



## 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: April 13, 2022  
Time: 3:00 to 4:30 p.m.

<b>Action:</b> Welcome and approval of March 3, 2022 Minutes	Tab 1	Chris Ballard, Chair
<b>Action:</b> Public comments received on Rules 10, 11, and 12	Tab 2	Chris Ballard
<b>Action:</b> Rules 11, 22, 24	Tab 3	Stan Purser
<b>Action:</b> Rules that use "affidavit" or "memorandum"	Tab 4	Nathalie Skibine, Nick Stiles, Lisa Collins, Amber Griffith
<b>Discussion:</b> Old/new business		Chris Ballard, Chair

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

#### **2022 Meeting schedule:**

May 5, 2022	August 4, 2022	November 3, 2022
June 2, 2022	September 1, 2022	December 1, 2022
July 7, 2022	October 6, 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, March 3, 2022  
12:00 pm to 1:30 pm

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#### PRESENT

Christopher Ballard – Chair  
Troy Booher –  
Emeritus Member  
Patrick Burt  
Lisa Collins  
Carol Funk  
Amber Griffith – Staff  
Judge Jill Pohlman

Judge Gregory Orme  
Stanford Purser  
Michelle Quist  
Clark Sabey  
Nathalie Skibine  
Scarlet Smith  
Nick Stiles – Staff  
Mary Westby

#### EXCUSED

Emily Adams  
Tyler Green  
Michael Judd –  
Recording Secretary

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

The Committee reviewed the February 2022 minutes and Judge Pohlman suggested minor corrections to item 4.

*With those corrections made, Mary Westby moved to approve the February 2022 minutes as amended. Judge Pohlman seconded that motion, and it passed without objection by unanimous consent.*

**2. Action:  
Rules 4, 5, 22, and 52**

**Mary Westby**

Mary Westby proposed making amendments to Rules 4, 5, 22, and 52 to add language which would clarify what will be deemed the entry date when an order is filed on the weekend or on a legal holiday. Mary modeled these proposed amendments after Rule 22.

Clark Sabey questioned whether the amendment was needed in Rule 22 if each jurisdictional rule was amended. The Committee discussed this and ultimately voted to leave the amendments in Rule 22 as well as the jurisdictional rules; 4, 5, and 52.

Chris Ballard commented that orders entered on Friday have an entry date of Friday, beginning the timeline. However, adding this language will give orders entered on Saturday additional time, as the entry date will not be recognized as Saturday, but the next business day. Clark Sabey countered that previously we were unable to file orders on the weekends; hence the entry date would have always been the next available business day.

Troy Booher questioned if the rules also needed to be amended to include when filed motions timeframe begins. Mary Westby stated that the time for motions begins from the time of service, which would include service by email, not the entry date of the court as is the case with orders. Judge Pohlman commented that she would base her time frame on when she received, i.e. was "served" the motion from opposing council. Michelle Quist added that in District Court if something is electronically filed on the weekend the timeframe starts the day it was electronically filed. Michelle stated that it should be consistent between courts. When the courts move to electronic filing, then these rules may need to be amended again. Mary proposed that the issue should be deferred to the Civil Rules as this is a bigger issue with District Courts.

*Following these discussions, Lisa and Troy agreed to wait on proposing any additional amendments to filed motions, Scarlet Smith concurred.*

*Clark Sabey moved to approve the amendments to Rules 4, 5, 22, and 52 as proposed by Mary Westby. Mary Westby seconded the motion, and it passed without objection by unanimous consent.*

**3. Action:  
Rules that use “memorandum” or “affidavit”**

**Nick Stiles  
Lisa Collins  
Amber Griffith**

This action was brought before the committee due to a discussion during February’s meeting. During that meeting the committee approved to change “memorandum” to “discussion” in Rule 23 to avoid confusion regarding separate motions and memoranda.

The committee included the term “affidavit” as it is deemed an out dated term, and should be changed to declarations. Michelle brought Rule 6 to the committee attention, as the statute itself says affidavit. Chris Ballard then mention Rule 37 as both affidavit and declarations is mentioned. He noted that the rules are not consistent.

*Chris Ballard then suggested that a subcommittee be formed to go through each of these rules and decide which rules need to be amended. Lisa Collins moved to make a subcommittee of Lisa Collins, Nick Stiles, and Amber Griffith. Chris Ballard asked if Nathalie Skibine would also join the subcommittee, she agreed.*

*Lisa Collins moved to approve the creation of the subcommittee to go through any rules that mention “memorandum” or “affidavit”, Michelle Quist seconded, and the motion passed without objection by unanimous consent.*

**4. Action:  
Cross-petition Memo**

**Nick Stiles  
Clark Sabey**

Nick Stiles presented a memo to the committee to add amendments to either Rule 14 or 18, to include when parties may file a cross-petition in appeals which arose from an administrative action.

Nick Stiles proposed the amendments to Rule 18, and Clark Sabey proposed adding paragraph (d) to Rule 14 to address this issue. Judge Orme questioned if the suggested amendment would cause confusion in regards to Rule 4, after reviewing Rule 18 Judge Orme withdrew his concern.

Nick Stiles commented that he prefers the proposed amendment to Rule 14, Judge Orme and Lisa Collins agreed.

*After these discussions Stan Purser moved to accept proposed amendments to Rule 14, Judge Pohlman seconded, and the motion passed without objection by unanimous consent.*

5. **Action:** **Chris Ballard**  
**Old/New Business**

Chris Ballard let the committee know that Stan Purser will be presenting proposed amendments to Rules 11, 22, and 24, once Rule 11's public comment period has ended.

Stan Purser is also working on proposed amendments to Rule 19.

6. **Adjourn**

*After a productive meeting, Michelle Quist moved to adjourn. Judge Orme seconded that motion. There were no objections and the motion carried. The committee's next meeting will take place on April 7, 2022.*

# Tab 2

**Leslie Slauch**

January 19, 2022 at 4:22 pm

Proposed Rules 11 and 12 should, but don't, allow for electronic exhibits. The rules allow for electronic documents (pleadings, motions, etc.) but not electronic exhibits. I have had two cases, one pre-COVID and the other just a few months ago, where all the exhibits were electronic, but we had to print physical copies after trial for transmission to the appellate court. Where the exhibits at the trial level were electronic, the same electronic exhibits should be part of the record on appeal.

**Rex Bagley**

February 17, 2022 at 3:42 pm

If the Court is to fully realize the benefits of electronic technologies to both the law and the public, then every effort must be made to fully integrate these technologies and electronic communications systems. Given the capabilities of modern technology, court documents could not only be prepared using Internet based technologies but research could be integrated into that system and plugged into these documents which could then be accessed by the readers. The record could be called by a hyperlink embedded in the document that, once clicked, would be instantly viewable by the reader just like case citations, evidence, etc. This can all be accomplished by a browser based interface that is designed to format, cite, quote, etc. in compliance with court rules.

The benefits of such a system are readily recognizable as it eases the burden on the judiciary, it leads to a more informed public, and it ushers the public toward a better understanding of the law and the justice system; this all leads to better laws and a more efficient justice system.

**William Hains**

March 4, 2022 at 4:54 pm

On line 120, add "the" before "appellant's brief." Omitting "the" appears to have been a typo.

On line 92, consider striking "complete and."

Requiring the trial court to find that a joint statement of the record is not only "accurate" but also "complete" contradicts the very purpose of what is re-designated as Subsection (d). This Subsection expressly allows for a joint statement of the facts that is not "complete" in the strict sense. The joint statement needs to provide "only so many



of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented.” (See lines 90-91.)

Perhaps some other word(s) could be used to convey the concept of completeness within the meaning of Subsection (d) – i.e., containing all facts essential to a decision of the issues presented. But it wouldn’t make sense to require the trial court to make that determination, but then say the court can then add “such additions as the trial court may consider necessary fully to present the issues raised by the appeal.” (See lines 92-93.)

I think the best approach is to simply go with a finding of accuracy, as the rule currently does, but replace “conforms to the truth” with the more natural “accurate,” as the proposed rule does: “If the trial court deems the statement accurate, it, together with such additions as the trial court may consider necessary fully to present the issues raised by the appeal, will be approved by the trial court.” The rule would still require the trial court to determine that all facts essential to a decision of the issues presented are contained in the statement. It just wouldn’t contain contradictory directives.

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 prior to the expiration of time  
56 in which a memorandum is due~~before the date a memorandum is due to be filed~~, the  
57 parties may extend the time for filing by no more than 21 days. Any additional motions  
58 for an extension of time will be governed by rule 22(b).

1 **Rule 11. The record on appeal.**

2 (a) **Composition of the record on appeal.** The record on appeal consists of the original  
3 papers ~~documents~~ and exhibits filed in or considered by ~~in~~ the trial court, including the  
4 presentence report in criminal matters, and the transcript of proceedings, if any, ~~the~~  
5 ~~index prepared by the clerk of the trial court, and the docket sheet, shall constitutes the~~  
6 ~~record on appeal in all cases. A copy of the record certified by the clerk of the trial court~~  
7 ~~to conform to the original may be substituted for the original as the record on appeal.~~  
8 ~~Only those papers prescribed under paragraph (d) of this rule shall be transmitted to~~  
9 ~~the appellate court.~~

10 (b) Preparing, paginationg, and indexing ~~of~~ the record.

11 (1) Preparing the record. ~~Immediately upon filing of the notice of appeal~~ On the  
12 appellate court's request, ~~the clerk of the trial court~~ clerk shall will securely  
13 ~~fasten the record in a trial court case file, with collation~~ prepare the record in the  
14 following order:

15 ~~(A) the index prepared by the clerk;~~

16 ~~(B) the docket sheet;~~

17 ~~(C)~~ (A) all original ~~papers~~ documents in chronological order;

18 ~~(D)~~ (B) all published depositions in chronological order;

19 ~~(E)~~ (C) all transcripts prepared for appeal in chronological order;

20 ~~(F)~~ (D) a list of all exhibits offered in the proceeding; and

21 ~~(G)~~ (E) in criminal cases, the presentence investigation report.

22 (2) Pagination.

23 (A) ~~The clerk shall mark the bottom right corner of every page of the~~  
24 ~~collated index, docket sheet, and all original papers as well as~~ Using  
25 Bates numbering, the entire record must be paginated, ~~the cover page~~  
26 ~~only of all published depositions and the cover page only of each volume~~

27 ~~of transcripts constituting the record with a sequential number using one~~  
28 ~~series of numerals for the entire record.~~

29 (B) If the appellate court requests a supplemental record ~~is forwarded to~~  
30 ~~the appellate court~~, the clerk shall collate same procedures as in (b)(2)(A)  
31 apply, continuing Bates numbering from the last page number of the  
32 original record.~~the papers, depositions, and transcripts of the~~  
33 ~~supplemental record in the same order as the original record and mark the~~  
34 ~~bottom right corner of each page of the collated original papers as well as~~  
35 ~~the cover page only of all published depositions and the cover page only~~  
36 ~~of each volume of transcripts constituting the supplemental record with a~~  
37 ~~sequential number beginning with the number next following the number~~  
38 ~~of the last page of the original record.~~

39 (3) Index. ~~The clerk shall prepare a~~A chronological index of the record must  
40 accompany the record on appeal. The index ~~shall~~must identify~~contain a~~  
41 ~~reference to~~ the date of filing and starting page of ~~on which~~ the document~~paper,~~  
42 ~~deposition or transcript.~~ was filed in the trial court and the starting page of the  
43 ~~record on which the paper, deposition or transcript will be found.~~

44 (4) Examining the record. ~~Clerks of the trial and a~~Appellate courts clerks  
45 ~~shall~~will establish rules and procedures for parties to ~~checking~~ out the record  
46 after pagination. ~~for use by the parties in preparing briefs for an appeal or in~~  
47 ~~preparing or briefing a petition for writ of certiorari.~~

48 ~~(c) Duty of appellant.~~ After filing the notice of appeal, the appellant, or in the event  
49 ~~that more than one appeal is taken, each appellant, shall comply with the provisions of~~  
50 ~~paragraphs (d) and (e) of this rule and shall take any other action necessary to enable~~  
51 ~~the clerk of the trial court to assemble and transmit the record. A single record shall be~~  
52 ~~transmitted.~~

53 ~~(d) Papers on appeal.~~

54 ~~(1) Criminal cases. All of the papers in a criminal case shall be included by the~~  
55 ~~clerk of the trial court as part of the record on appeal.~~

56 ~~(2) Civil cases. Unless otherwise directed by the appellate court upon sua sponte~~  
57 ~~motion or motion of a party, the clerk of the trial court shall include all of the~~  
58 ~~papers in a civil case as part of the record on appeal.~~

59 ~~(3) Agency cases. Unless otherwise directed by the appellate court upon sua~~  
60 ~~sponte motion or motion of a party, the agency shall include all papers in the~~  
61 ~~agency file as part of the record.~~

62 **(ec) The transcript of proceedings; duty of appellant to order; notice to appellee if**  
63 **partial transcript is ordered.**

64 (1) Request for transcript; time for filing. Within 104 days after filing the notice of  
65 appeal, or within 30 days of the notice of appeal where an indigent appellant has  
66 a statutory or constitutional right to counsel, the appellant ~~shall~~ must order the  
67 transcript(s) online at [www.utcourts.gov](http://www.utcourts.gov), specifying the entire proceeding or  
68 parts of the proceeding to be transcribed that are not already on file. The  
69 appellant ~~shall~~ must serve on the appellee a designation of those parts of the  
70 proceeding to be transcribed. ~~If the appellant desires a transcript in a compressed~~  
71 ~~format, appellant shall include the request for a compressed format within the~~  
72 ~~request for transcript.~~ If no such parts of the proceedings are to be requested,  
73 within the same period the appellant ~~shall~~ must file a certificate to that effect  
74 with the ~~clerk of the~~ appellate court clerk and serve a copy ~~of that certificate~~ on  
75 the appellee.

76 (2) Transcript required of all evidence regarding challenged finding or  
77 conclusion. If the appellant intends to urge argue on appeal that a finding or  
78 conclusion is unsupported by or is contrary to the evidence, the appellant ~~shall~~  
79 must include in the record a transcript of all evidence relevant to such finding or

80 conclusion. Neither the court nor the appellee is obligated to correct appellant's  
81 deficiencies in providing the relevant portions of the transcript.

82 (3) Statement of issues; ~~C~~cross-designation by appellee. If the appellant does not  
83 order the entire transcript, the appellee may, within 104 days after the appellant  
84 ~~services of~~ the designation or certificate described in paragraph (e)(1) ~~of this~~  
85 ~~rule~~, order the transcript(s) in accordance with (e)(1), and file and serve on the  
86 appellant a designation of additional parts to be included.

87 ~~(fd)~~ **Agreed statement as the record on appeal.** In lieu of the record on appeal as  
88 defined in paragraph (a) of this rule, the parties may prepare and sign a statement of  
89 the case, showing how the issues presented by the appeal arose and were decided in the  
90 trial court and setting forth only so many of the facts averred and proved or sought to  
91 be proved as are essential to a decision of the issues presented. If the court deems - the  
92 statement complete and accurate ~~conforms to the truth~~, it, -together with such additions  
93 as the trial court may consider necessary fully to present the issues raised by the appeal,  
94 ~~shall~~ will be approved by the trial court. The ~~clerk of the~~ trial court clerk shall will  
95 transmit the statement to the ~~clerk of the~~ appellate court clerk within the time  
96 prescribed by Rule 12(b)(2). The ~~clerk of the~~ trial court clerk shall will transmit the  
97 record ~~index of the record~~ to the ~~clerk of the~~ appellate court clerk ~~up~~ upon the trial court's  
98 approval of the statement ~~by the trial court~~.

99 ~~(ge)~~ **Statement of evidence or proceedings when no report was made or when**  
100 **transcript is unavailable.** If no report of the evidence or proceedings at a hearing or  
101 trial was made, or if a transcript is unavailable, or if the appellant is impecunious and  
102 unable to afford a transcript in a civil case, the appellant may prepare a statement of the  
103 evidence or proceedings from the best available means, including recollection. The  
104 statement ~~shall~~ must be served on the appellee, who may serve objections or propose  
105 amendments within 104 days after service. The statement and any objections or  
106 proposed amendments ~~shall~~ must be submitted to the trial court for resolution, and the  
107 trial court clerk will conform the record to the trial court's resolution. ~~for settlement~~



108 ~~and approval and, as settled and approved, shall be included by the clerk of the trial~~  
109 ~~court in the record on appeal.~~

110 ~~(h)g~~ Supplementing or ~~Correction or modification~~ ing of the record.

111 (1) If any ~~difference dispute~~ arises as to whether the record ~~truly discloses what~~  
112 ~~occurred in the trial court~~ is complete and accurate, the ~~difference dispute shall~~  
113 may be submitted to and ~~resolved~~ settled by the ~~at~~ trial court. The trial court will  
114 ensure that ~~and~~ the record ~~made to conform to the truth~~ accurately reflects the  
115 proceedings before the trial court, including by entering any necessary findings  
116 to resolve the dispute.

117 (2) If anything material to either party is omitted from or ~~misstated or is omitted~~  
118 ~~from~~ in the record by error of the trial court or court personnel, by accident, or  
119 because the appellant did not order a transcript of proceedings that the appellee  
120 needs to respond to issues raised in appellant's brief ~~the Brief of Appellant, the~~  
121 ~~parties by stipulation, the trial court, or the appellate court, either before or after~~  
122 ~~the record is transmitted, may direct that~~ the omission or misstatement may be  
123 corrected and; ~~if necessary, that~~ a supplemental record may be ~~certified~~ created  
124 and forwarded ~~and transmitted~~;

125 (A) on stipulation of the parties;

126 (B) by the trial court before or after the record has been forwarded; or

127 (C) by the appellate court on a motion from a party.

128 (3) The moving party, or the court if it is acting on its own initiative, ~~shall~~ must  
129 serve on the parties a statement of the proposed changes. Within ~~10~~ 14 days after  
130 service, any party may serve objections to the proposed changes. ~~All other~~  
131 ~~questions as to the form and content of the record shall be presented to the~~  
132 ~~appellate court.~~

1 | **Rule 12. Transmission of ~~the~~ the record.**

2 | **(a) Duty to prepare and file transcript; request for enlargement of time; notice to**  
3 | **appellate court.**

4 | (a)(1) ~~Upon receipt of a request for a transcript~~On receiving a transcript request,  
5 | the ~~clerk of the~~ appellate court clerk shall will assign ~~the preparation of the~~  
6 | transcript preparation to the court reporter who reported the proceedings or, if  
7 | recorded on video or audio equipment, to an official court transcriber and notify  
8 | the requesting party of the assignment. With appellate court approval, By  
9 | ~~stipulation of the parties approved by the appellate court,~~ the parties may  
10 | stipulate that a person other than an official court transcriber may transcribe a  
11 | recorded hearing.

12 | (a)(2) A party requesting a transcript ~~shall~~must make satisfactory arrangements  
13 | for paying the fee to the reporter or transcriber~~and notify the clerk of the~~  
14 | ~~appellate court of the date on which satisfactory arrangements were made.~~ The  
15 | transcript ~~shall~~must be completed and filed within 30 days after payment  
16 | arrangements have been made. ~~that date.~~

17 | (a)(3) The reporter or transcriber may request through the Transcript  
18 | Management System~~from the clerk of the appellate court~~ an enlargement of time  
19 | in which to file the transcript. The request for enlargement of time ~~shall be in~~  
20 | ~~writing and shall~~must contain the elements stated in CJA 5-201(1). If filed ~~prior~~  
21 | ~~to the expiration of~~before the transcript preparation period expires, the request  
22 | ~~shall~~must make a showing of good cause. If filed after the period ~~expiration~~es of  
23 | ~~the period~~, the request ~~shall~~must make a showing of extraordinary circumstances  
24 | beyond the control of the reporter or transcriber. ~~The reporter or transcriber shall~~  
25 | ~~provide a copy of the request to the parties. The clerk of the appellate court shall~~  
26 | ~~provide written notice of the disposition of the request for enlargement of time to~~  
27 | ~~the reporter or transcriber and the parties.~~

28 (a)(4) ~~Upon completion of~~On completing the transcript, the reporter and, if  
29 applicable, the transcriber ~~shall~~must certify that the transcript is a true and  
30 correct record of the court hearing or of the file provided by the ~~clerk of the~~  
31 appellate court clerk. The reporter or transcriber ~~shall~~must prepare an index of  
32 its contents and file the electronic file through the T~~transcript~~ M~~management~~  
33 System~~program~~. ~~The original hard copy of the transcript and index shall be filed~~  
34 ~~with the clerk of the trial court.~~ At the request of the person ordering the  
35 transcript or at the request of the appellate court, the reporter or transcriber  
36 ~~shall~~must file the transcript in a compressed format that places multiple  
37 complete pages of the original transcript upon each page of compressed  
38 transcript. The compressed transcript ~~shall~~must retain the page and line numbers  
39 of the original transcript. ~~A compressed transcript may be certified as a correct~~  
40 ~~copy of the original.~~

41 (b) ~~Transmittal of~~ing the record on appeal to the appellate court.

42 (b)(1) ~~Transmittal of~~ing an index. Within 20 days from the date of the appellate  
43 court's request ~~from the appellate court~~, the trial court, ~~juvenile court, or~~  
44 ~~government agency shall~~must transmit ~~a certified copy of~~ the index prepared  
45 ~~pursuant to~~under Rule 11(b) to the ~~clerk of the~~ appellate court clerk.

46 ~~(b)(2) Transmittal of non-paginated record. Within 7 days from the date of~~  
47 ~~request from the appellate court, the trial court, juvenile court, or government~~  
48 ~~agency shall transmit the papers and any transcripts on file to the clerk of the~~  
49 ~~appellate court. These papers may be sent "as is," without pagination, and will be~~  
50 ~~used by the appellate court for purposes of preliminary review. If the appeal is~~  
51 ~~not summarily dismissed, the record will be returned for indexing and~~  
52 ~~pagination.~~

53 (b)(~~3~~2) ~~Transmittal of~~ing a paginated record. Within 20 days from the date of the  
54 appellate court's request ~~from the appellate court~~, the trial court, ~~juvenile court,~~

55 ~~or government agency shall~~must transmit the record, including papers,  
56 transcripts, and exhibits, ~~in the appeal~~ to the appellate courts.

57 (b)(43) ~~Transmission of~~ting exhibits. Documents of unusual bulk or weight, and  
58 physical exhibits other than documents, photographs, or binders, ~~shall~~must not  
59 be transmitted by the trial court, ~~juvenile court, or government agency~~ unless  
60 directed to do so by a party or by the ~~clerk of the~~ appellate court clerk. A party  
61 must make advance arrangements with the clerks for ~~the transportation and~~  
62 ~~receipt of~~transporting and receiving exhibits of unusual bulk or weight.

63 (b)(54) Examining the record. During the briefing period, the parties may obtain  
64 a copy of the record on appeal from the appellate courts. If a digital record is  
65 available, it may be shared with the parties electronically.

66 (b)(65) Checking out the record on appeal. During the briefing period, if a  
67 physical record on appeal exists, counsel for the parties who are members of the  
68 Utah State Bar in good standing may, as officers of the court, check out the  
69 record upon written request to the appellate court clerk,~~clerk of court of the court~~  
70 ~~in possession of the record on appeal.~~ The record may be mailed by registered  
71 mail or other reputable overnight carrier, return receipt requested, provided that  
72 counsel requesting mailing makes advance arrangements with the clerk and pays  
73 the cost of shipping. The record may be picked up in person by counsel, or  
74 counsel's ~~his or her~~ authorized agent. Counsel ~~shall~~must ~~be responsible for~~  
75 promptly return~~ing~~ the record to the court not later than when the party's brief is  
76 filed.

77 (c) ~~Expedited~~ing the transmittal of parts of the record. If ~~prior to~~ the appellate court  
78 requires the record before the time the record is transmitted ~~the record is required in the~~  
79 ~~appellate court,~~ the ~~clerk of the~~ trial court clerk at the request of any party or of the  
80 appellate court ~~shall~~must transmit to the appellate court such parts of the original  
81 record as designated.

Tab 3

1 **Rule 11. The record on appeal.**

2 (a) **Composition of the record on appeal.** The record on appeal consists of the original  
3 papers ~~documents~~ and exhibits filed in or considered by ~~in~~ the trial court, including the  
4 presentence report in criminal matters, and the transcript of proceedings, if any, ~~the~~  
5 ~~index prepared by the clerk of the trial court, and the docket sheet, shall constitutes the~~  
6 ~~record on appeal in all cases. A copy of the record certified by the clerk of the trial court~~  
7 ~~to conform to the original may be substituted for the original as the record on appeal.~~  
8 ~~Only those papers prescribed under paragraph (d) of this rule shall be transmitted to~~  
9 ~~the appellate court.~~

10 (b) Preparing, paginating, and indexing of ~~the~~ record.

11 (1) Preparing the record. ~~Immediately upon filing of the notice of appeal~~ On the  
12 appellate court's request, ~~the clerk of the trial court~~ clerk shall will securely  
13 ~~fasten the record in a trial court case file, with collation~~ prepare the record in the  
14 following order:

15 ~~(A) the index prepared by the clerk;~~

16 ~~(B) the docket sheet;~~

17 ~~(C)~~ (A) all original papers ~~documents~~ in chronological order;

18 ~~(D)~~ (B) all published depositions in chronological order;

19 ~~(E)~~ (C) all transcripts prepared for appeal in chronological order;

20 ~~(F)~~ (D) a list of all exhibits offered in the proceeding; and

21 ~~(G)~~ (E) in criminal cases, the presentence investigation report.

22 (2) Pagination.

23 (A) ~~The clerk shall mark the bottom right corner of every page of the~~  
24 ~~collated index, docket sheet, and all original papers as well as~~ Using  
25 Bates numbering, the entire record must be paginated, ~~the cover page~~  
26 ~~only of all published depositions and the cover page only of each volume~~

27 ~~of transcripts constituting the record with a sequential number using one~~  
28 ~~series of numerals for the entire record.~~

29 (B) If the appellate court requests a supplemental record ~~is forwarded to~~  
30 ~~the appellate court~~, the clerk shall collate same procedures as in (b)(2)(A)  
31 apply, continuing Bates numbering from the last page number of the  
32 original record.~~the papers, depositions, and transcripts of the~~  
33 ~~supplemental record in the same order as the original record and mark the~~  
34 ~~bottom right corner of each page of the collated original papers as well as~~  
35 ~~the cover page only of all published depositions and the cover page only~~  
36 ~~of each volume of transcripts constituting the supplemental record with a~~  
37 ~~sequential number beginning with the number next following the number~~  
38 ~~of the last page of the original record.~~

39 (3) Index. ~~The clerk shall prepare a~~A chronological index of the record must  
40 accompany the record on appeal. The index ~~shall~~must identify~~contain a~~  
41 ~~reference to~~ the date of filing and starting page of ~~on which~~ the document~~paper,~~  
42 ~~deposition or transcript.~~ was filed in the trial court and the starting page of the  
43 ~~record on which the paper, deposition or transcript will be found.~~

44 (4) Examining the record. ~~Clerks of the trial and a~~Appellate courts clerks  
45 ~~shall~~will establish rules and procedures for parties to ~~checking~~ out the record  
46 after pagination. ~~for use by the parties in preparing briefs for an appeal or in~~  
47 ~~preparing or briefing a petition for writ of certiorari.~~

48 ~~(c) Duty of appellant.~~ After filing the notice of appeal, the appellant, or in the event  
49 ~~that more than one appeal is taken, each appellant, shall comply with the provisions of~~  
50 ~~paragraphs (d) and (e) of this rule and shall take any other action necessary to enable~~  
51 ~~the clerk of the trial court to assemble and transmit the record. A single record shall be~~  
52 ~~transmitted.~~

53 ~~(d) Papers on appeal.~~

54 ~~(1) Criminal cases. All of the papers in a criminal case shall be included by the~~  
55 ~~clerk of the trial court as part of the record on appeal.~~

56 ~~(2) Civil cases. Unless otherwise directed by the appellate court upon sua sponte~~  
57 ~~motion or motion of a party, the clerk of the trial court shall include all of the~~  
58 ~~papers in a civil case as part of the record on appeal.~~

59 ~~(3) Agency cases. Unless otherwise directed by the appellate court upon sua~~  
60 ~~sponte motion or motion of a party, the agency shall include all papers in the~~  
61 ~~agency file as part of the record.~~

62 **(ec) The transcript of proceedings; duty of appellant to order; notice to appellee if**  
63 **partial transcript is ordered.**

64 (1) Request for transcript; time for filing. Within 104 days after filing the notice of  
65 appeal, or within 30 days of the notice of appeal where an indigent appellant has  
66 a statutory or constitutional right to counsel, the appellant ~~shall~~ must order the  
67 transcript(s) online at [www.utcourts.gov](http://www.utcourts.gov), specifying the entire proceeding or  
68 parts of the proceeding to be transcribed that are not already on file. The  
69 appellant ~~shall~~ must serve on the appellee a designation of those parts of the  
70 proceeding to be transcribed. ~~If the appellant desires a transcript in a compressed~~  
71 ~~format, appellant shall include the request for a compressed format within the~~  
72 ~~request for transcript.~~ If no such parts of the proceedings are to be requested,  
73 within the same period the appellant ~~shall~~ must file a certificate to that effect  
74 with the ~~clerk of the~~ appellate court clerk and serve a copy ~~of that certificate~~ on  
75 the appellee.

76 (2) Transcript required of all evidence regarding challenged finding or  
77 conclusion. If the appellant intends to urge on appeal that a finding or  
78 conclusion is unsupported by or is contrary to the evidence, the appellant ~~shall~~  
79 must include in the record a transcript of all evidence relevant to such finding or



80 conclusion. Neither the court nor the appellee is obligated to correct appellant's  
81 deficiencies in providing the relevant portions of the transcript.

82 (3) Statement of issues; ~~C~~cross-designation by appellee. If the appellant does not  
83 order the entire transcript, the appellee may, within 104 days after the appellant  
84 ~~services of~~ the designation or certificate described in paragraph (e)(1) ~~of this~~  
85 ~~rule~~, order the transcript(s) in accordance with (e)(1), and file and serve on the  
86 appellant a designation of additional parts to be included.

87 ~~(fd)~~ **Agreed statement as the record on appeal.** In lieu of the record on appeal as  
88 defined in paragraph (a) of this rule, the parties may prepare and sign a statement of  
89 the case, showing how the issues presented by the appeal arose and were decided in the  
90 trial court and setting forth only so many of the facts averred and proved or sought to  
91 be proved as are essential to a decision of the issues presented. If the court deems - the  
92 statement complete and accurate ~~conforms to the truth~~, it, -together with such additions  
93 as the trial court may consider necessary fully to present the issues raised by the appeal,  
94 ~~shall~~ will be approved by the trial court. The ~~clerk of the~~ trial court clerk shall will  
95 transmit the statement to the ~~clerk of the~~ appellate court clerk within the time  
96 prescribed by Rule 12(b)(2). The ~~clerk of the~~ trial court clerk shall will transmit the  
97 record ~~index of the record~~ to the ~~clerk of the~~ appellate court clerk upon the trial court's  
98 approval of the statement ~~by the trial court~~.

99 ~~(ge)~~ **Statement of evidence or proceedings when no report was made or when**  
100 **transcript is unavailable.** If no report of the evidence or proceedings at a hearing or  
101 trial was made, or if a transcript is unavailable, or if the appellant is impecunious and  
102 unable to afford a transcript in a civil case, the appellant may prepare a statement of the  
103 evidence or proceedings from the best available means, including recollection. The  
104 statement ~~shall~~ must be served on the appellee, who may serve objections or propose  
105 amendments within 104 days after service. The statement and any objections or  
106 proposed amendments ~~shall~~ must be submitted to the trial court for resolution, and the  
107 trial court clerk will conform the record to the trial court's resolution. ~~for settlement~~

108 ~~and approval and, as settled and approved, shall be included by the clerk of the trial~~  
109 ~~court in the record on appeal.~~

110 ~~(h)g~~ Supplementing or ~~Correction or~~ modification ~~ing~~ of the record.

111 (1) If any ~~difference dispute~~ arises as to whether the record ~~truly discloses what~~  
112 ~~occurred in the trial court~~ is complete and accurate, the ~~difference dispute shall~~  
113 may be submitted to and ~~resolved~~ settled by the ~~at~~ trial court. The trial court will  
114 ensure that ~~and~~ the record ~~made to conform to the truth~~ accurately reflects the  
115 proceedings before the trial court, including by entering any necessary findings  
116 to resolve the dispute.

117 (2) If anything material to either party is ~~omitted from or~~ misstated ~~or is omitted~~  
118 ~~from~~ in the record by error of the trial court or court personnel, by accident, or  
119 because the appellant did not order a transcript of proceedings that the appellee  
120 needs to respond to issues raised in appellant's brief ~~the Brief of Appellant, the~~  
121 ~~parties by stipulation, the trial court, or the appellate court, either before or after~~  
122 ~~the record is transmitted, may direct that~~ the omission or misstatement may be  
123 corrected and; ~~if necessary, that~~ a supplemental record may be ~~certified~~ created  
124 and forwarded ~~and transmitted~~;

125 (A) on stipulation of the parties;

126 (B) by the trial court before or after the record has been forwarded; or

127 (C) by the appellate court on a motion from a party. The motion must state  
128 the position of every other party on the requested supplement or  
129 modification or why the movant was unable to learn any party's position.

130 (3) The moving party, or the court if it is acting on its own initiative, ~~shall~~ must  
131 serve on the parties a statement of the proposed changes. Within 104 days after  
132 service, any party may serve objections to the proposed changes. All other  
133 ~~questions as to the form and content of the record shall be presented to the~~  
134 appellate ~~\_\_\_\_\_~~ court.

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. The last  
5 day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday,  
6 in which event the period extends until the end of the next day that is not a Saturday, a  
7 Sunday, or a legal holiday. When the period of time prescribed or allowed, without  
8 reference to any additional time under subsection (d), is less than 11 days, intermediate  
9 Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used  
10 in this rule, “legal holiday” includes days designated as holidays by the state or federal  
11 governments.

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

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

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

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

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

25 (b)(4)(A) with particularity the good cause for granting the motion;

26 (b)(4)(B) whether the movant has previously been granted an enlargement  
27 of time and, if so, the number and duration of such enlargements;

28 (b)(4)(C) when the time will expire for doing the act for which the  
29 enlargement of time is sought; ~~and~~

30 (b)(4)(D) the date on which the act for which the enlargement of time is  
31 sought will be completed; ~~and~~

32 (b)(4)(E) the position of every other party on the requested extension or  
33 why the movant was unable to learn any party's position.

34 (b)(5)(A) If the good cause relied upon is engagement in other litigation,  
35 the motion shall:

36 (b)(5)(A)(i) identify such litigation by caption, number and court;

37 (b)(5)(A)(ii) describe the action of the court in the other litigation on  
38 a motion for continuance;

39 (b)(5)(A)(iii) state the reasons why the other litigation should take  
40 precedence over the subject appeal;

41 (b)(5)(A)(iv) state the reasons why associated counsel cannot  
42 prepare the brief for timely filing or relieve the movant in the other  
43 litigation; and

44 (b)(5)(A)(v) identify any other relevant circumstances.

45 (b)(5)(B) If the good cause relied upon is the complexity of the appeal, the  
46 movant shall state the reasons why the appeal is so complex that an  
47 adequate brief cannot reasonably be prepared by the due date.

48 (b)(5)(C) If the good cause relied upon is extreme hardship to counsel, the  
49 movant shall state in detail the nature of the hardship.

50 (b)(5)(D) All facts supporting good cause shall be stated with specificity.  
51 Generalities, such as "the motion is not for the purpose of delay" or  
52 "counsel is engaged in other litigation," are insufficient.

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

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

62 *Effective November 14, 2016*

63 **Advisory Committee Note**

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

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

71 *Adopted*

2020

1 Rule 24. Principal and reply briefs.

2 (a) **Principal briefs.** Principal briefs must contain under appropriate headings and in  
3 the order indicated:

4 (1) **A list of current and former parties.** The list of parties must include:

5 (A) all parties to the proceeding in the appellate court and their counsel;  
6 and

7 (B) listed separately, all parties to the proceeding in the court or agency  
8 whose judgment or order is under review that are not parties in the  
9 appellate court proceeding.

10 (2) **A table of contents.** The table of contents must list the sections of the brief  
11 with page numbers and the items in the addendum with the item number.

12 (3) **A table of authorities.** The table of authorities must list all cases  
13 alphabetically arranged, rules, statutes, and other authorities cited, with  
14 references to the pages on which they are cited.

15 (4) **An introduction.** The introduction should describe the nature and context of  
16 the dispute and explain why the party should prevail on appeal.

17 (5) **A statement of the issue.** The statement of the issue must set forth the issue  
18 presented for review, including for each issue:

19 (A) the standard of appellate review with supporting authority; and

20 (B) citation to the record showing that the issue was preserved for review;  
21 or a statement of grounds for seeking review of an issue not preserved.

22 (6) **A statement of the case.** The statement of the case must include, with  
23 citations to the record:

24 (A) the facts of the case, to the extent necessary to understand the issues  
25 presented for review;

26 (B) the procedural history of the case, to the extent necessary to  
27 understand the issues presented for review; and

28 (C) the disposition in the court or agency whose judgment or order is  
29 under review.

30 (7) **A summary of the argument.** The summary of the argument must contain a  
31 succinct statement of the arguments made in the body of the brief.

32 (8) **An argument.** The argument must explain, with reasoned analysis supported  
33 by citations to legal authority and the record, why the party should prevail on  
34 appeal.

35 (9) **A claim for attorney fees.** A party seeking attorney fees for work performed  
36 on appeal must state the request explicitly and set forth the legal basis for an  
37 award.

38 (10) **A short conclusion.** The conclusion may summarize the party's position and  
39 must state the specific relief sought on appeal.

40 (11) **A certificate of compliance.** The filer must certify that the brief complies  
41 with:

42 (A) paragraph (g), governing the number of pages or words (the filer may  
43 rely on the word count of the word processing system used to prepare the  
44 brief); and

45 (B) Rule [21](#), governing public and private records.

46 (12) **An addendum.** Subject to Rule [21\(h\)](#), the addendum must contain a copy of:

47 (A) any constitutional provision, statute, rule, or regulation of central  
48 importance cited in the brief but not reproduced verbatim in the brief;

49 (B) the order, judgment, opinion, or decision under review and any  
50 related minute entries, findings of fact, and conclusions of law; and

51 (C) materials in the record that are the subject of the dispute and that are  
52 of central importance to the determination of the issues presented for  
53 review, such as challenged jury instructions, transcript pages, insurance  
54 policies, leases, search warrants, or real estate purchase contracts.

55 (b) **Reply brief.** The appellant or petitioner may file a reply brief. A reply brief must be  
56 limited to responding to the facts and arguments raised in the appellee's or  
57 respondent's principal brief. The reply brief must include:

58 (1) a table of contents, as required by paragraph (a)(2);

59 (2) a table of authorities, as required by paragraph (a)(3);

60 (3) an argument, as required by paragraph (a)(8);

61 (4) a conclusion, as required by paragraph (a)(10); and

62 (5) a certificate of compliance, as required by paragraph (a)(11).

63 (c) **No further briefs; joining or adopting the brief of another party.** No further briefs  
64 may be filed except with leave of the appellate court. More than one party may join in a  
65 single brief. Any party may adopt by reference any part of the brief of another.

66 (d) **References in briefs to parties and others.** Parties and other persons and entities  
67 should be referred to consistently by the term, phrase, or name most pertinent to the  
68 issues on appeal. These may include descriptive terms based on the person or entity's  
69 role in the dispute, or the designations used in the trial court or agency, or the names of  
70 parties. Unless germane to an issue on appeal, a party should not be described solely by  
71 the party's procedural role in the case. The identity of minors should be protected by  
72 use of descriptive terms, initials, or pseudonyms. In child welfare appeals, the surname  
73 of a minor must not be used nor may a surname of a minor's biological, adoptive, or  
74 foster parent be used.

75 (e) **References to the record.**



76 (1) Statements of fact and references to proceedings in the court or agency whose  
 77 judgment or order is under review must be supported by citation to the record. A  
 78 citation must identify the page of the record as marked by the clerk.

79 (2) A reference to an exhibit must set forth the exhibit number. If the reference is  
 80 to evidence the admissibility of which is in controversy, the reference must set  
 81 forth the pages of the record at which the evidence was identified, offered, and  
 82 received or rejected.

83 (f) **References to legal authority.** A reference to an opinion of the Utah Supreme Court  
 84 or the Utah Court of Appeals issued on or after January 1, 1999, must include the  
 85 universal citation (e.g., 2015 UT 99, ¶ 3; or 2015 UT App 320, ¶ 6).

86 (g) **Length of briefs.**

87 (1) Unless a brief complies with the following page limits, it must comply with  
 88 the following word limits:

Type of brief	Page limit	Word limit
Legality of death sentence, principal brief	60	28,000
Legality of death sentence, reply brief	30	14,000
Other cases, principal brief	30	14,000
Other cases, reply brief	15	7,000

89  
 90 (2) Headings, footnotes, and quotations count toward the page or word limit, but  
 91 the table of contents, table of authorities, and addendum, and any certificates of  
 92 counsel do not.

93 (h) **Permission to file over length brief.**

94 (1) Although over length briefs are disfavored, a party may file a motion for  
95 leave to file a brief that exceeds the page, or word limitations of this rule.

96 (2) The motion must state: ~~e with specificity~~

97 (A) the issues to be briefed;<sup>7</sup>

98 (B) the number of additional pages, or words requested;<sup>7</sup>

99 (C) ~~and~~ the good cause for granting the motion; and

100 (D) the position of every other party on the request for an over length brief  
101 or why the movant was unable to learn any party's position.

102 (3) A motion filed at least 7 days before the brief is due or seeking three or fewer  
103 additional pages, or 1,400 or fewer additional words need not be accompanied by  
104 a copy of the proposed brief. Otherwise, a copy of the proposed brief must  
105 accompany the motion.

106 (4) If the motion is granted, the responding party is entitled to an equal number  
107 of additional pages, or words without further order of the court.

108 (5) Whether the motion is granted or denied, the court will destroy the proposed  
109 brief.

110 (i) **Sanctions.** The court on motion or on its own initiative may strike or disregard a  
111 brief that contains burdensome, irrelevant, immaterial, or scandalous matters, and the  
112 court may assess an appropriate sanction including attorney fees for the violation.

113 (j) **Notice of supplemental authorities.** When authority of central importance to an  
114 issue comes to the attention of a party after briefing or oral argument but before  
115 decision, that party may file a notice of supplemental authority setting forth:

116 (1) the citation to the authority;

117 (2) a reference either to the page of the brief or to a point argued orally to which  
118 the authority applies; and

119 (3) relevance of the authority. The body of the notice must not exceed 350 words.  
120 Any other party may file a response no later than 7 days after service of the  
121 notice. The body of the response must not exceed 350 words.

122 *Effective November 1, 2017*

### 123 **Advisory Committee Notes**

124 The 2017 amendments substantially change the organization and content of briefs. An  
125 important objective of the amendments is to present the party's case in logical order, in  
126 measured increments, and without unnecessary repetition. The principal brief of each  
127 party must meet the same requirements.

128 Paragraph (a)(4). A party's principal brief should include an introduction. The author  
129 should focus the introduction on the important features of the case. The introduction to  
130 one case may be only a few sentences, while a more complex case may require a few  
131 paragraphs or perhaps a few pages. The objective of the introduction is to give the  
132 reader a sense of the forest before detailing the trees.

133 Paragraph (a)(6). The statement of the case should describe the facts surrounding the  
134 dispute and procedural history of the litigation, but only to the extent that these are  
135 necessary to understand the issues. Describing a fact or circumstance or proceeding that  
136 has no bearing on the issues adds words of no value and distracts the reader. When  
137 stating a fact or describing a proceeding, a concise narrative is sometimes a better  
138 presentation than a numbered, itemized list. The party must cite to the places in the  
139 record that support the statement.

140 Paragraph (a)(8). The 2017 amendments remove the reference to marshaling. *State v.*  
141 *Nielsen*, 2014 UT 10, 326 P.3d 645, holds that the failure to marshal is not a technical  
142 deficiency resulting in default, but is a manner in which an appellant may carry its  
143 burden of persuasion when challenging a finding or verdict.

144 Paragraph (a)(11). The certificate of compliance is expanded to include not only  
145 compliance with the limit on the length of the brief, but also compliance with the

146 public/private record requirements of Rule [21](#). Briefs, including the addendum  
147 containing trial court records, are public documents, increasingly available on the  
148 Internet. However, many trial court records are not public. If the author needs to  
149 include a non-public document in an addendum or non-public information in the body  
150 of the brief, Rule [21](#) requires that an identical, public brief be filed, but with the non-  
151 public information removed.

152 Paragraph (b). The purpose of a reply brief is to respond to the facts and arguments  
153 presented in an appellee’s principal brief, not to reiterate points already made in the  
154 appellant’s principal brief, nor to introduce new matters that should have been raised in  
155 that brief. Although not required, it is good practice to identify the point that is being  
156 responded to.

157 Paragraph (d). Describing the actors in a dispute and litigation presents a challenge to  
158 the author of a brief. Consistency promotes clarity; having chosen a term, phrase, name,  
159 or initials to define a party, person, or entity, the author should use it throughout a  
160 brief.

161 The name of a minor is often a private record and caution should be used to avoid  
162 including other names or information from which a minor might be identified. A  
163 minor’s surname should be used only with the informed consent of a mature minor.  
164 The author may file a private brief for the parties and the court using the minor’s name  
165 while simultaneously filing an otherwise identical public brief with the minor’s name  
166 omitted, redacted, reduced to initials, or substituted with a placeholder name. A minor  
167 may be referred to by a descriptive term such as “the child,” “the 11-year old,” or “the  
168 sister.” The biological, adoptive, or foster parents of minors may be referred to by their  
169 relation to the minor, such as “mother,” “adoptive parent,” or “foster father.”

170 While the name of an adult is usually a public record, the author should recognize the  
171 intrusion into the lives of victims, witnesses, and others who are not principals in the  
172 dispute caused by a brief published on the Internet. Also, the use of names is disfavored  
173 when clarity and discretion can be promoted by use of a reference based on the person’s

174 role in the dispute or the case. Parties and other persons and entities should generally  
175 be referred to by their role in the dispute, such as “employee,” “Defendant Employer,”  
176 or “the Taxpayer.” Descriptions such as “witness” or “neighbor” can also be useful  
177 while respecting the interests of non-parties. The reference chosen should be the one  
178 most relevant to the matters on appeal.

179 Paragraph (g). Because of the increasing rarity of monospaced font, the 2017  
180 amendments eliminated the number of lines as a measure of a brief’s length. And to  
181 improve the clarity of Rule [24](#), the 2017 amendments moved the requirements for briefs  
182 in a cross-appeal to Rule [24A](#).

183 *Adopted*

2017

Tab 4

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 <b>affidavit</b> as provided for in Utah Code Section 78A-2-302 is filed.	Leave as is
Rule 8	(iii) copies of <b>affidavits</b> or other sworn statements supporting facts subject to dispute; and	Add "declarations"
Rule 10	Many uses of memorandum.	Leave as is
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 <b>affidavits</b> or other sworn statements or copies thereof.	Add "declarations"
Rule 19	(7) A <b>memorandum</b> of points and authorities in support of the petition; and	Change to discussion
Rule 23	(3) a <del>memorandum</del> <b>discussion</b> of points and authorities in support (unless the motion is for an enlargement of time); and	Committee approved 2/3/22
Rule 23B	The content of the motion must conform to the requirements of Rule 23. The motion must include or be accompanied by <b>affidavits</b> alleging facts not fully appearing in the record on appeal that show the claimed deficient performance of the attorney. The <b>affidavits</b> must also allege facts that show the claimed prejudice suffered by the appellant as a result of the claimed deficient performance.	Add "or declarations"
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 <b>affidavit</b> 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 <b>affidavit</b> of counsel specifying the grounds for the motion.	Add "or declaration"
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, <b>memorandum</b> 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, <b>memorandum</b> decision, per curiam decision, or order resolving the appeal on the merits, unless the time is shortened or enlarged by order.	Leave as is
Rule 37	(c) <b>Affidavit</b> 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 <b>affidavit</b> 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 <b>affidavit</b> or declaration from the appellant, the motion must be accompanied by counsel's <b>affidavit</b> or declaration stating that, after reasonable efforts, counsel is unable to obtain the required <b>affidavit</b> or declaration and certifying that counsel has a reasonable factual basis to believe that the appellant no longer wishes to pursue the appeal.	Leave as is
Rule 58	(a) After reviewing the petition on appeal, any response, and the record, the Court of Appeals may rule by opinion, <b>memorandum</b> 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.	Leave as is
Rule 60	(e) Brief. A brief is not required. However, the minor may file a typewritten <b>memorandum</b> in support of the appeal. The <b>memorandum</b> shall be submitted within two judicial days after the notice of appeal is filed.	Leave as is

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, declarations, or other ~~sworn~~ statements  
18 supporting facts 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 17. **Stay pending review.**

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

27 (8) The prescribed filing fee, unless waived by the court.

28 (9) Where emergency relief is sought, the petitioner must file a separate petition  
29 and comply with the additional requirements set forth in Rule 23C(b).

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

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

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

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

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

68 *Effective November 1, 2020*

1 **Rule 23. Motions.**

2 (a) **Content of motion.** Unless another form is elsewhere prescribed by these rules, an  
3 application for an order or other relief must be made by filing a motion for such order  
4 or relief with proof of service on all other parties. The motion must contain:

5 (1) a specific and clear statement of the relief sought;

6 (2) a particular statement of the factual grounds;

7 | (3) a ~~memorandum~~discussion of points and authorities in support (unless the  
8 motion is for an enlargement of time); and

9 (4) affidavits or declarations and documents, where appropriate.

10 (b) **Response.** Any party may file a response to a motion within 14 days after the  
11 motion is served; however, the court may, for good cause shown, dispense with,  
12 shorten, or extend the time for responding to any motion.

13 (c) **Reply.** The moving party may file a reply only to answer new matters raised in the  
14 response. A reply, if any, may be filed no later than 5 days after the response is served,  
15 but the court may rule on the motion without awaiting a reply.

16 (d) **Determination of motions for procedural orders.** Notwithstanding paragraph (a) as  
17 to motions generally, motions for procedural orders not substantially affecting the  
18 rights of the parties or the ultimate disposition of the appeal, including any motion  
19 under Rule 22(b), may be acted upon at any time, without awaiting a response or reply.  
20 Pursuant to rule or at the court's direction, the clerk may dispose of motions for  
21 specified types of procedural orders. The court may review a clerk's disposition upon a  
22 party's motion or upon its own motion.

23 (e) **Power of a single justice or judge to entertain motions.** In addition to the authority  
24 expressly conferred by these rules or by law, a single justice or judge of the court may  
25 entertain and may grant or deny any request for relief that under these rules may  
26 properly be sought by motion, except that:

- 27 (1) a single justice or judge may not dismiss or otherwise determine an appeal or  
28 other proceeding;
- 29 (2) the court may provide by order or rule that any motion or class of motions  
30 must be acted upon by the court; and
- 31 (3) the action of a single justice or judge may be reviewed by the court.

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** or declarations  
19 alleging facts not fully appearing in the record on appeal that show the claimed  
20 deficient performance of the attorney. The **affidavits** or declarations must also allege  
21 facts that show the claimed prejudice suffered by the appellant as a result of the  
22 claimed deficient performance. The motion must also be accompanied by a proposed  
23 order of remand that identifies the ineffectiveness claims and specifies the factual issues  
24 relevant to each such claim to be 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 trialcourt proceedings conducted pursuant to this rule are reviewable under the  
84 samestandards 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** or declaration of counsel specifying the  
21 grounds for the motion. A motion to continue filed not later than 14 days from  
22 the date of the clerk's notice may be granted on a showing of good cause. A  
23 motion to continue filed thereafter will be granted only on a showing of  
24 exceptional circumstances.

25 (2) **Court of Appeals.** Not later than 28 days before the date on which a case is  
26 calendared, the clerk shall give notice to all parties that oral argument is to be  
27 permitted, the time and place of oral argument, and the time to be allowed each

28 side. Any party may waive oral argument by filing a written waiver with the  
29 clerk not later than 14 days from the date of the clerk's notice. If one party waives  
30 oral argument and any other party does not, the party waiving oral argument  
31 may nevertheless present oral argument. A request to continue oral argument or  
32 for additional argument time must be made by motion. A motion to continue  
33 oral argument must be supported by (1) a stipulation of all parties or a statement  
34 that the movant was unable to obtain such a stipulation, and (2) an **affidavit** or  
35 declaration of counsel specifying the grounds for the motion. A motion to  
36 continue filed not later than 14 days from the date of the clerk's notice may be  
37 granted on a showing of good cause. A motion to continue filed thereafter will be  
38 granted only on a showing of exceptional circumstances.

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

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

55 the appellant's answer to the issues raised by the cross-appeal. The court will grant  
56 reasonable requests, for good cause shown, for extended argument time.

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

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

64 (g) **Use of physical exhibits at argument; removal.** If physical exhibits other than  
65 documents are to be used at the argument, counsel must arrange to have them placed in  
66 the courtroom before the court convenes on the date of the argument. After the  
67 argument, counsel must remove the exhibits from the courtroom unless the court  
68 otherwise directs. If exhibits are not reclaimed by counsel within a reasonable time after  
69 notice is given by the clerk, they will be destroyed or otherwise disposed of.

70 *Effective September 23, 2020*

71