

Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Paul C. Burke, Chair

Location: Webex (see calendar appointment for instructions)
Date: December 3, 2020
Time: 12:00 to 1:30 p.m.

Action: Welcome and approval of November 5, 2020 minutes	Tab 1	Paul C. Burke, Chair
Review: Supreme Court Style Guide	Tab 2	Sarah Roberts
Action: Rule 15	Tab 3	Paul C. Burke
Action: Rules 19 & 20	Tab 4	Tyler Green, Sarah Roberts
Discussion: Rule 31	Tab 5	Judicial Efficiency Subcommittee
Action: Rules 43, 50, 56 (Incorporating Standing Order 11)	Tab 6	Sarah Roberts
Discussion: Old/new business		Paul C. Burke

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

2021 Meeting schedule:

January 7, 2021	April 1, 2021	July 1, 2021	October 7, 2021
February 4, 2021	May 6, 2021	August 5, 2021	November 4, 2021
March 4, 2021	June 3, 2021	September 2, 2021	December 2, 2021

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

Via WebEx Videoconference
Thursday, November 5, 2020
12:00 pm to 1:30 pm

PRESENT

Christopher Ballard
Troy Booher—
Emeritus Member
Paul C. Burke—Chair
Lisa Collins
Michael Judd—
Recording Secretary
Larissa Lee—Staff
Margaret Lindsay—
Guest

Kirstin Norman—Guest
Judge Gregory Orme
Judge Jill Pohlman
Sarah Roberts—Staff
Clark Sabey
Nathalie Skibine
Scarlet Smith
Adam Trupp—Guest
Mary Westby
Chris Williams

EXCUSED

Patrick Burt
Tyler Green
R. Shawn Gunnarson
Alan Mouritsen
Rodney Parker

1. Welcome and Approval of October 2020 Minutes Paul C. Burke

Paul C. Burke welcomed the committee, and the committee discussed their review of the October 2020 minutes. No comments or objections were noted.

Mary Westby moved to approve the minutes from the October 2020 meeting. Judge Gregory Orme seconded the motion and it passed by unanimous consent.

2. **Discussion:** **Paul C. Burke**
Legislative Update (Rule 4) **Judge Jill Pohlman**
Christopher Ballard

The committee received feedback from a party regarding reinstatement of a right to appeal under Rule 4(g). That question focuses on whether a motion to reinstate an appeal should be entertained by the trial judge (as the rules now provide) or by some other decision-maker. After discussion, the committee determined that no policy change is needed, and the committee moved forward without further formal action.

3. **Action:** **Larissa Lee**
Rule 11

Judge Jill Pohlman noted that the Utah Court of Appeals is currently considering a case that relates to Rule 11, and suggested that it may make practical sense to delay further consideration of Rule 11 until after that case is resolved. After discussion, the committee determined that would be the most prudent approach.

Mary Westby move to table further consideration of the proposed amendments to Rule 11 per the committee's discussion. Lisa Collins seconded the motion and it passed without objection by unanimous consent.

4. **Action:** **Paul C. Burke**
Rule 25A **Larissa Lee**

The proposed Rule 25A amendments are intended to comport with changes already made to other rules. Christopher Ballard noted that the deadline change from 30 to 28 days may be consistent with an ongoing trend, but that with other deadlines currently fixed at 30 days, it may make sense to deal with all 30-day (or 40-day) deadlines at once, should a change be noted.

With that discussion in mind, Mr. Ballard moved to amend the proposed changes to remove the change from a 30-day period to a 28-day period. Lisa Collins seconded that motion and it passed without objection by unanimous consent.

Mr. Ballard then moved to approve the amendments to Rule 25A as they appeared on screen at the committee meeting, subject to the amendment noted above. Scarlet

Smith seconded the motion and it passed without objection by unanimous consent.

5. **Discussion:** **Larissa Lee**
Rules 52–59 (Child Welfare) **Judge Gregory Orme**

Guests Margaret Lindsay, Kirstin Norman, and Adam Trupp explained that the goal of the proposed amendments is intended to resolve existing issues within Rule 52–59, and Rule 55 in particular. Under the existing child-welfare rules, the requirement for roster-qualified counsel attach only if the matter goes to briefing, which makes those proceedings different from other indigent-defense proceedings.

Judge Orme noted work done by prior groups (including a commission led by former Court of Appeals Judge Greenwood) and expressed concern about the committee wiping away decisions made by those prior groups without fully revisiting and retooling the rules and the mechanisms they put into place. With that thought in mind, Judge Orme recommended the formation of an *ad hoc* subcommittee, which could include the committee’s guests as well as other stakeholders.

Based on that recommendation and after further discussion, the committee agreed to form an *ad hoc* subcommittee that would include Ms. Lindsay, Ms. Norman, and Mr. Trupp, as well as Mary Westby, Christopher Ballard, and Lisa Collins. That subcommittee will propose amendments to Rules 52–59 for the committee’s consideration.

6. **Action:** **Christopher Ballard**
Rule 15

The committee’s previous discussion of Rule 15 had centered on the removal of pincites to relevant statutory provisions. Mr. Ballard reported that he had discussed the matter with the Division Director of the tax division and with the head of civil appeals, and both expressed that they had no concerns with deleting the pincite references at issue.

Following that discussion, Mr. Ballard moved to approve the amendments to Rule 15 as those amendments appeared on the screen at the committee meeting. Judge Pohlman seconded the motion and it passed without objection by unanimous

consent.

**7. Discussion:
Old/New Business**

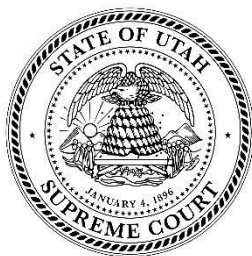
Paul C. Burke

None.

8. Adjourn

A motion to adjourn was made and seconded and there were no objections. The committee is scheduled to meet again on December 3, 2020.

Tab 2



Utah Supreme Court Style Guide for Drafting and Editing Court Rules

Grammar preferences:

- Always include the Oxford comma.
- Strictly limit prepositional phrases unless necessary. Rewrite prepositional phrases to possessives where possible (e.g. use “the court’s judgment” not “the judgment of the court.”).
- Turn buried verbs into verbs (e.g. nouns ending in -tion, -sion, -ment, -ence, -ance, -ity).
- Use active voice where possible.
- Use semicolons to separate items in a series when any element in the series contains an internal comma. If the paragraph contains subparts, use semicolons to separate each subpart even if there are no internal commas, and include “and” or “or” in the penultimate subpart.
- To avoid ambiguity, place a modifier next to the word or phrase it modifies.
- Use “which” as a nonrestrictive relative pronoun. It should almost always follow a comma.
- Draft in the singular.
 - Do not use “their” unless the subject is plural.
 - Do not use gendered pronouns. Use one of these [alternatives](#) instead. If absolutely necessary, pluralize the subject.
- Draft in the present, not the past or future. (e.g. use “is” and not “will be”).

Word preferences:

- Do not use “section” or “subsection” when referring to rules (these are used for statutes). Use “paragraph.”

- Avoid “shall.” Use “may” if permissive, “must” or “may not” if mandatory, “will” if referring to the court.
- Replace all references to “paper” or “papers” with “document” or “documents,” unless the language refers to a physical piece of paper.
- Use “but” instead of “and” to introduce a contrasting idea.
- When citing a statute, use lowercase “section” rather than an abbreviation or the section symbol (§).
- Use “upon” if the meaning is “at the occurrence of...” otherwise use “on.”
- Use “if” instead of “in the event of”
- Minimize “of” where possible (e.g., use “court order” or “court clerk” not “order of the court” or “clerk of court”).

Style preferences:

- Prefer short sentences. Aim for sentences whose length does not exceed 30 words. A subpart is counted as a separate sentence.
- If the sentence requires an exception to be alluded to before it can be read without a miscue, allude to the exception at the beginning of the sentence, unless it is too long to be stated briefly.
- If an interruptive phrase must appear midsentence – because of what it modifies – use em dashes, not commas.
- Prefer em dashes to parentheses.
- Eliminate hyphens separating the prefix from the root word (e.g., prefer pretrial to pre-trial and nonparty to non-party).
- Hyphenate phrasal adjectives (2+ words that modify a noun).
- Defined terms must appear in alphabetical order.
- Draft in the singular unless referring to the plural.
- Spell out all numbers of ten and below, use digits for 11 and above.
- Set deadlines at 7-day increments (e.g. 7 days, 14 days, 21 days, etc.) and do not use business days.

Cross references:

- Avoid code/rule cross references unless they bring clarity, consistency, or controlling standards into the rules.
- If the cross reference is necessary:

Tab 3

1 **Rule 15. Petitions for review in tax cases.**

2 (a) If a petition for judicial review of a State Tax Commission decision is filed ~~pursuant~~
3 ~~to Utah Code Ann. §59-1-602~~ by one party in the district court and by another party in
4 the ~~supreme Court~~ appellate court through a direct appeal, the direct appeal ~~shall~~ will
5 be, absent compelling circumstances;

6 (1) stayed pending the district court proceeding's resolution ~~of the proceeding~~
7 ~~before the district court;~~ and

8 (2) dismissed when the district court issues ~~upon the issuance of~~ a final
9 appealable order ~~by the district court.~~

10 (b) Assuming an absence of compelling circumstances under ~~subsection~~ paragraph (a),
11 all issues appealed in the direct appeal may be raised by any party in the district court
12 proceeding, and if not raised in the district court proceeding, the direct appeal issues
13 will be waived and subject to dismissal with the direct appeal when the district court
14 issues ~~upon the issuance of~~ a final appealable order ~~by the district court.~~

15 (c) A party may not appeal ~~pursuant to Utah Code Ann. §59-1-602~~ to both the district
16 court and ~~to the Supreme Court~~ appellate court through appeal. However, a party who
17 has appealed to either the district court or the ~~Supreme Court~~ appellate court may join
18 an appeal filed by another party in the separate court through filing a cross-appeal ~~at~~ in
19 the ~~Supreme Court~~ appellate court or by intervening in the district court appeal.

Tab 4

1 **Rule 19. Extraordinary writs.**

2 (a) **Petition for extraordinary writ to a judge or agency; petition; service and filing.** An
3 application for an extraordinary writ referred to in Rule 65B, Utah Rules of Civil Procedure,
4 directed to a judge, agency, person, or entity ~~shall~~must be made by filing a petition with the ~~clerk~~
5 ~~of the~~ appellate court clerk. ~~Service of t~~The petition ~~shall~~must be ~~made~~served on the respondent
6 judge, agency, person, or entity and on all parties to the action or case in the trial court ~~or~~
7 ~~agency~~. In the event of an original petition in the appellate court where no action is pending in
8 the trial court ~~or agency~~, the petition ~~shall~~must be served personally on the respondent judge,
9 agency, person, or entity and service ~~shall~~must be made by the most direct means available on all
10 persons or associations whose interests might be substantially affected.

11 (b) **Contents of petition and filing fee.** A petition for an extraordinary writ ~~shall~~must contain
12 the following:

- 13 (1) A statement of all persons or associations, by name or by class, whose interests might
14 be substantially affected;
- 15 (2) A statement of the issues presented and of the relief sought;
- 16 (3) A statement of the facts necessary to an understanding of the issues presented by the
17 petition;
- 18 (4) A statement of the reasons why no other plain, speedy, or adequate remedy exists and
19 why the writ should issue;
- 20 (5) Except in cases where the writ is directed to a ~~district trial~~ court, a statement
21 explaining why it is impractical or inappropriate to file the petition for a writ in the
22 ~~district trial~~ court;
- 23 (6) Copies of any order or opinion or parts of the record ~~which~~that may be essential to an
24 understanding of the matters set forth in the petition;
- 25 (7) A memorandum of points and authorities in support of the petition; and
- 26 (8) The prescribed filing fee, unless waived by the court.

27 | (9) Where emergency relief is sought, the petitioner must file a separate petition ~~must and~~
28 | comply with the additional requirements set forth in Rule 23C(b), ~~including any~~
29 | ~~additional requirements set forth by that subpart.~~

30 | (10) Where the subject of the petition is an interlocutory order, the petitioner must state
31 | whether a petition for interlocutory appeal has been filed and, if so, summarize its status
32 | or, if not, state why interlocutory appeal is not a plain, speedy, or adequate remedy.

33 | (c) **Response to petition.** The judge, agency, person, or entity and all parties in the action other
34 | than the petitioner ~~shall~~will be deemed respondents for all purposes. Two or more respondents
35 | may respond jointly. If any respondent does not desire to appear in the proceedings, that
36 | respondent may advise the ~~clerk of the~~ appellate court clerk and all parties by letter, but the
37 | allegations of the petition ~~shall~~will not thereby be deemed admitted. Where emergency relief is
38 | sought, Rule 23C(d) ~~shall~~applies. Otherwise, within seven days after ~~service of~~ the petition is
39 | served, any respondent or any other party may file a response in opposition or concurrence,
40 | which includes supporting authority.

41 | (d) **Review and disposition of petition.** The court ~~shall~~will render a decision based on the
42 | petition and any timely response, or it may require briefing or ~~the submission of~~request further
43 | information, and may hold oral argument at its discretion. If additional briefing is required, the
44 | briefs ~~shall~~must comply with Rules 24 and 27. Rule 23C(f) applies to requests for hearings in
45 | emergency matters. With regard to emergency petitions submitted under Rule 23C, and where
46 | consultation with other members of the court cannot be timely obtained, a single judge or justice
47 | may grant or deny the petition, subject to the court's review ~~by the court~~ at the earliest possible
48 | time. With regard to all petitions, a single judge or justice may deny the petition if it is frivolous
49 | on its face or fails to materially comply with the requirements of this rule or Rule 65B, Utah
50 | Rules of Civil Procedure. A petition's ~~The denial of a petition~~ by a single judge or justice may be
51 | reviewed by the appellate court upon specific request filed within seven days of notice of
52 | disposition, but such request ~~shall~~may not include any additional argument or briefing.

53 | (e) **Transmission of record.** In reviewing a petition for extraordinary writ, the appellate court
54 | may order transmission of the record, or any relevant portion thereof, ~~to be transmitted.~~

55 | ~~(f) **Number of copies.** For a petition presented to the Supreme Court, petitioner shall file with~~
56 | ~~the clerk of the court an original and five copies of the petition. For a petition pending in the~~

57 ~~Supreme Court, respondent shall file with the clerk of the court an original and five copies of the~~
58 ~~response. For a petition presented to the Court of Appeals, petitioner shall file with the clerk of~~
59 ~~the court an original and four copies of the petition. For a petition pending in the Court of~~
60 ~~Appeals, respondent shall file with the clerk of the court an original and four copies of the~~
61 ~~response.~~

62 ~~(g)~~ **Issuance of** an extraordinary writ by appellate court sua sponte on the court's
63 motion. The appellate court, in aid of its own jurisdiction in extraordinary cases, may on its own
64 motion issue a writ of certiorari ~~sua sponte~~ directed to a judge, agency, person, or entity. A copy
65 of the writ ~~shall~~will be served on the named respondents in the manner and by an individual
66 authorized to accomplish personal service under Rule 4, Utah Rules of Civil Procedure. In
67 addition, copies of the writ ~~shall~~must be transmitted by the ~~clerk of the~~ appellate court clerk, by
68 the most direct means available, to all persons or associations whose interests might be
69 substantially affected by the writ. The respondent and the persons or associations whose interests
70 are substantially affected may, within four days of ~~the issuance of~~ the writ's issuance, petition
71 the court to dissolve or amend the writ. The petition ~~shall~~must be accompanied by a concise
72 statement of the reasons for dissolution ing or amendment ing of the writ.

1 Rule 20. Habeas corpus proceedings.

2 (a) ~~Application~~ Petition for an original writ of habeas corpus; ~~when appropriate. If a~~
3 petition for a writ of habeas corpus may be filed in the appellate court only if the petitioner
4 demonstrates that it is impractical or inappropriate to file in the district court or other
5 extraordinary circumstances exist. ~~is filed in the appellate court or submitted to a justice or judge~~
6 ~~thereof, it will be referred to the appropriate district court unless it is shown on the face of the~~
7 ~~petition to the satisfaction of the appellate court that the district court is unavailable or other~~
8 ~~exigent circumstances exist.~~ If a petition is initially filed in a district court or the appellate
9 court ~~is referred~~ the petition to at the district court ~~by the appellate court~~ and the district court
10 denies or dismisses the petition, the petitioner may not ~~refiling~~ of the petition with the
11 appellate court. ~~is inappropriate; Instead, the petitioner must proper procedure in such an~~
12 ~~instance is an appeal from the district court's order of the district court.~~

13 (b) Procedure on original petition.

14 (1) Filing. A habeas corpus proceeding may be commenced in the appellate court by
15 filing a petition with the ~~clerk of the appellate~~ clerk ~~court~~ or, in emergency situations,
16 with a justice or judge of the court. ~~For matters pending in the Supreme court, an original~~
17 ~~petition and seven copies must be filed in the Supreme Court. For matters pending in the~~
18 ~~Court of Appeals, an original petition and four copies must be filed in the Court of~~
19 ~~Appeals.~~

20 (2) Service. The petitioner must serve ~~a copy of~~ the petition on the respondent, except:
21 ~~pursuant to any of the methods provided for service of process in Rule 4 of the Utah~~
22 ~~Rules of Civil Procedure but, if imprisoned, the petitioner may mail by United States~~
23 ~~mail, postage prepaid, a copy of the petition to the Attorney General of Utah or the~~
24 ~~county attorney of the county if imprisoned in a county jail. Such service is in lieu of~~
25 ~~service upon the named respondent, and a certificate of mailing under oath that a copy~~
26 ~~was mailed to the Attorney General or county attorney must be filed with the clerk of the~~
27 ~~appellate court.~~

28 (A) A petitioner imprisoned in the custody of the Utah Department of Corrections
29 or state mental hospital may mail, postage prepaid, the petition to the Utah
30 Attorney General. A petitioner incarcerated in a county jail may mail, postage

31 prepaid, the petition to the applicable county attorney. The petitioner must file a
32 certificate of mailing under oath that a copy was mailed to the Attorney General
33 or county attorney with the appellate clerk.

34 (B) If the respondent cannot be found or the respondent does not have the person
35 in custody, the writ and any other process issued may be served on anyone having
36 the petitioner in custody, in the manner and with the same effect as if that person
37 had been made respondent in the action.

38 (C) If the respondent refuses or avoids service, or attempts wrongfully to carry the
39 person imprisoned or restrained out of the county or state after service of the writ,
40 the person serving the writ must immediately arrest the respondent or other person
41 so resisting, together with the person designated in the writ, for presentation
42 before the court.

43 (3) Emergencies. In emergency situations, ~~an order to show cause may be issued by~~ the
44 court, or a single justice or judge if the court is not available, may issue an order to show
45 cause and may issue a stay or injunction ~~may be issued~~ to preserve the court's jurisdiction
46 until such time as the court can hear argument on whether a writ should issue.

47 ~~(24)~~ Response. If the petition is not referred to the district court, the attorney general or
48 the county attorney, as the case may be, must answer the petition or otherwise plead
49 within ~~ten~~10 days after the petition is served ~~of a copy of the petition~~. When a
50 responsive pleading or motion is filed or an order to show cause is issued, the court must
51 set the case for hearing and the clerk must ~~give notice to~~notify the parties.

52 ~~(35)~~ Notice. The appellate clerk ~~of the appellate court~~ must, if the petitioner is
53 imprisoned or ~~is a person~~ otherwise in the custody of the state or any political subdivision
54 thereof, give notice of the time for ~~the filing of~~ memoranda and for oral argument, to the
55 attorney general, the county attorney, or the city attorney, depending on where the
56 petitioner is held and whether the petitioner is detained pursuant to state, county, or city
57 law. ~~Similar notice must be given to any other person or an association detaining the~~
58 ~~petitioner not in custody of the state.~~

59 (c) **Contents of petition and attachments.** The petition must include the following:

60 (1) A statement of where the petitioner is detained, by whom the petitioner is detained,
61 and the reason, if known, why the respondent has detained the petitioner.

62 (2) A brief statement of the reasons why the detention is deemed unlawful. The petition
63 must state in plain and concise language:

64 (A) the facts giving rise to each claim that the confinement or detention ~~is in~~
65 ~~violation of~~violates a state order or judgment or a constitutional right established
66 by the United States Constitution or the Constitution of the State of Utah or is
67 otherwise illegal;

68 (B) whether an appeal was taken from the judgment or conviction ~~pursuant to~~
69 under which ~~a~~ petitioner is incarcerated; and

70 (C) whether the allegations of illegality were raised in the appeal and decided by
71 the appellate court.

72 (3) A statement ~~indicating of~~ whether any other petition for a writ of habeas corpus based
73 on the same or similar grounds has been filed and the reason why relief was denied.

74 (4) Copies of the court order or legal process, court opinions, and findings ~~pursuant~~
75 ~~to~~under which the petitioner is detained or confined, affidavits, copies of orders, and
76 other supporting written documents must be attached to the petition or ~~it must be~~
77 ~~stated~~petitioner must state ~~by petitioner~~ why the same are not attached.

78 (d) **Contents of answer.** The answer must concisely set forth specific admissions, denials, or
79 affirmative defenses to the petition's ~~allegations of the petition~~ and must state plainly and
80 unequivocally whether the respondent has, or at any time has had, the person designated in the
81 petition under control and restraint and, if so, the cause for the restraint. The answer must not
82 contain citations of legal authority or legal argument.

83 (e) **Other provisions.**

84 ~~(1) If the respondent cannot be found or if the respondent does not have the person in~~
85 ~~custody, the writ and any other process issued may be served upon anyone having the~~
86 ~~petitioner in custody, in the manner and with the same effect as if that person had been~~
87 ~~made respondent in the action.~~

88 ~~(2) If the respondent refuses or avoids service, or attempts wrongfully to carry the person~~
89 ~~imprisoned or restrained out of the county or state after service of the writ, the person~~
90 ~~serving the writ must immediately arrest the respondent or other person so resisting, for~~
91 ~~presentation, together with the person designated in the writ, forthwith before the court.~~

92 (31) At the time ~~of the issuance of~~ the writ is issued, the court may, if it appears that the
93 person detained will be carried out of the court's jurisdiction ~~of the court~~ or will suffer
94 some irreparable injury before compliance with the writ can be enforced, cause a warrant
95 to issue, reciting the facts and directing the sheriff to bring the detained person before the
96 court to be dealt with according to law.

97 (42) The respondent must appear at the proper time and place with the person designated
98 or show good cause for not doing so. If the person designated has been transferred, the
99 respondent must state when and to whom the transfer was made, and the reason and
100 authority for the transfer. The writ must not be disobeyed for any defect of form or
101 misdescription of the person restrained or of the respondent, if enough is stated to show
102 the meaning and intent.

103 (53) The person restrained may waive any rights to be present at the hearing, in which
104 case the writ must be modified accordingly. Pending decision ~~a determination of the~~
105 ~~matter~~, the court may place such person in the custody of an individual or association as
106 may be deemed proper.

Tab 5

1 **Rule 31. Expedited appeals decided after oral argument without written opinion.**

2 (a) **Motion and stipulation for expedited hearing.** After ~~the filing of~~ all briefs in an appeal
3 have been filed, a party may move for an expedited decision without a written opinion. The
4 motion ~~shall~~must be in the form prescribed by Rule 23 and ~~shall~~must describe: the nature of the
5 case, the issues presented, and any special reasons the parties may have for an expedited
6 decision. The court may dispose of any qualified case under this rule upon its own motion before
7 or after oral argument.

8 (b) **Cases ~~which~~that qualify for expedited decision.** The following are matters ~~which~~that the
9 court may consider for expedited decision without opinion:

10 (1) appeals involving uncomplicated factual issues based primarily on documents;

11 (2) summary judgments;

12 (3) dismissals for failure to state a claim;

13 (4) dismissals for lack of personal or subject matter jurisdiction; and

14 (5) judgments or orders based on uncomplicated issues of law.

15 (c) In all motions brought under this rule, the substantive rules of law should be deemed settled,
16 although the parties may differ as to their application.

17 (d) **Appeals ineligible for expedited decision.** The court will not grant a motion for an
18 expedited appeal in cases raising substantial constitutional issues, issues of significant public
19 interest, issues of law of first impression, or complicated issues of fact or law.

20 (e) **Procedure if expedited motion is granted.** If a motion for expedited decision is granted, the
21 appeal will be given an expedited setting for oral argument within 45 to 60 days from the date of
22 the order granting the motion. Within two days after submission of the appeal, the court will
23 conference, decide the case, and issue a written order which need not be accompanied by an
24 opinion. ~~Entry of the order by the clerk in the records of the court, shall constitute the entry of~~
25 ~~†~~The judgment of the court will be entered when the clerk docket the order.

26 (f) **Effect as precedent.** Appeals decided under this rule will not stand as precedent, but, in other
27 respects, will have the same force and effect as other court decisions ~~of the court~~.

28 | (g) ~~Issuance of~~ing **written opinion**. If it appears to the court after the case has been submitted
29 | for decision that a written opinion should be issued, the time limitation in paragraph (e) ~~shall~~will
30 | not apply and the parties will be so notified.

Tab 6

1 **Rule 43. Certification by the Court of Appeals to the Supreme Court.**

2 (a) **Transfer.** In any case over which the Court of Appeals has original appellate jurisdiction, the
3 court may, upon the affirmative vote of at least four judges of the court, certify a case for
4 immediate transfer to the Supreme Court for determination.

5 (b) **Procedure for transfer.**

6 (1) The Court of Appeals may, on its own motion, decide whether a case should be
7 certified. Any party to a case may, however, file ~~and serve an original and eight copies of~~
8 a suggestion for certification not exceeding five pages, ~~setting forth the reasons~~explaining
9 why the party believes that the case should be certified. The suggestion may not be filed
10 ~~prior to the filing of~~before a docketing statement is filed. Within ~~ten~~10 days of service, an
11 adverse party may file and serve ~~an original and eight copies of a~~ statement not ~~in excess~~
12 ~~of~~exceeding five pages either supporting or opposing the suggestion for certification.

13 (2) Upon ~~entry of~~entering the certification order ~~of certification~~, the Court of Appeals
14 Clerk ~~of the Court of Appeals shall~~must immediately transfer the case, including the
15 record and file of the case from the trial court, all papers filed in the Court of Appeals,
16 and a written statement of all docket entries in the case up to and including the
17 certification order, to the Supreme Court Clerk ~~of the Supreme Court~~. The Court of
18 Appeals Clerk ~~of the Court of Appeals shall~~must promptly notify all parties and the trial
19 court clerk ~~of the trial court~~ that the case has been transferred.

20 (3) Upon ~~receipt of~~receiving the certification order ~~of certification~~, the Supreme Court
21 Clerk ~~of the Supreme Court shall~~must enter the appeal upon the Supreme Court's docket
22 ~~of the Supreme Court~~. The ~~clerk of the~~ Supreme Court Clerk shallmust immediately send
23 notices to all parties and to the trial court clerk ~~of the trial court~~ that the case has been
24 docketed and that all further filings will be made with the Supreme Court Clerk ~~of the~~
25 Supreme Court. The notice ~~shall~~must state the docket number assigned to the case in the
26 Supreme Court. The case ~~shall~~will proceed before the Supreme Court to final decision
27 and disposition as in other appellate cases ~~pursuant to~~under these rules.

28 (4) If the record on appeal has not been filed with the Court of Appeals Clerk ~~of the Court~~
29 ~~of Appeals~~ as of the date of the certification order ~~of transfer~~, the Court of Appeals Clerk
30 ~~of the Court of Appeals shall~~must notify the trial court clerk ~~of the trial court~~ that upon

31 ~~completion of~~completing the conditions for filing the record by that court, the clerk
32 ~~shall~~must transmit the record on appeal to the Supreme Court Clerk ~~of the Supreme~~
33 ~~Court~~. If, however, the record on appeal has already been transmitted to and filed with the
34 Court of Appeals Clerk ~~of the Court of Appeals~~ as of the date the certification order is
35 entered~~of the entry of the order of transfer~~, the Court of Appeals Clerk ~~of the Court of~~
36 ~~Appeals~~ ~~shall~~must transmit the record on appeal to the Supreme Court Clerk ~~of the~~
37 ~~Supreme Court~~ within five days ~~of the date of the entry of the order of transfer~~after the
38 certification order is entered.

39 (c) **Criteria for transfer.** The Court of Appeals ~~shall~~must consider certification only in the
40 following cases:

41 (1) Cases ~~which are of such a nature that~~where it is apparent that the case should be
42 decided by the Supreme Court and that the Supreme Court would ~~probably~~likely grant a
43 petition for a writ of certiorari in the case if decided by the Court of Appeals, irrespective
44 of how the Court of Appeals might rule; and

45 (2) Cases ~~which~~that will govern a number of other cases involving the same legal issue
46 or issues pending in the district courts, juvenile courts, or the Court of Appeals, or ~~which~~
47 ~~are~~ cases of first impression under state or federal law ~~which~~that will have wide
48 applicability.

1 **Rule 50. Response; reply; brief of amicus curiae.**

- 2 (a) **Response.** Within ~~30~~28 days after ~~service of a~~ petition for a writ of certiorari is served, any
3 other party may file a response ~~to the petition~~. Or, if the satisfaction of a petitioner's obligation
4 ~~to~~ pays at the required filing fee or ~~to~~ obtains a waiver of that fee ~~is accomplished~~ after service,
5 then the time for response ~~shall~~will run from the date that obligation is satisfied~~of satisfaction of~~
6 ~~that obligation~~. The response ~~shall~~must comply with Rule 27 and, as applicable, Rule 49. ~~Seven~~
7 ~~copies of the response, one of which shall contain an original signature, shall be filed with the~~
8 ~~Clerk of the Supreme Court.~~ A party opposing a petition may so indicate by letter in lieu of a
9 formal response, but the letter ~~shall~~may not include any argument or analysis.
- 10 (b) **Page limitation.** A response ~~shall~~must be as short as possible and may not, ~~in any single~~
11 ~~case~~, exceed 20 pages, excluding the subject index, the table of authorities, and the appendix.
- 12 (c) **Objections to jurisdiction.** The court will not accept a ~~No~~ motion ~~by a respondent~~ to dismiss
13 a petition for a writ of certiorari ~~will be received~~. Objections to the Supreme Court's jurisdiction
14 ~~of the Supreme Court~~ to grant the petition may be included in the response.
- 15 (d) **Reply.** A petitioner may file a reply addressed to arguments first raised in the response ~~may~~
16 ~~be filed by any petitioner~~ within ~~fourteen~~14 days after ~~service of~~ the response is served, but
17 distribution of the petition and response to the court ordinarily will not be delayed pending the
18 filing of any such reply unless the response includes a new request for relief, such as an award of
19 attorney fees for the response. The reply ~~shall~~must be as short as possible; and ~~but~~ may not
20 exceed five pages, and ~~shall~~must comply with Rule 27. ~~The number of copies to be filed shall be~~
21 ~~as described in Rule 50(a).~~
- 22 (e) **Brief of amicus curiae.** Amicus curiae may only file a brief ~~of an amicus curiae~~ concerning a
23 petition for certiorari ~~may be filed only if the~~ by leave of the Supreme Court ~~granted a~~ on motion
24 for leave to file an amicus curiae brief or if the Supreme Court ~~at the~~ requests it ~~of the Supreme~~
25 ~~Court~~. A ~~The~~ motion for leave ~~shall~~must be accompanied by a proposed amicus brief, not to
26 exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations
27 required by Rule 49(a)(7), and the appendix. The proposed amicus brief ~~shall~~must comply with
28 Rule 27, and, as applicable, Rule 49. ~~The number of copies of the proposed amicus brief~~
29 ~~submitted to the Supreme Court shall be the same as dictated by Rule 48(f).~~ A motion for leave
30 ~~shall~~must identify the applicant's interest ~~of the applicant~~ and ~~shall~~ state the reasons why an

31 | amicus curiae brief ~~of an amicus curiae~~ is desirable. The motion for leave ~~shall~~must be filed on
32 | or before the date ~~of the filing of~~ the timely petition or response of the party whose position the
33 | amicus curiae will support is filed, unless the Supreme Court for good cause shown otherwise
34 | orders. Parties to the proceeding in the Court of Appeals may indicate their support for, or
35 | opposition to, the motion. Any party's response ~~of a party~~ to a motion for leave ~~shall~~must be
36 | filed within seven days ~~of service of~~after the motion is served. If leave is granted, the proposed
37 | amicus brief will be accepted as filed and, unless the order granting leave otherwise
38 | ~~indicates~~directs, amicus curiae also will be permitted to submit a brief on the merits, provided it
39 | ~~is submitted in compliance~~complies with the briefing schedule of the party the amicus curiae
40 | supports. Denial of a motion for leave to file brief of an amicus curiae concerning a petition for
41 | certiorari ~~shall~~will not preclude a subsequent amicus motion relating to the merits after a grant
42 | of certiorari. All motions for leave to file brief of an amicus curiae on the merits after a grant of
43 | certiorari are governed by Rule 25.

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

2 (a) **Filing.** Any appellee, including the Guardian ad Litem, may file a response to the petition on
3 appeal with the appellate clerk; ~~An original and four copies of the response must be filed with the~~
4 ~~clerk of the Court of Appeals~~ within 154 days after service of the appellant's petition on appeal.
5 The response ~~It~~shall~~must~~ be accompanied by proof of service to; ~~The response shall be deemed~~
6 ~~filed on the date of the postmark if first class mail is utilized. The appellee shall serve a copy on~~
7 counsel of record of each party, including the Guardian ad Litem, or; on the party if the party is
8 not represented by counsel; ~~then on the party at the party's last known address, in the manner~~
9 ~~prescribed in Rule 21(e).~~

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

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