposition, the court may defer its ruling
32 until plenary presentation and consideration of the case.

33 (b) Simplified appeal process; eligible appeals.

34 (b)(1) After a docketing statement has been filed, the court may designate an appeal for a
35 simplified appeal process. An appellant may move for a simplified appeal process under this
36 subsection within ten days after the docketing statement is filed.

37 (b)(2) Appeals eligible for a simplified process include:

38 (b)(2)(A) appeals challenging only the sentence in a criminal case;

39 (b)(2)(B) appeals from the revocation of probation or parole;

40 (b)(2)(C) appeals from a judgment in an unlawful detainer action;

41 (b)(2)(D) petitions for review of a decision of the Department of Workforce Services Workforce
42 Appeals Board or the Labor Commission;

43 (b)(2)(E) appeals involving the application of well-settled law to a set of facts.

44 (b)(3) For appeals eligible under this subsection, the substantive rules of law should be deemed
45 settled, although the parties may differ as to their application.

46 (c) Memoranda in lieu of briefs.

47 (c)(1) In appeals designated under subsection (b), the parties must file memoranda in support of
48 their positions instead of briefs. The schedule for preparing memoranda will be set by order of
49 the appellate court.

50 (c)(2) A party's principal memorandum must include:

51 (c)(2)(A) an introduction describing the nature and context of the dispute, including the
52 disposition in the court or agency whose judgment or order is under review;

53 (c)(2)(B) a statement of the issues for review, including a citation to the record showing that the
54 issue was preserved for review or a statement of grounds for seeking review of an issue not
55 preserved;

56 (c)(2)(C) an argument. The argument must explain, with reasoned analysis supported by citations
57 to legal authority and the record, why the party should prevail on appeal. A separate statement of
58 facts is not required, but facts asserted in the argument must be supported by citations to the
59 record;

60 (c)(2)(D) a claim for attorney fees, if any, including the legal basis for an award;

61 (c)(2)(E) a certificate of compliance, certifying that the memorandum complies with rule 21
62 regarding public and private documents.

63 (c)(3) An appellant or petitioner may file a reply memorandum limited to responding to the facts
64 and arguments raised in appellee's or respondent's principal memorandum. The reply
65 memorandum must include an argument and a certificate of compliance with rule 21 regarding
66 public and private documents.

67 (c)(4) Principal memoranda must be no more than 7000 words or 20 pages if a word count is not
68 provided. A reply memorandum must be no more than 3500 words or ten pages if a word count
69 is not provided. The form of memoranda must comply with the requirements of rule 23(f)(2) and
70 23(f)(3).

71 (d) By stipulation filed with the court before the date a memorandum is due to be filed, the
72 parties may extend the time for filing by no more than 21 days. Any additional motions for an
73 extension of time will be governed by rule 22(b).

Tab 5

1 **Rule 35. ~~Petition for rehearing~~Motion to Reconsider or Modify.**

2 (a) Motion to Reconsider.

3 ~~(a)(1) Petition for rehearing permitted. A rehearing will not be granted in the absence of a~~
 4 ~~petition for rehearing. A petition for rehearing~~ A motion to reconsider a final decision of the
 5 court, which requests an alteration of the decision that affects the substantive rights of the parties
 6 or any mandate or rule of law established by the decision, may be filed only in cases in which the
 7 court has issued an opinion, memorandum decision, or per curiam decision. ~~No other petitions~~
 8 ~~for rehearing will be considered.~~ A motion to reconsider will be treated as a motion to modify
 9 under subpart (b) insofar as it merely requests an alteration of a decision that does not affect the
 10 substantive rights of the parties or any mandate or rule of law established by the decision.

11 ~~(b)(a)(2)~~ Time for filing. A ~~petition for rehearing~~motion to reconsider may be filed with the
 12 clerk within 14 days after issuance of the opinion, memorandum decision, or per curiam decision
 13 of the court, unless the time is shortened or enlarged by order. Remittitur of the case will be
 14 deferred pending a decision on any timely motion complying with the requirements of this
 15 subpart (a).

16 ~~(e)(a)(3)~~ Contents of ~~petition~~motion. The ~~petition shall~~ motion must succinctly state and
 17 explain~~with particularity~~ the points of law or fact ~~which the petitioner~~that the movant claims the
 18 court has overlooked or misapprehended ~~and shall contain such argument in support of the~~
 19 ~~petition as the petitioner desires. Counsel for petitioner~~The movant must certify that the
 20 ~~petition~~motion is presented in good faith and not for delay.

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

22 ~~(e)(a)(4)~~ Response. No response to a ~~petition for rehearing~~motion to reconsider will be
 23 received unless requested by the court. Any response shall be filed within 14 days after the entry
 24 of the order requesting the response, unless otherwise ordered by the court. A ~~petition for~~
 25 ~~rehearing~~ motion to reconsider will not be granted in whole or in part in the absence of a request
 26 for a response.

27 ~~(f)(a)(5)~~ Form of ~~petition~~motion. ~~The petition~~A motion to reconsider shall be in the form
 28 prescribed by Rule 27 and shall include a copy of the decision to which it is directed.

29 ~~(g)(a)(6)~~ Number of copies to be filed and served. An original and 6 copies shall be filed with
 30 the court; ~~and~~ two copies shall be served on counsel for each party separately represented.

31 ~~(h)~~(a)(7) Length. Except by order of the court, a ~~petition for rehearing~~motion for
32 reconsideration and any response requested by the court shall not exceed 15 pages.

33 ~~(i)~~(a)(8) Color of cover. The cover of a ~~petition for rehearing~~motion for reconsideration shall
34 be tan; that of any response ~~to a petition for rehearing~~ filed by a party, white; and that of any
35 response filed by an amicus curiae, green. All brief covers shall be of heavy cover stock. There
36 shall be adequate contrast between the printing and the color of the cover.

37 ~~(j)~~(a)(9) Action by court ~~if granted. If a petition for rehearing is granted, t~~The court may
38 make a final disposition of ~~the cause~~a motion for reconsideration without reargument, or may
39 restore ~~it~~the case to the calendar for reargument or resubmission, or may make such other orders
40 as are deemed appropriate under the circumstances of the particular case.

41 ~~(k)~~(a)(10) Untimely or consecutive ~~petitions~~motions for reconsideration. ~~Petitions for~~
42 ~~rehearing~~Motions that are not timely presented under this rule and consecutive ~~petitions for~~
43 ~~rehearing~~motions will not be received by the clerk.

44 ~~(l)~~(a)(11) Amicus curiae. An amicus curiae may not file a ~~petition for rehearing~~motion for
45 reconsideration but may file a response to a ~~petition~~motion if the court has requested a response
46 under paragraph (e) of this rule.

47 (b) Motion to Modify.

48 (b)(1) A motion to modify a decision may be filed by a party seeking an alteration to a
49 decision that does not affect the substantive rights of the parties or any mandate or rule of law
50 established by the decision.

51 (b)(2) Time for filing. A motion to modify may be filed with the clerk within 14 days after
52 issuance of any decision of an appellate court that includes an explanation of the reasoning for
53 the decision.

54 (b)(3) Contents of motion. The motion must identify the portions of the decision that should
55 be modified and must state or suggest how it should be modified. The movant must certify that
56 the motion is presented in good faith and not for delay.

57 (b)(4) Response. Any other party to the case may choose to respond to a motion to modify.
58 Any response shall be filed within 14 days after service of the motion to modify. Remittitur of
59 the case will be deferred pending a decision on the motion; and the court will not act on the
60 motion until all other parties have responded or the response time has elapsed.

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62 | (b)(5) Length. A motion to modify, and any response, may not exceed 10 pages.
63 | (b)(6) Non-Exclusivity. This provision does not affect the court's authority to make non-
64 | substantive amendments or corrections to a decision in the absence of a motion by a party or
65 | notice to the parties.