



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Chris Ballard, Chair
Nathalie Skibine, Vice Chair

Location: Webex (see calendar appointment for instructions)
Date: March 3, 2022
Time: 12:00 to 1:30 p.m.

Action: Welcome and approval of February 3, 2022 Minutes	Tab 1	Chris Ballard, Chair
Action: Rules 4, 5, 22, 52	Tab 2	Mary Westby
Action: Rules that use "memorandum" or "affidavit"	Tab 3	Lisa Collins, Nick Stiles, Amber Griffith
Action: Cross-petition Memo	Tab 4	Nick Stiles, Clark Sabey
Discussion: Old/new business		Chris Ballard, Chair

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

2022 Meeting schedule:

April 7, 2022	July 7, 2022	October 6, 2022
May 5, 2022	August 4, 2022	November 3, 2022
June 2, 2022	September 1, 2022	December 1, 2022

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, February 3, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams	Michael Judd—	Nathalie Skibine
Christopher Ballard—Chair	Recording Secretary	Scarlet Smith
Troy Booher— Emeritus Member	Amber Griffith—Staff	Nick Stiles—Staff
Patrick Burt	Judge Jill Pohlman	Mary Westby
Lisa Collins	Judge Gregory Orme	
Carol Funk	Stanford Purser	
Tyler Green	Michelle Quist	EXCUSED
	Clark Sabey	None

1. Action: **Chris Ballard**
Approval of January 2022 Minutes

The committee reviewed the January 2022 minutes and noted minor corrections needed to Items 1, 6, and 7.

With those corrections made, Michelle Quist moved to approve the January 2022 minutes as amended. Judge Pohlman seconded that motion, and it passed without objection by unanimous consent.

**2. Action:
Rule 4(f)**

Chris Ballard

Christopher Ballard reported to the committee that he had discussed revisions to Rule 4(f) with the Utah Supreme Court and that the Court appreciated those changes. The Court indicated, however, that it would like the rule to contain a more concrete deadline for filing a motion to reinstate the period for direct appeal. Mr. Ballard proposed that the rule include a 90-day deadline. Emily Adams offered that based on her experience with clients, 90 days seems too short. Nathalie Skibine also noted that in many cases, it can be difficult to pin down exactly when an individual “had the facts” needed to bring a motion, particularly when facts are not properly communicated from an attorney to client. Judge Orme suggested that the committee may consider a reference to facts being “personally known” to the individual seeking relief.

The committee continued with a robust discussion regarding what triggers the running of the deadline at issue. Judge Pohlman then suggested the possibility of extending the deadline to one year, which would eliminate motions that are difficult to resolve because they are brought 10 to 15 years after the fact, while providing ample time to identify the need for a motion. The committee agreed with that proposal.

Following that discussion, Judge Pohlman moved to adopt the amendment as modified and as shown on screen at the committee meeting. Judge Orme seconded that motion, and it passed without objection by unanimous consent.

**3. Action:
Rule 25**

Chris Ballard

The committee considered two public comments regarding the proposed changes to Rule 25. The first comment dealt with a concern about giving notice. The committee suggested that the deadline at issue be cut back by 7 days, thereby allowing time for an interested non-party to search for and consider amicus issues before filing notice of amicus brief. (That change would be implemented by changing the number “14” on line 4 of the draft rule to “7.”)

Following that discussion, Tyler Green moved to approve the rule as amended and as shown on screen at the committee meeting. Judge Pohlman seconded that motion,

and it passed without objection by unanimous consent.

The second comment dealt with whether the committee should clarify the deadline in subsection (g)(1), either by express statement or by reference. The committee engaged in a brief discussion, but then noted that it had already considered the possibility of providing specific deadlines and preferred the current approach.

Following that discussion, Clark Sabey moved to leave the rule unchanged. Stan Purser seconded that motion, and it passed without objection by unanimous consent.

**4. Action:
Rule 23**

Stan Purser

The draft amendment to Rule 23 introduces an obligation to confer with other side on all motions. Committee discussed the pros and cons of the requirement, including whether it may be necessary and what types of motion, by force of existing rules, would be excluded. After discussion, Mr. Sabey proposes that the committee craft some sort of recommendation/encouragement, but stop short of mandating as part of the rules. The committee landed on an approach in which this requirement is imposed on motions on a category-by-category basis. However, the committee did agree to change the rule's use of the word "memorandum" to "discussion" to avoid confusion about separate motions and memoranda.

After that discussion, Mr. Sabey moved to approve the rule as amended and as shown on screen at the committee meeting. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

5. **Action:** **Chris Ballard**
Rule 20 **Clark Sabey**
Mary Westby

The subcommittee on Rule 20 reported that it had met and discussed a proposal that Rule 20 be deleted, for the reasons described in the subcommittee's memo to the committee.

Following that discussion and based on the committee's review of that memo, Ms. Westby moved to delete Rule 20. Ms. Quist seconded that motion, and it passed without objection by unanimous consent.

6. **Discussion:** **Nick Stiles**
Orders-on-the-Weekends Memo **Mary Westby**

The committee resumed its discussion of the nature of the orders-on-weekends problem, both in concept and in application. After that discussion, Ms. Westby offered to generate a proposal for how best to address this issue. The committee welcomed that offer, and agreed to wait to coordinate with other committees regarding a proposal until we've agreed on an approach.

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

Ms. Quist raised a follow-up concern about the timing mechanisms of the proposed new Rule 25. The committee will attend to that concern in a future meeting.

8. **Adjourn**

After a productive meeting, Ms. Westby moved to adjourn. Lisa Collins seconded that motion. There were no objections and the motion carried. The committee's next meeting will take place on March 3, 2022.

TAB 2

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

2 (a) **Appeal from final judgment and order.** In a case in which an appeal is permitted as
3 a matter of right from the trial court to the appellate court, the notice of appeal required
4 by Rule [3](#) shall be filed with the clerk of the trial court within 30 days after the date of
5 entry of the judgment or order appealed from. If the trial court enters a judgment or
6 order on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the
7 first day following the trial court's entry that is not a Saturday, Sunday, or legal holiday.
8 However, when a judgment or order is entered in a statutory forcible entry or unlawful
9 detainer action, the notice of appeal required by Rule [3](#) shall be filed with the clerk of
10 the trial court within 10 days after the date of entry of the judgment or order appealed
11 from.

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

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

15 (A) A motion for judgment under Rule [50\(b\)](#) of the Utah Rules of Civil
16 Procedure;

17 (B) A motion to amend or make additional findings of fact, whether or not
18 an alteration of the judgment would be required if the motion is granted,
19 under Rule [52\(b\)](#) of the Utah Rules of Civil Procedure;

20 (C) A motion to alter or amend the judgment under Rule [59](#) of the Utah
21 Rules of Civil Procedure;

22 (D) A motion for a new trial under Rule [59](#) of the Utah Rules of Civil
23 Procedure;

24 (E) A motion for relief under Rule [60\(b\)](#) of the Utah Rules of Civil
25 Procedure if the motion is filed no later than 28 days after the judgment is
26 entered;

27 (F) A motion or claim for attorney fees under Rule [73](#) of the Utah Rules of
28 Civil Procedure; or

29 (G) A motion for a new trial under Rule [24](#) of the Utah Rules of Criminal
30 Procedure.

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

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

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

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

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

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

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

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

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

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

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

81 (C) The party, if any, responsible for serving the judgment under Rule
82 [58A\(d\)](#) of the Utah Rules of Civil Procedure did not promptly serve a copy
83 of the signed judgment on the party seeking to appeal.

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

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

91 **Advisory Committee Note**

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

2 (a) **Petition for permission to appeal.** Any party may seek an appeal from an
3 interlocutory order by filing a petition for permission to appeal from the interlocutory
4 order with the appellate court with jurisdiction over the case. The petition must be filed
5 within 21 days after the trial court's order is entered and served on all other parties to
6 the action. If the trial court enters an order on a Saturday, Sunday, or legal holiday, the
7 date of entry will be deemed to be the first day following the trial court's entry that is
8 not a Saturday, Sunday, or legal holiday. A timely appeal from an order certified under
9 Rule 54(b), Utah Rules of Civil Procedure, that the appellate court determines is not
10 final may, in the appellate court's discretion, be considered by the appellate court as a
11 petition for permission to appeal an interlocutory order. The appellate court may direct
12 the appellant to file a petition that conforms to the requirements of paragraph (c) of this
13 rule.

14 (b) **Fees and filing of petition.** The petitioner must file the petition with the appellate
15 court clerk and pay the fee required by statute within seven days of filing. The
16 petitioner must serve the petition on the opposing party and notice of the filing of the
17 petition on the trial court. If the appellate court issues an order granting permission to
18 appeal, the appellate court clerk will immediately give notice of the order to the
19 respective parties and will transmit the order to the trial court where the order will be
20 filed instead of a notice of appeal.

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

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

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

25 (c)(1)(B) The issue presented expressed in the terms and circumstances of
26 the case but without unnecessary detail, and a demonstration that the

27 issue was preserved in the trial court. Petitioner must state the applicable
28 standard of appellate review and cite supporting authority;

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

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

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

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

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

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

50 (f) **Response; no reply.** No petition will be granted in the absence of a request by the
51 court for a response. No response to a petition for permission to appeal will be received
52 unless requested by the court. Within 14 days after an order requesting a response, any
53 other party may oppose or concur with the petition. Any response to a petition for

54 permission to appeal is subject to the same page limitation set out in paragraph (d) and
55 must be filed in the appellate court. The respondent must serve the response on the
56 petitioner. The petition and any response will be submitted without oral argument
57 unless otherwise ordered. No reply in support of a petition for permission to appeal
58 will be permitted unless requested by the court.

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

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

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

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

79 (j)(1) The trial court will not prepare or transmit the record under rule 11(b) or
80 12(b). The record on appeal is as defined in rule 11(a).

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

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

1 **Rule 22. Computation and enlargement of time.**

2 (a) **Computation of time.** In computing any period of time prescribed by these rules, by
3 an order of the court, or by any applicable statute, the day of the act, event, or default
4 from which the designated period of time begins to run shall not be included. If the
5 designated period of time begins to run from the date of entry of an order or judgment
6 and the order or judgment is entered on a Saturday, Sunday, or legal holiday, the date
7 of entry will be deemed to be the first day following the entry that is not a Saturday,
8 Sunday, or legal holiday. The last day of the period shall be included, unless it is a
9 Saturday, a Sunday, or a legal holiday, in which event the period extends until the end
10 of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of
11 time prescribed or allowed, without reference to any additional time under subsection
12 (d), is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be
13 excluded in the computation. As used in this rule, “legal holiday” includes days
14 designated as holidays by the state or federal governments.

15 (b) **Enlargement of time.**

16 (b)(1) Motions for an enlargement of time for filing briefs beyond the time
17 permitted by stipulation of the parties under Rule [26\(a\)](#) are not favored.

18 (b)(2) The court for good cause shown may upon motion extend the time
19 prescribed by these rules or by its order for doing any act, or may permit an act
20 to be done after the expiration of time. This rule does not authorize the court to
21 extend the jurisdictional deadlines specified by any of the rules listed in Rule [2](#).
22 For the purpose of this rule, good cause includes, but is not limited to, the
23 complexity of the case on appeal, engagement in other litigation, and extreme
24 hardship to counsel.

25 (b)(3) A motion for an enlargement of time shall be filed prior to the expiration of
26 the time for which the enlargement is sought.

27 (b)(4) A motion for enlargement of time shall state:

- 28 (b)(4)(A) with particularity the good cause for granting the motion;
- 29 (b)(4)(B) whether the movant has previously been granted an enlargement
30 of time and, if so, the number and duration of such enlargements;
- 31 (b)(4)(C) when the time will expire for doing the act for which the
32 enlargement of time is sought; and
- 33 (b)(4)(D) the date on which the act for which the enlargement of time is
34 sought will be completed.
- 35 (b)(5)(A) If the good cause relied upon is engagement in other litigation,
36 the motion shall:
- 37 (b)(5)(A)(i) identify such litigation by caption, number and court;
- 38 (b)(5)(A)(ii) describe the action of the court in the other litigation on
39 a motion for continuance;
- 40 (b)(5)(A)(iii) state the reasons why the other litigation should take
41 precedence over the subject appeal;
- 42 (b)(5)(A)(iv) state the reasons why associated counsel cannot
43 prepare the brief for timely filing or relieve the movant in the other
44 litigation; and
- 45 (b)(5)(A)(v) identify any other relevant circumstances.
- 46 (b)(5)(B) If the good cause relied upon is the complexity of the appeal, the
47 movant shall state the reasons why the appeal is so complex that an
48 adequate brief cannot reasonably be prepared by the due date.
- 49 (b)(5)(C) If the good cause relied upon is extreme hardship to counsel, the
50 movant shall state in detail the nature of the hardship.
- 51 (b)(5)(D) All facts supporting good cause shall be stated with specificity.
52 Generalities, such as “the motion is not for the purpose of delay” or
53 “counsel is engaged in other litigation,” are insufficient.

54 (c) **Ex parte motion.** Except as to enlargements of time for filing and service of briefs
55 under Rule [26\(a\)](#), a party may file one ex parte motion for enlargement of time not to
56 exceed 14 days if no enlargement of time has been previously granted, if the time has
57 not already expired for doing the act for which the enlargement is sought, and if the
58 motion otherwise complies with the requirements and limitations of paragraph (b) of
59 this rule.

60 (d) **Additional time after service by mail.** Whenever a party is required or permitted to
61 do an act within a prescribed period after service of a paper and the paper is served by
62 mail, 3 days shall be added to the prescribed period.

63 *Effective November 14, 2016*

64 **Advisory Committee Note**

65 A motion to enlarge time must be filed prior to the expiration of the time sought to be
66 enlarged. A specific date on which the act will be completed must be provided. The
67 court may grant an extension of time after the original deadline has expired, but the
68 motion to enlarge the time must be filed prior to the deadline.

69 Both appellate courts place appeals in the oral argument queue in accordance with the
70 priority of the case and after principal briefs have been filed. Delays in the completion
71 of briefing will likely delay the date of oral argument.

72 *Adopted 2020*

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

2 (a) Time for appeal. A notice of appeal from an order in a child welfare proceeding, as
3 defined in Rule 1(f), must be filed within 15 days of the entry of the order appealed
4 from. If the juvenile court enters an order on a Saturday, Sunday, or legal holiday, the
5 date of entry will be deemed to be the first day following the juvenile court's entry that
6 is not a Saturday, Sunday, or legal holiday.

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

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

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

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

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

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

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

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

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

TAB 3

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Rule 6	Except in a criminal case, at the time of filing the notice of appeal, the appellant shall file with the notice a bond for costs on appeal, unless the bond is waived in writing by the adverse party, or unless an affidavit as provided for in Utah Code Section 78A-2-302 is filed.
Rule 8	(iii) copies of affidavits or other sworn statements supporting facts subject to dispute; and
Rule 10 (currently out for public comment)	Many uses of memorandum, please see rule below.
Rule 17	The motion shall also show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof.
Rule 19	(7) A memorandum of points and authorities in support of the petition; and
Rule 23B	The content of the motion must conform to the requirements of Rule 23. The motion must include or be accompanied by affidavits alleging facts not fully appearing in the record on appeal that show the claimed deficient performance of the attorney. The affidavits must also allege facts that show the claimed prejudice suffered by the appellant as a result of the claimed deficient performance.
Rule 29	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 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.
Rule 35	(1) Petition. A petition for rehearing seeking to alter a decision in a manner 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 issues an opinion, memorandum decision, per curiam decision, or order resolving the appeal on the merits. (2) Time for filing. A petition for rehearing may be filed with the clerk within 14 days after the court issues an opinion, memorandum decision, per curiam decision, or order resolving the appeal on the merits, unless the time is shortened or enlarged by order.
Rule 37	(c) Affidavit or declaration. If the appellant has the right to effective assistance of counsel, a motion to voluntarily dismiss the appeal for reasons other than mootness must be accompanied by appellant's personal affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, demonstrating that the appellant's decision to dismiss the appeal is voluntary and is made with knowledge of the right to an appeal and the consequences of voluntary dismissal. If counsel for the appellant is unable to obtain the required affidavit or declaration from the appellant, the motion must be accompanied by counsel's affidavit or declaration stating that, after reasonable efforts, counsel is unable to obtain the required affidavit or declaration and certifying that counsel has a reasonable factual basis to believe that the appellant no longer wishes to pursue the appeal.
Rule 58	(a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion, memorandum decision, or order. The Court of Appeals may issue a decision or may set the case for full briefing under Rule 24. The Court of Appeals may order an expedited briefing schedule and specify which issues must be briefed.
Rule 60	(e) Brief. A brief is not required. However, the minor may file a typewritten memorandum in support of the appeal. The memorandum shall be submitted within two judicial days after the notice of appeal is filed.

1 **Rule 6. Bond for costs on appeal.**

2 Except in a criminal case, at the time of filing the notice of appeal, the appellant shall
3 file with the notice a bond for costs on appeal, unless the bond is waived in writing by
4 the adverse party, or unless an affidavit as provided for in Utah Code Section 78A-2-302
5 is filed. The bond shall be in the sum of at least \$300.00 or such greater amount as the
6 trial court may order on motion of the appellee to ensure payment of costs on appeal.
7 No separate bond for costs on appeal is required when a supersedeas bond is filed. The
8 bond on appeal shall be with sufficient sureties and shall be conditioned to secure
9 payment of costs if the appeal is dismissed or the judgment affirmed, or of such costs as
10 the appellate court may award if the judgment is modified. The adverse party may
11 except to the sufficiency of the sureties in accordance with the provisions of Rule 62,
12 Utah Rules of Civil Procedure.

1 **Rule 8. Stay or injunction pending appeal.**

2 **(a) Motion for stay.**

3 **(1) Initial motion in the trial court.** A party must ordinarily move first in the
4 trial court for the following relief:

5 (A) a stay of the judgment or order without security pending appeal or
6 disposition of a petition under Rule 5;

7 (B) approval of a bond or other security provided to obtain a stay of the
8 judgment or order; or

9 (C) an order suspending, modifying, restoring, or granting an injunction
10 while an appeal is pending, unless the trial court has already rejected the
11 basis for the requested relief.

12 **(2) Motion in the appellate court.**

13 (A) The motion for a stay must include:

14 (i) the reasons the trial court denied the request;

15 (ii) the reasons for granting the relief requested and the facts relied
16 on;

17 (iii) copies of **affidavits** or other sworn statements supporting facts
18 subject to dispute; and

19 (iv) relevant parts of the record, including a copy of the trial court's
20 order.

21 (B) Any motion must comply with Rule 23.

22 (C) Except in extraordinary circumstances, an appellate court will not act
23 on a motion to stay a judgment or order or to suspend, modify, restore, or
24 grant an injunction, unless the movant first requested a stay or opposed
25 the injunction in the trial court.

26 **(3) Stays in criminal cases.** Stays pending appeal in criminal cases in which the
27 defendant has been sentenced are governed by Utah Code section 77-20-10 and
28 Rule 27 of the Utah Rules of Criminal Procedure. Stays in other criminal cases are
29 governed by this rule.

30 (b) **Bond requirement.**

31 (1) **Stay ordinarily conditioned upon giving a bond.** For requests for relief to
32 which Rule 62(d) of the Utah Rules of Civil Procedure applied in the trial court,
33 relief available pending appeal will be conditioned upon giving a bond or other
34 appropriate security in the trial court, unless there is no reasonable means of
35 quantifying the security in monetary or other terms and the conditions of
36 paragraph (b)(2) are met.

37 (2) **Stay in cases not conditioned on giving a bond.** Ordinarily a stay without a
38 bond or other security will not be granted unless the movant demonstrates a
39 likelihood of success on the merits or the case presents serious issues on the
40 merits warranting appellate review and the appellant demonstrates:

41 (A) a likelihood of irreparable harm to the movant outweighing the harm
42 to any other party and the stay would not be adverse to the public
43 interest; or

44 (B) an extraordinary circumstance that justifies issuing a stay.

45 (c) **Injunctions.** For requests for relief to which Rules 65A or 62(c) of the Utah Rules of
46 Civil Procedure applied in the trial court, any relief available pending appeal is
47 governed by those rules.

1 **Rule 10. 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
4 review on the basis that the appellate court lacks jurisdiction. Any response to
5 such motion must be filed within 14 days from the date of service.

6 (a)(2) After a docketing statement has been filed, the court, on its own motion,
7 and on such notice as it directs, may dismiss an appeal or petition for review if
8 the court lacks jurisdiction; or may summarily affirm the judgment or order that
9 is the subject of review, if it plainly appears that no substantial question is
10 presented; or may summarily reverse in cases of manifest error.

11 (a)(3) The time for taking other steps in the appellate process is suspended
12 pending disposition of a motion for summary affirmance, reversal, or dismissal.

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

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

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

21 (b)(2) Appeals eligible for a simplified process are those involving the application
22 of well-settled law to a set of facts, which may include, but are not limited to,
23 cases in the following categories:

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (c)(4) Principal memoranda must be no more than 7,000 words or 20 pages if a
53 word count is not provided. A reply memorandum must be no more than 3,500
54 words or 10 pages if a word count is not provided.

55 (d) **Extension of time.** By stipulation filed with the court before the date a
56 memorandum is due to be filed, the parties may extend the time for filing by no more
57 than 21 days. Any additional motions for an extension of time will be governed by rule
58 22(b).

1 Rule 17. **Stay pending review.**

2

3 Application for a stay of a decision or order of an agency pending direct review in the
4 appellate court shall ordinarily be made in the first instance to the agency if the agency
5 is authorized by law to grant a stay. If a motion for such relief is made to the appellate
6 court, the motion shall show that application to the agency for the relief sought is not
7 practicable, or that application has been made to the agency and denied, with the
8 reasons given by it for denial. The motion shall also show the reasons for the relief
9 requested and the facts relied upon, and if the facts are subject to dispute, the motion
10 shall be supported by affidavits or other sworn statements or copies thereof. With the
11 motion shall be filed those parts of the record relevant to the relief sought. Reasonable
12 notice of the filing of the motion and any hearing shall be given to all parties to the
13 proceeding in the appellate court. The appellate court may condition relief under this
14 rule upon the filing of a bond or other appropriate security. The motion shall be filed
15 with the clerk and normally will be considered by the court, but in exceptional cases
16 where such procedure would be impracticable due to the requirements of time, the
17 application may be considered by a single justice or judge of the court.

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
4 Procedure, directed to a judge, agency, person, or entity must be made by filing a
5 petition with the appellate court clerk. The petition must be served on the respondent
6 judge, agency, person, or entity and on all parties to the action or case in the trial court.
7 In the event of an original petition in the appellate court where no action is pending in
8 the trial court, the petition must be served personally on the respondent judge, agency,
9 person, or entity and service 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 must
12 contain the following:

- 13 (1) A statement of all persons or associations, by name or by class, whose
14 interests might 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
17 by the petition;
- 18 (4) A statement of the reasons why no other plain, speedy, or adequate remedy
19 exists and why the writ should issue;
- 20 (5) Except in cases where the writ is directed to a district court, a statement
21 explaining why it is impractical or inappropriate to file the petition for a writ in
22 the district court;
- 23 (6) Copies of any order or opinion or parts of the record that may be essential to
24 an 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
28 and comply with the additional requirements set forth in Rule 23C(b).
- 29 (10) Where the subject of the petition is an interlocutory order, the petitioner
30 must state whether a petition for interlocutory appeal has been filed and, if so,
31 summarize its status or, if not, state why interlocutory appeal is not a plain,
32 speedy, or adequate remedy.

33 (c) **Response to petition.** The judge, agency, person, or entity and all parties in the
34 action other than the petitioner will be deemed respondents for all purposes. Two or

35 more respondents may respond jointly. If any respondent does not desire to appear in
36 the proceedings, that respondent may advise the appellate court clerk and all parties by
37 letter, but the allegations of the petition will not thereby be deemed admitted. Where
38 emergency relief is sought, Rule 23C(d) applies. Otherwise, within seven days after the
39 petition is served, any respondent or any other party may file a response in opposition
40 or concurrence, which includes supporting authority.

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

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

56 **(f) Issuing an extraordinary writ on the court's motion.** The appellate court, in aid of its
57 own jurisdiction in extraordinary cases, may on its own motion issue a writ of certiorari
58 directed to a judge, agency, person, or entity. A copy of the writ will be served on the
59 named respondents in the manner and by an individual authorized to accomplish
60 personal service under Rule 4, Utah Rules of Civil Procedure. In addition, copies of the
61 writ must be transmitted by the appellate court clerk, by the most direct means
62 available, to all persons or associations whose interests might be substantially affected
63 by the writ. The respondent and the persons or associations whose interests are
64 substantially affected may, within four days of the writ's issuance, petition the court to
65 dissolve or amend the writ. The petition must be accompanied by a concise statement of
66 the reasons for dissolving or amending the writ.

67 *Effective November 1, 2020*

1 **Rule 23B. Motion to remand for findings necessary to determination of ineffective**
2 **assistance of counsel claim.**

3
4 (a) Grounds for motion; time. A party to an appeal in a criminal case may move the
5 court to remand the case to the trial court for entry of findings of fact, necessary for the
6 appellate court's determination of a claim of ineffective assistance of counsel. The
7 motion will be available only upon a nonspeculative allegation of facts, not fully
8 appearing in the record on appeal, which, if true, could support a determination that
9 counsel was ineffective.

10
11 The motion must be filed before or at the time of the filing of the appellant's brief. Upon
12 a showing of good cause, the court may permit a motion to be filed after the filing of the
13 appellant's brief. After the appeal is taken under advisement, a remand pursuant to this
14 rule is available only on the court's own motion and only if the claim has been raised
15 and the motion would have been available to a party.

16
17 (b) Content of motion. The content of the motion must conform to the requirements of
18 Rule 23. The motion must include or be accompanied by affidavits alleging facts not
19 fully appearing in the record on appeal that show the claimed deficient performance of
20 the attorney. The affidavits must also allege facts that show the claimed prejudice
21 suffered by the appellant as a result of the claimed deficient performance. The motion
22 must also be accompanied by a proposed order of remand that identifies the
23 ineffectiveness claims and specifies the factual issues relevant to each such claim to be
24 addressed on remand.

25
26 (c) Orders of the court; response; reply. If a motion under this rule is filed at the same
27 time as appellant's principal brief, any response and reply must be filed within the time
28 for the filing of the parties' respective briefs on the merits, unless otherwise specified by
29 the court. If a motion is filed before appellant's brief, the court may elect to defer ruling
30 on the motion or decide the motion prior to briefing.

31
32 (c)(1) If the court defers the motion, the time for filing any response or reply will be the
33 same as for a motion filed at the same time as appellant's brief, unless otherwise
34 specified by the court.

35
36 (c)(2) If the court elects to decide the motion prior to briefing, it will issue a notice that
37 any response must be filed within 30 days of the notice or within such other time as the
38 court may specify. Any reply in support of the motion must be filed within 20 days after
39 the response is served or within such other time as the court may specify.

40

41 (c)(3) If the requirements of parts (a) and (b) of this rule have been met, the court may
42 order that the case be temporarily remanded to the trial court to enter findings of fact
43 relevant to a claim of ineffective assistance of counsel. The order of remand will identify
44 the ineffectiveness claims and specify the factual issues relevant to each such claim to be
45 addressed by the trial court. The order will also direct the trial court to complete the
46 proceedings on remand within 90 days of issuance of the order of remand, absent a
47 finding by the trial court of good cause for a delay of reasonable length.

48

49 (c)(4) If it appears to the appellate court that the appellant's attorney of record on the
50 appeal faces a conflict of interest upon remand, the court will direct that counsel
51 withdraw and that new counsel for the appellant be appointed or retained.

52

53 (d) Effect on appeal. If a motion is filed at the same time as appellant's brief, the briefing
54 schedule will not be stayed unless ordered by the court. If a motion is filed before
55 appellant's brief, the briefing schedule will be automatically stayed until the court issues
56 notice of whether it will defer the motion or decide the motion before briefing.

57

58 (e) Proceedings before the trial court. Upon remand the trial court will promptly
59 conduct hearings and take evidence as necessary to enter the findings of fact necessary
60 to determine the claim of ineffective assistance of counsel. Any claims of ineffectiveness
61 not identified in the order of remand will not be considered by the trial court on
62 remand, unless the trial court determines that the interests of justice or judicial
63 efficiency require consideration of issues not specifically identified in the order of
64 remand. Evidentiary hearings will be conducted without a jury and as soon as
65 practicable after remand. The burden of proving a fact will be upon the proponent of the
66 fact. The standard of proof will be a preponderance of the evidence. The trial court will
67 enter written findings of fact concerning the claimed deficient performance by counsel
68 and the claimed prejudice suffered by appellant as a result, in accordance with the order
69 of remand. Proceedings on remand must be completed within 90 days of entry of the
70 order of remand, unless the trial court finds good cause for a delay of reasonable length.

71

72 (f) Preparation and transmittal of the record. At the conclusion of all proceedings before
73 the trial court, the clerk of the trial court will immediately prepare the record of the
74 supplemental proceedings as required by these rules. If the record of the original
75 proceedings before the trial court has been transmitted to the appellate court, the clerk
76 of the trial court will immediately transmit the record of the supplemental proceedings
77 upon preparation of the supplemental record. If the record of the original proceedings

78 before the trial court has not been transmitted to the appellate court, the clerk of the
79 court will transmit the record of the supplemental proceedings upon the preparation of
80 the entire record.

81

82 (g) Appellate court determination. Errors claimed to have been made during the
83 trial court proceedings conducted pursuant to this rule are reviewable under the
84 same standards as the review of errors in other appeals. The findings of fact entered
85 pursuant to this rule are reviewable under the same standards as the review of findings
86 of fact in other appeals.

87

88 Effective December 1, 2018

89

1 Rule 29. **Oral argument.**

2 (a) **Holding oral argument.**

3 (1) **Supreme Court.** Oral argument will be held in cases before the Supreme
4 Court unless the court determines that oral argument will not aid the decisional
5 process.

6 (2) **Court of Appeals.** Oral argument will be allowed in all cases in which the
7 Court of Appeals determines that oral argument will significantly aid the
8 decisional process.

9 (3) **Alternative means.** The court may hold oral argument in person, by phone,
10 or by videoconference.

11 (b) **Notice; waiver; cancellation; continuance.**

12 (1) **Supreme Court.** Not later than 28 days before the date on which a case is
13 calendared, the clerk will give notice of the time and place of oral argument, and
14 the time to be allowed each side. If all parties to a case believe oral argument will
15 not benefit the court, they may file a joint motion to cancel oral argument not
16 later than 14 days from the date of the clerk's notice. The court will grant the
17 motion only if it determines that oral argument will not aid the decisional
18 process. A motion to continue oral argument must be supported by (1) a
19 stipulation of all parties or a statement that the movant was unable to obtain
20 such a stipulation, and (2) an affidavit of counsel specifying the grounds for the
21 motion. A motion to continue filed not later than 14 days from the date of the
22 clerk's notice may be granted on a showing of good cause. A motion to continue
23 filed thereafter will be granted only on a showing of exceptional circumstances.

24 (2) **Court of Appeals.** Not later than 28 days before the date on which a case is
25 calendared, the clerk shall give notice to all parties that oral argument is to be
26 permitted, the time and place of oral argument, and the time to be allowed each
27 side. Any party may waive oral argument by filing a written waiver with the
28 clerk not later than 14 days from the date of the clerk's notice. If one party waives
29 oral argument and any other party does not, the party waiving oral argument
30 may nevertheless present oral argument. A request to continue oral argument or
31 for additional argument time must be made by motion. A motion to continue
32 oral argument must be supported by (1) a stipulation of all parties or a statement
33 that the movant was unable to obtain such a stipulation, and (2) an affidavit of

34 counsel specifying the grounds for the motion. A motion to continue filed not
35 later than 14 days from the date of the clerk’s notice may be granted on a
36 showing of good cause. A motion to continue filed thereafter will be granted
37 only on a showing of exceptional circumstances.

38 (c) **Argument order.** The appellant argues first and the appellee responds. The
39 appellant may reply to the appellee’s argument if appellant reserved part of appellant’s
40 time for this purpose. Such argument in reply is limited to responding to points made
41 by appellee in appellee’s oral argument and answering any questions from the court.

42 (d) **Cross and separate appeals.** A cross or separate appeal is argued with the initial
43 appeal at a single argument, unless the court otherwise directs. If a case involves a
44 separate appeal, the plaintiff in the action below is deemed the appellant for the
45 purpose of this rule unless the parties otherwise agree or the court otherwise directs. If
46 separate appellants support the same argument, care must be taken to avoid duplicative
47 arguments. Unless otherwise agreed by the parties, in cases involving a cross-appeal the
48 appellant, as determined pursuant to Rule [24A](#), opens the argument and presents only
49 the issues raised in the appellant’s opening brief. The cross-appellant then presents an
50 argument that answers the appellant’s issues and addresses original issues raised by the
51 cross-appeal. The appellant then presents an argument that replies to the cross-
52 appellant’s answer to the appellant’s issues and answers the issues raised on the cross-
53 appeal. The cross-appellant may then present an argument that is confined to a reply to
54 the appellant’s answer to the issues raised by the cross-appeal. The court will grant
55 reasonable requests, for good cause shown, for extended argument time.

56 (e) **Nonappearance of parties.** If the appellee fails to appear to present argument, the
57 court will hear argument on behalf of the appellant, if present. If the appellant fails to
58 appear, the court may hear argument on behalf of the appellee, if present. If neither
59 party appears, the case may be decided on the briefs, or the court may direct that the
60 case be rescheduled for argument.

61 (f) **Submission on the briefs.** By agreement of the parties, a case may be submitted for
62 decision on the briefs, but the court may direct that the case be argued.

63 (g) **Use of physical exhibits at argument; removal.** If physical exhibits other than
64 documents are to be used at the argument, counsel must arrange to have them placed in
65 the courtroom before the court convenes on the date of the argument. After the
66 argument, counsel must remove the exhibits from the courtroom unless the court

67 otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after
68 notice is given by the clerk, they will be destroyed or otherwise disposed of.

69 *Effective September 23, 2020*

70

1 Rule 35. **Petition for rehearing.**

2 (a) **Petition for rehearing.**

3 (1) **Petition.** A petition for rehearing seeking to alter a decision in a manner that
4 affects the substantive rights of the parties or any mandate or rule of law
5 established by the decision may be filed only in cases in which the court issues
6 an opinion, **memorandum** decision, per curiam decision, or order resolving the
7 appeal on the merits.

8 (2) **Time for filing.** A petition for rehearing may be filed with the clerk within 14
9 days after the court issues an opinion, **memorandum** decision,
10 per curiam decision, or order resolving the appeal on the merits, unless the time
11 is shortened or enlarged by order.

12 (3) **Contents of petition.** The petition must succinctly state and explain the
13 points of law or fact that the petitioner claims the court has overlooked or
14 misapprehended and must contain such argument in support of the petition
15 as the petitioner desires. The petitioner must certify that the petition is presented
16 in good faith and not for delay.

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

22 (5) **Form of petition.** The petition must be in the form prescribed by Rule 27(a),
23 (b), and (d) with respect to contents of the cover and must include a copy of the
24 decision to which it is directed.

25 (6) **Length.** Except by court order, a petition for rehearing and any response
26 requested by the court may not exceed 15 pages.

27 (7) **Action by court.** The court may dispose of a petition for rehearing
28 without reargument, or may restore the case to the calendar for reargument or
29 resubmission, or may make such other orders as are deemed appropriate under
30 the circumstances of the particular case.

31 (8) **Untimely or consecutive petitions.** Petitions for rehearing that are not timely
32 presented under this rule and consecutive petitions will be rejected by the clerk.

33 (9) **Amicus curiae.** An amicus curiae may not file a petition for rehearing but
34 may file a response to a petition if the court has requested a response under
35 paragraph (a)(4).

36 (b) **Nonsubstantive or clerical error.**

37 (1) If a decision contains a nonsubstantive or clerical error, a party may promptly
38 advise the appellate clerk by letter, with a copy to all other parties, identifying
39 the error, suggesting how the error may be corrected, and stating the position of
40 other parties regarding the requested correction. Any response must be made
41 promptly and concisely.

42 (2) If the court concludes the letter requests a substantive revision, it may
43 construe the letter as a petition for rehearing if timely filed under paragraph
44 (a)(2) and call for a response.

45 (3) The court may make nonsubstantive corrections without prior notice to the
46 parties.

47 *Effective November 1, 2020*

1 **Rule 37. Suggestion of mootness; voluntary dismissal.**

2 (a) **Suggestion of mootness.** Any party aware of circumstances that render moot one or
3 more of the issues presented for review must promptly file a “suggestion of mootness”
4 in the form of a motion under Rule 23.

5 (b) **Voluntary dismissal.** At any time prior to the issuance of a decision an appellant
6 may move to voluntarily dismiss an appeal or other proceeding. If all parties to an
7 appeal or other proceeding agree that dismissal is appropriate and stipulate to a motion
8 for voluntary dismissal, the appeal will be promptly dismissed. The stipulation must
9 specify the terms as to payment of costs and fees, if any.

10 (c) **Affidavit or declaration.** If the appellant has the right to effective assistance of
11 counsel, a motion to voluntarily dismiss the appeal for reasons other than mootness
12 must be accompanied by appellant’s personal **affidavit** or unsworn declaration as
13 described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, demonstrating
14 that the appellant’s decision to dismiss the appeal is voluntary and is made with
15 knowledge of the right to an appeal and the consequences of voluntary dismissal. If
16 counsel for the appellant is unable to obtain the required **affidavit** or declaration from
17 the appellant, the motion must be accompanied by counsel’s **affidavit** or declaration
18 stating that, after reasonable efforts, counsel is unable to obtain the required **affidavit** or
19 declaration and certifying that counsel has a reasonable factual basis to believe that the
20 appellant no longer wishes to pursue the appeal.

21 *Effective June 9, 2020 under Rule [11-105](#)*

1 **Rule 58. Ruling.**

2 (a) After reviewing the petition on appeal, any response, and the record, the Court of
3 Appeals may rule by opinion, memorandum decision, or order. The Court of Appeals
4 may issue a decision or may set the case for full briefing under Rule 24. The Court of
5 Appeals may order an expedited briefing schedule and specify which issues must be
6 briefed.

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

10 Effective Date November 1st, 2021

1 **Rule 60. Judicial bypass appeals.**

2 (a) Scope. This rule applies to an appeal from an order denying or dismissing a petition
3 filed by a minor to bypass parental consent to an abortion under Utah Code Ann. § 76-
4 7-304.5. In such appeals, this rule supercedes the other appellate rules to the extent they
5 may be inconsistent with this rule.

6 (b) Jurisdictional limitation. This rule does not permit an appeal to be taken in any
7 circumstances in which an appeal would not be permitted by Rule 3.

8 (c) Notice of appeal.

9 (c)(1) A minor may appeal an order denying or dismissing a petition to bypass parental
10 consent by filing a notice of appeal in the juvenile court within the time allowed under
11 Rule 4. The notice of appeal may be filed in person, by mail, or by fax, and must be
12 accompanied by a copy of the order from which the appeal is taken. No filing fee will be
13 charged. The clerk of the juvenile court shall immediately notify the clerk of the court of
14 appeals that the appeal has been filed.

15 (c)(2) The notice of appeal must indicate that the appeal is being filed pursuant to this
16 rule, but the court will apply this rule to cases within its scope whether they are so
17 identified or not.

18 (c)(3) Blank notice of appeal forms will be available at all juvenile court locations and
19 will be mailed or faxed to a minor upon request. No fee will be charged for this service
20 or other services provided to a minor in an appeal under this rule.

21 (d) Record on appeal. The record on appeal consists of the juvenile court file, including
22 all papers and exhibits filed in the juvenile court, and a recording or transcript of the
23 proceedings before the juvenile court. The clerk of the court of appeals shall request the
24 record immediately upon receiving notice that the appeal has been filed. Upon
25 receiving this request, the clerk of the juvenile court shall immediately transmit the
26 record to the court of appeals by overnight mail or in another manner that will cause it
27 to arrive within 48 hours after the notice of appeal is filed.

28 (e) Brief. A brief is not required. However, the minor may file a typewritten
29 **memorandum** in support of the appeal. The **memorandum** shall be submitted within
30 two judicial days after the notice of appeal is filed.

31 (f) Oral argument. If ordered by the court, oral argument will be held within three
32 judicial days after the notice of appeal is filed. The court of appeals clerk will
33 immediately notify the minor of the date and time for oral argument. Upon request, the
34 minor will be allowed to participate telephonically at court system expense.

35 (g) Disposition. The court shall enter an order stating its decision immediately after oral
36 argument or, if oral argument is not held, within three judicial days after the date the
37 notice of appeal is filed. The clerk shall immediately notify the minor of the decision.

38 The court may issue an opinion explaining the decision at any time following entry of
39 the order. The opinion shall be written to ensure the confidentiality of the minor.

40 (h) Confidentiality. Documents and proceedings in an appeal under this rule are
41 confidential. Court personnel are prohibited from notifying the minor's parents,
42 guardian, or custodian that the minor is pregnant or wants to have an abortion, or from
43 disclosing this information to any member of the public.

44 (i) Attorney. If the minor is not represented by an attorney, the court shall consider
45 appointing an attorney or the Office of Guardian ad Litem to represent the minor in the
46 appeal. If an attorney or the Office of Guardian ad Litem was appointed to represent the
47 minor in the trial court, the appointment continues through appeal.

TAB 4



Nicholas Stiles
Appellate Court Administrator
Nicole J. Gray
Clerk of Court

Supreme Court of Utah
450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Telephone 801-578-3900
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Matthew B. Durrant Chief Justice
Thomas R. Lee Associate Chief Justice
Deno G. Himonas Justice
John A. Pearce Justice
Paige Petersen Justice

To: Advisory Committee on the Rules of Appellate Procedure
From: Nick Stiles and Clark Sabey
Re: Cross-Petitions in Administrative Appeals

In two recent Court of Appeals' opinions the panel eluded to the inability of a litigant to file a cross-petition if the appeal arose from an administrative action. The Supreme Court considered this issue and has requested that this Committee review it and offer its perspective on a resolution.

[Rule 18](#) of the Utah Rules of Appellate Procedure applies all appellate rules to agency appeals with exception to Rules 3 through 8. Likewise, [Rule 4](#), which allows cross-appeals, does not extend to agency actions.

Included below are two options that we believe would extend the ability of a litigant to file a cross-petition in agency appeals.

Respectfully,

Nick Stiles & Clark Sabey

1 Rule 18. Applicability of other rules to review.

2

3 All provisions of these rules are applicable to review of decisions or orders of agencies, except
4 that Rules 3 through 8 are not applicable. [This exception does not include Rule 4\(d\)](#). As used in
5 any applicable rule, the term "appellant" includes a petitioner in proceedings to review the orders
6 of an agency, commission, or board. The term "appellee" includes the respondent, which may be
7 the agency, commission, or board. The term "clerk of the trial court" includes the chief executive
8 officer of the agency, commission, or board or the officer's designee. The term "trial court"
9 includes the agency, commission, or board.

1 Rule 14. Review of administrative orders: how obtained; intervention. Effective: 11/1/2016

2

3 (a) Petition for review of order; joint petition. When a statute provides for judicial review by or

4 appeal to the Supreme Court or the Court of Appeals of an order or decision of an administrative

5 agency, board, commission, committee, or officer (hereinafter the term “agency” shall include

6 agency, board, commission, committee, or officer), a party seeking review must file a petition for

7 review with the clerk of the appellate court within the time prescribed by statute, or if there is no

8 time prescribed, then within 30 days after the date of the written decision or order. The petition

9 must specify the parties seeking review and must designate the respondent(s) and the order or

10 decision, or part thereof, to be reviewed. In each case, the agency must be named respondent.

11 The State of Utah is a respondent if required by statute, even if not designated in the petition. If

12 two or more persons are entitled to petition for review of the same order and their interests are

13 such as to make joinder practicable, they may file a joint petition for review and may thereafter

14 proceed as a single petitioner.

15 (b) Service of petition. The petitioner must serve the petition on the respondents and all parties to

16 the proceeding before the agency in a manner provided by Rule 21.

17 (c) Intervention. Any person may file with the clerk of the appellate court a motion to intervene.

18 The motion must contain a concise statement of the interest of the moving party and the grounds

19 on which intervention is sought. A motion to intervene must be filed within 40 days of the date

20 on which the petition for review is filed.

21 (d) Additional or Cross-Petition. If a timely petition for review is filed by any party, any other

22 party may file a petition for review within 14 days after the date on which the first petition for

23 review was filed, or within the time otherwise prescribed by paragraph (a) of this rule, whichever

24 period last expires.