Agenda

Utah Supreme Court Advisory Committee
Utah Rules of Appellate Procedure

Paul C. Burke, Chair

Location: Judicial Council Room
Scott M. Matheson Courthouse, 450 S. State St., Salt Lake City, UT 84111

Date: January 9, 2019

Time: 12:00 to 1:30 p.m.

Tab 1	**Action**: Welcome and approval of December 2019 minutes	Paul C. Burke, Chair
Tab 2	**Discussion & Action:** Rule 8 amendments (stays when there is no means of quantifying security)	Clark Sabey
Tab 3	**Discussion & Action:** Rules 35A and 35B (petition for rehearing and motion to modify)	Clark Sabey
Tab 4	**Discussion & Action:** Rule 33 amendments (requests for damages)	Clark Sabey
Tab 5	**Discussion & Action**: Reviewing public comments on Rules 5 and 10	Larissa Lee
	Discussion: Forming subcommittee for public outreach re appellate questions/concerns	Larissa Lee
	Discussion: Other business	Paul C. Burke

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

Meeting schedule:

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 Council Room
Thursday, December 5, 2019
12:00 pm to 1:30 pm

PRESENT		**EXCUSED**
Christopher Ballard	Alan Mouritsen	Patrick Burt
Troy Booher—Emeritus Member	Judge Gregory Orme	
Paul C. Burke—Chair	Rodney Parker	
Lisa Collins	Judge Jill Pohlman	
Tyler Green (by phone)	Clark Sabey	
R. Shawn Gunnarson	Nathalie Skibine	
Michael Judd—Recording Secretary	Scarlet Smith	
Larissa Lee—Staff	Mary Westby	

1. Welcome and approval of November 2019 minutes — Paul C. Burke

Paul C. Burke welcomed the committee. The committee reviewed the November 2019 minutes. Alan Mouritsen noted an error in those minutes, in which Mr. Mouritsen's able description of certain advisory-committee-note recommendations was attributed instead to Troy Booher. The committee agreed that the error should be corrected.

Judge Pohlman moved to approve and adopt the minutes from the November 2019 meeting, subject to the correction of the error noted by Mr. Mouritsen. Scarlet Smith seconded the motion and it passed unanimously.

2. Discussion: Rescheduling January meeting **Paul C. Burke**

Mr. Burke asked whether there were objections to moving the January meeting planned for January 2, 2020, to January 9, 2020.

After discussion, Mr. Burke provided notice to the committee that the meeting would be rescheduled to January 9, 2020, as proposed.

3. Discussion and Action: **Judge Orme**
Review of Advisory Committee Notes **Alan Mouritsen**
Rodney Parker

Judge Orme has identified seven sets of advisory committee notes for which certain changes are recommended: Notes for Rules 2, 20, 22, 24, 28A, 37, and 44. Judge Orme noted a complication in the exercise, in which advisory committee notes that appeared in the published hard-copy version of the rule do not appear in online versions of the rules that appear on Westlaw and/or Lexis. Larissa Lee presented research conducted to determine the source of that inconsistency. The committee also discussed a clarification to the Rule 22 advisory committee note to state that appeals are placed in the oral argument queue after all principal briefs have been filed, not after "the completion of briefing."

Rodney R. Parker moved to adopt the revised version of the Rule 22 advisory committee note, with an adoption date. R. Shawn Gunnarson seconded the motion and it passed unanimously.

Mr. Burke asked the committee whether there was any objection to the practice of including adoption dates with each newly adopted, re-adopted, or revised advisory committee note. No members objected, and that practice will be followed.

The committee discussed what portion of the Rule 2 advisory committee note is helpful in its current position and discussed the relationship between Rule 2 and Rule 4.

Mr. Gunnarson moved to adopt the revised version of the Rule 2 advisory committee note, with an adoption date. Judge Pohlman seconded the motion and it passed unanimously.

With respect to the Rule 20 advisory committee note, Judge Orme recommended that the note be repealed in its entirety. The committee noted

that further attention should be given to the text of Rule 20, as amendment or revision may be appropriate.

Mr. Parker moved to repeal the Rule 20 advisory committee note in its entirety. Judge Orme seconded the motion and it passed unanimously.

The committee briefly discussed the Rule 24 advisory committee note and agreed that it remains useful.

Lisa Collins moved to leave the advisory committee note to Rule 24 unchanged, with reference to its 2017 adoption date. Mr. Parker seconded the motion and it passed unanimously.

The committee discussed removing the advisory committee note to Rule 28A and, at the same time, amending Rule 28A(a) to replace the word "direct" with the word "order," noting that that change, in conjunction with Rule 28A(g), addressed by rule what had previously been addressed only by advisory committee note.

Judge Orme moved to repeal the advisory committee note in its entirety and to make a one-word change to Rule 28A(a) to replace the word "direct" with the word "order." Scarlet Smith seconded the motion and it passed unanimously.

With respect to Rule 37, the committee discussed that further discussion may be warranted regarding the rule, the advisory committee note, and their statutory or caselaw underpinning. The committee determined that the best approach is to table any discussion of Rule 37 in the meantime.

The committee discussed the advisory committee note to Rule 44, including whether it added any information not presented in the rule itself. With that discussion in mind, Judge Orme changed his recommendation from a "soft" recommendation to retain to a recommendation to repeal.

Judge Orme moved to repeal the advisory committee note to Rule 44. Mr. Parker seconded the motion and it passed unanimously.

Mr. Burke asked for any objections to amending the meeting notes to allow the committee to address proposed amendments to Rules 44 and 28A. No committee members objected.

Ms. Collins moved to remove the word "appellate" from the term "appellate jurisdiction" in Rule 44 and to change the words "shall" to "will." Judge Pohlman seconded the motion and it passed unanimously.

4. Discussion and Action: Larissa Lee
Finalizing Rules 21 and 26

Ms. Lee discussed recommended changes to Rules 21 and 26 designed to better facilitate email filing. Mr. Booher noted that further attention to Rule 5 may be needed in order to eliminate unnecessary filing and service of "copies" of filings other than principal briefs.

Mr. Parker moved to adopt amendments to Rules 21 and 26, as presented during the committee meeting. Judge Pohlman seconded the motion and it passed unanimously.

5. Discussion: Larissa Lee
Requirement to file copy of notice of appeal

Ms. Lee discussed proposed changes to the service requirements in Rule 3, which would require the parties to serve a courtesy copy of the notice of appeal on the appellate court. This would eliminate current delays between the parties filing the notice of appeal in district/juvenile court and the appellate courts receiving the notice of appeal from the district/juvenile judicial assistant. The committee asked whether a failure to serve a copy of a notice of appeal would constitute a jurisdictional defect and whether serving a copy of a notice of appeal would constitute an attorney's appearance in the appellate court. Ms. Lee clarified that the proposed amendments would require serving, not filing, a courtesy copy with the appellate court (paragraph (e) not paragraph (a)).

The committee considered using an advisory committee note rather than amending the rule. But the committee noted that any rule that is optional may not effectively address the problem at issue.

The committee decided that the soundest approach at this point is to table the discussion until the next meeting. No objections were made.

6. Discussion and Action: Clark Sabey
Petitions for rehearing/to modify (Rule 35A/35B)

Clark Sabey recommended that discussion of Rule 35A/35B be postponed to a meeting at which more time is available. No committee members objected.

7. Discussion and Action: Clark Sabey
Stays and quantifying security (Rule 8)

Mr. Sabey recommended that discussion of Rule 8 be postponed to a meeting at which more time is available. No committee members objected.

8. Discussion and Action: Clark Sabey
Requests for damages (Rule 33)

Mr. Sabey noted that the current rule appears to allow the party against whom sanctions are sought to demand a hearing on the sanctions. The proposed rule change would allow the court to impose sanctions without a hearing, so long as the court provides the party against whom sanctions are sought with notice and an opportunity to respond. The committee worked to clarify the rule.

Mr. Burke proposed that the discussion of Rule 33 be tabled until the January meeting. No committee members objected.

9. Discussion: Paul C. Burke
Other Business

None.

10. Adjourn

Judge Orme moved to adjourn the meeting. Mr. Mouritsen seconded the motion and it passed unanimously. The committee is scheduled to meet again on January 9, 2020.

Tab 2

Rule 8. Stay or injunction pending appeal.

(a) **Stay must ordinarily be sought in the first instance in trial court; motion for stay in appellate court**. Application for a stay of the judgment or order of a trial court pending appeal, or disposition of a petition under Rule 5, or for approval of a supersedeas bond, or for an order suspending, modifying, restoring, or granting an injunction during the pendency of an appeal must ordinarily be made in the first instance in the trial court. A motion for such relief may be made to the appellate court, but the motion ~~shall~~ must show that application to the trial court for the relief sought is not practicable, or that the trial court has denied an application, or has failed to afford the relief which the applicant requested, with the reasons given by the trial court for its action. The motion ~~shall~~ must also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the motion ~~shall~~ must be supported by copies of affidavits or other sworn statements ~~or copies thereof~~. The movant must include~~With the motion shall be filed such~~ relevant parts of the record ~~as are relevant~~, including a copy of the order sought to be stayed. Any motion for stay ~~shall~~ must comply with~~be filed under~~ rule 23.

(b)(1) **Stay may be conditioned upon giving of bond**. For cases to which the Utah Rules of Civil Procedure apply, ~~R~~relief available ~~in the appellate court~~ under this rule ~~may~~will be conditioned upon the filing of a bond or other appropriate security in the trial court, unless there is no reasonable means of quantifying the security referenced by Utah R. Civ. P. 62 in monetary or other terms.

(b)(2) **Criteria for stays in cases not conditioned upon giving of bond**. If a trial or appellate court readily and reliably can determine that the appeal clearly lacks merit, then the motion will be denied. Otherwise, the considerations justifying a stay ordinarily should consist of serious issues on the merits warranting appellate review and irreparable injury to the appellant, such as mootness of the claims on appeal, or a significant harm to a public interest. The injury to the appellant or harm to the public interest ordinarily should outweigh any harm suffered by another party. The court also may consider any extraordinary circumstance that militates in favor of or against a stay.

(c) **Stays in criminal cases**. Stays pending appeal in criminal cases in which the defendant has been sentenced are governed by Utah Code Ann. Section 77-20-10 and Rule 27, Utah. R. Crim. P. Stays in other criminal cases are governed by this rule.

Tab 3

Rule 35A. Petition for rehearing.

(a) **Petition** ~~for rehearing permitted. A rehearing will not be granted in the absence of a petition for rehearing~~. A petition for rehearing requesting to alter a decision that affects the substantive rights of the parties or any mandate or rule of law established by the decision, may be filed only in cases in which the court has issued an opinion, memorandum decision, or per curiam decision. ~~No other petitions for rehearing will be considered.~~

(b) **Time for filing**. A petition for rehearing may be filed with the clerk within 14 days after the court issu~~ance of~~es the opinion, memorandum decision, or per curiam decision ~~of the court~~, unless the time is shortened or enlarged by order. Remittitur of the case will be deferred pending a decision on any timely motion complying with the requirements of subpart (a).

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

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

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

(~~f~~e) **Form of petition**. The petition ~~shall~~must be in ~~a~~the form prescribed by Rule

27(a), (b), and (d) with respect to contents of the cover and ~~shall~~ must include a copy of the decision to which it is directed.

~~(g) **Number of copies to be filed and served**. An original and 6 copies shall be filed with the court. Two copies shall be served on counsel for each party separately represented.~~

(~~h~~f) **Length**. Except by ~~order of the~~ court order, a petition for rehearing and any response requested by the court ~~shall~~may not exceed 15 pages.

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

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

(~~k~~h) **Untimely or consecutive petitions**. Petitions for rehearing that are not timely presented under this rule and consecutive petitions ~~for rehearing~~ will ~~not~~ be ~~received~~refused by the clerk.

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

Rule 35B. Motion to modify.

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

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

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

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

(e) **Length**. A motion to modify, and any response, may not exceed 10 pages.

(f) This provision does not affect the court's authority to make non-substantive amendments or corrections to a decision in the absence of a motion by a party or notice to the parties.

Tab 4

Rule 33. Damages for delay or frivolous appeal; recovery of attorney~~'s~~ fees.

(a) **Damages for delay or frivolous appeal.** Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it ~~shall~~ will award just damages, which may include single or double costs, as defined in Rule 34, and/or reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

(b) **Definitions.** For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law. An appeal, motion, brief, or other paper interposed for the purpose of delay is one interposed for any improper purpose such as to harass, cause needless increase in the cost of litigation, or gain time that will benefit only the party filing the appeal, motion, brief, or other paper.

(c) **Procedures.**

(1) The court may award damages upon request of any party or upon its own motion. A party may request damages under this rule only as part of the appellee's motion for summary disposition under Rule 10, as part of the appellee's brief, or as part of a party's response to a motion or other paper.

(2) If the award of damages is upon the motion of the court, the court ~~shall~~ will issue to the party, ~~or~~ the party's attorney, or both an order to show cause why such damages should not be awarded. The order to show cause ~~shall~~will set forth the allegations ~~which~~ that form the basis of the damages and permit at least ten days in which to respond unless otherwise ordered for good cause shown. The order to show cause may be part of the notice of oral argument.

(3) The court will not grant a request for damages by a party or on its own motion without affording the party against whom damages may be awarded an opportunity to file a written objection. If a request for damages is included in a filing to which a response or reply is permitted by applicable rules or by a court order, any written objection to the request must be included in that response or reply. When applicable rules or a court order

do not provide for a response or reply, the court will issue a notice affording the opposing party an opportunity to submit a written objection to the request for damages. ~~If requested by a~~A ~~party against whom damages may be awarded the court shall grant a hearing,~~ny hearing will be at the court's discretion.

Tab 5

Posted: November 20, 2019

Utah Courts

Rules of Appellate Procedure – Comment Period Closed January 4, 2020

URAP005. Discretionary appeals from interlocutory orders. Amend. The proposed amendments to Rules 5 and 10 incorporate substantial changes meant to streamline and modernize the appellate process. For example, the proposed addition of subsection (j) in Rule 5 defines the record on appeal and permits a party to submit an appendix to be filed separately with the party's principal brief. The proposed amendments authorize citations to the record, to an appendix, or both.

URAP010. Procedures for summary disposition or simplified appeal process. Amend. The proposed amendments to Rule 10 allow specific classes of appeals to be designated for expedited review. The proposed amendments also narrow the grounds for parties to seek summary disposition by limiting such motions to jurisdictional objections. The Court retains its right to summarily dismiss, affirm, or reverse a case on its own initiative.

This entry was posted in URAP005, URAP010.

« Rule Governing the Utah State Bar, Supreme Court Rules of Professional Practice – Comment Period Closes January 23, 2020Rules of Criminal Procedure – Comment Period Closed January 4, 2020 »
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6 thoughts on "Rules of Appellate Procedure – Comment Period Closed January 4, 2020"

1. Joanna Landau
   November 21, 2019 at 2:45 pm

   Why do the amendments to Rule 10, dealing with the "simplified appeal process," use the term "well-settled" law, and twice? Who is to say what is "well-settled"? The courts? the appellant? Do you have to have client-consent to file for a Rule 10 expedited appeal? What if the appellant files it without client consent In the criminal context, it seems like grounds for a challenge to the effectiveness of appellate defense counsel if s/he files the motion under 10(b)(2)(E) and misses some legal development or the pocket part of a statutory update, and the AG doesn't respond. Having Utah's appointed attorney

appellate roster alone, does not guarantee effective assistance on appeal every single time. Appellate attorneys are human too.

It doesn't need to be in lines 34-35, and I don't know what it means in line 45. I would take "well-settled" out of lines 34-35, and 45. Leave the procedure just for sentencing appeals, but even then, the aforementioned scenario could still occur.

2. **J. Bogart**
December 5, 2019 at 7:23 am

Re Simplified Appeal Process:
The elements of the principal memoranda are designed for the appellant. If the appellee thinks an issue is not preserved, there is no place that gets addressed as (c)(2)(B) is about listing issues and showing they are preserved. I suppose one could ignore the text, but it does seem off. Also, what happens if there are cross-appeals sent into Simplified Appeal Process? Do the page limits remain? Is that to be addressed by the scheduling order?

3. **J. Robinson**
December 6, 2019 at 4:16 pm

Re: rule 10.

I'm generally in favor of allowing an expedited appeals process for a variety of reasons, but it's not clear exactly what problem these changes are meant to solve/address. I wonder if there might be a better mechanism than modifying the summary dispo rule only. For example, changing rule 31 comes to mind, or maybe a comprehensive set of changes to rules 10 and 31.

In any event, the amended rule appears out of joint with standing order 11 regarding paper vs. electronic, etc. The rule points to 23(f)(2)-(3) for form, but 23(f) is antiquated (the "ten characters per inch" directive only applies to monospaced fonts, monospace fonts are suboptimal, and characters per inch cannot be translated into a font's point size). 23(f) also suggests that paper copies need to be filed with the court, but amended rule 10 makes that somewhat confusing because it only references subsections 2 and 3, but not 1 (where the number of copies to be delivered resides).

Given standing order 11 says that no paper copies need be filed for papers other than briefs, this situation will likely be confusing to appellants who aren't frequent flyers in the court of appeals. Is a rule 10 memorandum a brief under SO 11, or a "document other than a brief."

Granted it may be that efiling is right around the corner and SO 11 will be codified soon, and it may also be that rule 23 will be revised soon. But there is potential confusion in the interim.

In addition, it's not clear how/on what timeline the appellee can contest a motion for simplified appeals process. Nor why the appellee shouldn't be able to move for a simplified process in the first instance.

4. **J. Robinson**
December 6, 2019 at 4:20 pm

Re: rule 5.

If we're modernizing the rule, I suggest we change the timeline for petitioning from 20 days to 21 days. That would be good for consistency, as it appears that most of our somewhat-recently-updated rules (ie., civ pro) express timelines in multiples of 7, ie. 7, 14, 21, 28 …

5. **William Hains**
January 3, 2020 at 5:43 pm

Rule 10:

1. The changes on Lines 17-18 (deleting the 10-day response time for summary dispo motions) has the effect of making summary dispo motions under (a)(1) subject to the timing requirements of rule 23. Rule 23 allows the court to change the response time. It also allows for a reply. If that change was unintentional, you could tack the following sentence onto the end of Line 4, "The parties moved against shall have 10 days from the service of such a motion in which to file a response."

2. The wording on Lines 34-35 and Line 45 create a significant ambiguity–it is not clear whether appeals for the categories listed on Lines 39-44 must also "involv[e] the application of well-settled law to a set of facts," or whether they are stand-alone categories that will always warrant a simplified appeal. The problem is in the placement of the phrase "for appeals involving the application of well-settled law to a set of facts" on Line 34. Preceding that phrase with "and" makes it sound like that is not the controlling test. Assuming the application of well-settled law to a set of facts is a minimum requirement applicable to all simplified appeals, I suggest one of the two following changes:

a) Rewrite Lines 34-35 as follows: “For appeals involving the application of well-settled law to a set of facts, the court may, after a docketing statement has been filed, designate the appeal for a simplified appeal process.”
That should make it clear that Line 45 is a catchall, and that the list on Lines 39-44 is illustrative of types of cases that typically meet that test.

-or-

b) Delete “and for appeals involving the application of well-settled law to a set of facts,” from Lines 34-35. Rewrite Line 39 as follows: “(b)(2) Appeals eligible for a simplified process are those involving the application of well-settled law to a set of facts, which may include, but are not limited to, cases in the following categories:”
Then delete Line 45.

6. **William Hains**
January 3, 2020 at 5:54 pm

Rule 5:

If the changes proposed to rule 21 are adopted, consider not including the email addresses in Rule 5 (Lines 16-18 and 55-57). They will be redundant. Any reference to “filing” in Rule 5 will automatically trigger the new Rule 21.

You could also get rid of the proposed references to paper copies and emailed copies on Lines 12-13 and 54-55 and just refer to filing a “petition” or “answer” (deleting “original and five copies of the” etc. from the current rule). Rule 21 will make it clear that hard copies or emailed copies are acceptable. But references to emailed copies would be less glaringly redundant with Rule 21 than the email addresses.

Rule 5. Discretionary appeals from interlocutory orders.

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

(b) **Fees and ~~copies~~ filing of petition**. ~~For a petition presented to the Supreme Court, t~~The petitioner ~~shall~~ must file with the ~~C~~clerk of the ~~Supreme Court~~appellate court an original paper ~~and five copies of the~~ petition or an emailed petition, together with the fee required by statute. ~~For a petition presented to the Court of Appeals, the petitioner shall file with the Clerk of the Court of Appeals an original and four copies of the petition, together with the fee required by statute.~~ A petition filed by email in the Utah Supreme Court must be sent to supremecourt@utcourts.gov. A petition filed by email in the Utah Court of Appeals must be sent to courtofappeals@utcourts.gov. The petitioner ~~shall~~must serve the petition on the opposing party and notice of the filing of the petition on the trial court. If an order is issued ~~authorizing the~~granting permission to appeal, the clerk of the appellate court ~~shall~~will immediately give notice of the order by email or mail to the respective parties and ~~shall~~ will transmit a certified copy of the order, together with a copy of the petition, to the trial court where the petition and order ~~shall~~ will be filed instead ~~lieu~~ of a notice of appeal.

(c) **Content of petition**.

(c)(1) The petition ~~shall~~ must contain:

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

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

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

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

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

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

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

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

(f) **Response; no reply**. No petition will be granted in the absence of a request by the court for a response. No response to a petition for permission to appeal will be received unless requested by the court. Within ~~10~~14 days after an order requesting a response, any other party may oppose or concur with the petition. Any response to a petition for permission to appeal ~~shall be~~is subject to the same page limitation set out in paragraph (d). An original paper response or an emailed response must be filed in the appellate court. A response filed by email in the Utah Supreme

Court must be sent to supremecourt@utcourts.gov. A response filed by email in the Utah Court of Appeals must be sent to courtofappeals@utcourts.gov.~~and five copies of the answer shall be filed in the Supreme Court. An original and four copies shall be filed in the Court of Appeals.~~ The respondent ~~shall~~ must serve the response on the petitioner. The petition and any response ~~shall~~ will be submitted without oral argument unless otherwise ordered. No reply in support of a petition for permission to appeal ~~shall~~ will be permitted unless requested by the court.

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

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

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

(j) **Record citations in merits briefs.**

(j)(1) The trial court will not prepare or transmit the record under rule 11(b) or 12(b). The record on appeal is as defined in rule 11(a).

(j)(2) A party may cite to the record by identifying documents by name and date and then using a short form after the first citation. A party may prepare and cite to a paginated appendix of select documents from the record. Any such appendix must be filed separately with the party's principal brief.

(j)(3) If a hearing was held regarding the order on appeal, within five days after the grant of permission to appeal, the appellant must order the transcript of the hearing as provided in rule 11(e)(1).

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) **Simplified appeal process; eligible appeals**.

(b)(1) After a docketing statement has been filed, and for appeals involving the application of well-settled law to a set of facts, the court may designate an appeal for a simplified appeal process. An appellant in a case pending before the court of appeals may move for a simplified appeal process under this subsection within 10 days after the docketing statement is filed or the case is transferred to the court of appeals, whichever is later.

(b)(2) Appeals eligible for a simplified process are:

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

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

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

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

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

(c) **Memoranda in lieu of briefs**.

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

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

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

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

(c)(2)(C) an argument, explaining with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal; no separate statement of facts is required, but facts asserted in the argument must be supported by citations to the record;

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

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

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

(c)(4) Principal memoranda must be no more than 7000 words or 20 pages if a word count is not provided. A reply memorandum must be no more than 3500 words or 10 pages if a word count is not provided. The form of memoranda must comply with the requirements of rule 23(f)(2) and 23(f)(3).

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