

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: December 1, 2022
Time: 12:00 to 1:30 p.m.

Action: Welcome and approval of November 3, 2022 Minutes	Tab 1	Chris Ballard, Chair
Discussion: Intervention on Appeal		Chris Ballard, Nathalie Skibine, Judge Christiansen Forster, Clark Sabey, Mary Westby
Action: Juvenile Briefing Rules	Tab 2	Emily Adams
Action: Appellate Court Disqualification	Tab 3	Nick Stiles
Discussion: Old/new business		Chris Ballard, Chair

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

2023 Meeting schedule:

January 5, 2023	April 6, 2023	July 6, 2023	October 5, 2023
February 2, 2023	May 4, 2023	August 3, 2023	November 2, 2023
March 2, 2023	June 1, 2023	September 7, 2023	December 7, 2023

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

By WebEx Videoconference
Thursday, November 3, 2022
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Troy Booher—
Emeritus Member
Jacqueline Carlton—Guest
Judge Michele
Christiansen Forster
Lisa Collins
Amber Griffith—Staff

Tyler Green
Michael Judd—Recording
Secretary
Margaret Lindsay—Guest
Judge Gregory Orme
Stanford Purser
Clark Sabey
Nathalie Skibine—
Vice Chair
Scarlet Smith

Nick Stiles—Staff
Doug Thompson—Guest
Adam Trupp—Guest
Mary Westby
EXCUSED
Patrick Burt
Carol Funk
Michelle Quist

1. Action:

Chris Ballard

Approval of October 2022 Minutes

The committee reviewed the October 2022 minutes and offered one proposed correction, related to an incorrect identification of a committee member making a motion. That correction was made.

With that correction made, Lisa Collins moved to approve the October 2022 minutes. Mary Westby seconded that motion, and it passed without objection by unanimous consent.

2. **Action:** **Chris Ballard**
Rule 4

Chris Ballard introduced proposed language in Rule 4 designed to place the burden on a prosecutor to show that a defendant’s delay in filing a motion was unreasonable. Ms. Westby reminded the committee that it has had this discussion at least once before—years ago—and that the ultimate resolution was to leave this rule unchanged. The committee noted that leaving the rule unchanged remains an option here, as well. Ms. Westby suggested that if a change *is* made, she believes that Mr. Ballard’s proposed language balances the relevant interests well.

Emily Adams noted that, in her experience, this type of motion has appeared less often recently, after a significant uptick a year or so ago faded. Mr. Ballard reiterated his view that an amendment to create a deadline remains valuable. Tyler Green and Ms. Westby discussed the burden-shifting mechanism contained in the draft rule.

Mr. Sabey moved to vote on adopting the proposed amendment appeared in the committee materials. Given that a split vote appeared likely, the committee voted member by member. The motion passed, with eight members voting in favor of the motion and three voting against it.

3. **Action:** **Mary Westby,**
Rule 22—Juneteenth Holiday **Lisa Collins**

Ms. Westby presented two proposals to address inconsistencies in Utah’s state and federal rules related to when (and perhaps whether) certain holidays are celebrated. After some discussion, the committee was more enthusiastic about the second option—use of a link to the holidays on the court’s webpage—including a “ringing endorsement” of that option by Judge Orme.

Following that discussion, Judge Orme moved to approve the proposed amendment to Rule 22, with changes made on the screen at the committee meeting. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

The committee then returned to the full set of amendments to Rule 22. Ms. Westby moved to adopt Rule 22 as a whole, as it appeared on the screen, as amended. Emily Adams seconded, and the motion passed without objection by unanimous consent.

4. **Action:** **Mary Westby**
Rule 57

The proposed amendment to Rule 57 addresses the scope of the record on appeal in juvenile-court cases, particularly on how that rule applies to a “social file.” The

committee also discussed the reference to “admitted exhibits,” as opposed to all documents and exhibits considered below.

Following that discussion, Ms. Collins moved to adopt the proposed amendment to Rule 57 as it appeared on the screen at the committee meeting. Judge Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.

5. **Action:** **Nathalie Skibine**
Utah Rule of Evidence 506

The committee considered action related to Utah Rule of Evidence 506. That action would involve amendments to the rules governing intervention on appeal in criminal cases, as flagged by the Utah Supreme Court in *In re F.L.*, 2022 UT 32. After some discussion, the committee determined that the best approach was to create a subcommittee to consider the issues. The committee also briefly discussed how to handle sealed records in such matters, with Mr. Ballard recommending that those records be presumptively designated Attorneys’ Eyes Only, allowing access only for judges and counsel.

Following that discussion, Judge Orme moved to create a subcommittee, comprising Judge Christiansen-Forster, Mr. Ballard, Ms. Skibine, Mr. Sabey, and Ms. Westby. Tyler Green seconded that motion, and it passed without objection by unanimous consent.

6. **Action:** **Nick Stiles**
Appellate Court Disqualification

Given a lack of time to address all issues slated for discussion in November, the committee opted to defer discussion of appellate court disqualification until December’s meeting.

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

None.

8. **Adjourn**

Following that discussion, adjourned. The committee’s next meeting will take place on December 1, 2022.

TAB 2

1 **Rule 1. Scope of rules.**

2 (a) Applicability of rules. These rules govern the procedure before the Supreme Court
3 and the Court of Appeals of Utah in all cases. Applicability of these rules to the review
4 of decisions or orders of administrative agencies is governed by Rule 18. When these
5 rules provide for a motion or application to be made in a trial court or an administrative
6 agency, commission, or board, the procedure for making such motion or application
7 shall be governed by the Utah Rules of Civil Procedure, Utah Rules of Criminal
8 Procedure, and the rules of practice of the trial court, administrative agency,
9 commission, or board.

10 (b) Reference to "court." Except as provided in Rule 43, when these rules refer to a
11 decision or action by the court, the reference shall include a panel of the court. The term
12 "trial court" means the court or administrative agency, commission, or board from
13 which the appeal is taken or whose ruling is under review. The term "appellate court"
14 means the court to which the appeal is taken.

15 (c) Procedure established by statute. If a procedure is provided by state statute as to the
16 appeal or review of an order of an administrative agency, commission, board, or officer
17 of the state which is inconsistent with one or more of these rules, the statute shall
18 govern. In other respects, these rules shall apply to such appeals or reviews.

19 (d) Rules not to affect jurisdiction. These rules shall not be construed to extend or limit
20 the jurisdiction of the Supreme Court or Court of Appeals as established by law.

21 (e) Title. These rules shall be known as the Utah Rules of Appellate Procedure and
22 abbreviated Utah R. App. P.

23 (f) Rules for appeals in child welfare proceedings. Appeals taken from juvenile court
24 orders related to abuse, neglect, dependency, termination, and adoption proceedings
25 are governed by Rules 52 through [5957](#), except for orders related to substantiation
26 proceedings under Section 78-3a-320. ~~Rules 9 and 23B do not apply. Due to the~~

27 | ~~summary nature of child welfare appeals, Rule 10(a)(2)(A) does not apply.~~ Other
28 | appellate rules apply if not inconsistent with Rules 52 through ~~59~~57.

1 **Rule 9. Docketing statement.**

2 (a) **Purpose.** A docketing statement has two principal purposes: (1) to demonstrate that
3 the appellate court has jurisdiction over the appeal, and (2) to identify at least one
4 substantial issue for review. The docketing statement is a document used for
5 jurisdictional and screening purposes. It should not include argument.

6 (b) **Time for filing.** Within 21 days after a notice of appeal, cross-appeal, or a petition
7 for review of an administrative order is filed, the appellant, cross-appellant, or
8 petitioner must file the docketing statement with the appellate court clerk and serve the
9 docketing statement with any required attachments on all parties. The Utah Attorney
10 General must be served in any appeal arising from a crime charged as a felony or a
11 juvenile court proceeding.

12 (c) **Content of docketing statement in a civil case.** The docketing statement in an
13 appeal arising from a civil case must include:

14 (1) A concise statement of the nature of the proceeding and the effect of the order
15 appealed, and the district court case number, e.g., “This appeal is from a final
16 judgment of the First District Court granting summary judgment in case number
17 001900055.”

18 (2) The following dates relevant to a determination of the appeal’s timeliness and
19 the appellate court’s jurisdiction:

20 (A) The date the final judgment or order from which the appeal is taken is
21 entered.

22 (B) The date the notice of appeal was filed in the trial court.

23 (C) If the notice of appeal was filed after receiving a time extension under
24 Rule 4(e), the date the motion for an extension was granted.

25 (D) If any motions listed in Rule 4(b) were filed, the date such motion was
26 filed in the trial court and the date any order disposing of such motion
27 was entered.

28 (E) If the appellant is an inmate confined in an institution and is invoking
29 Rule 21(f), the date the notice of appeal was deposited in the institution's
30 internal mail system.

31 (F) If a motion to reinstate the time to appeal was filed under Rule 4(g),
32 the date the order disposing of such motion was entered.

33 (3) If the appeal is taken from an order certified as final under Rule 54(b) of the
34 Utah Rules of Civil Procedure, a statement of what claims and parties remain for
35 adjudication before the trial court.

36 (4) A statement of at least one substantial issue appellant intends to assert on
37 appeal. An issue not raised in the docketing statement may nevertheless be
38 raised in appellant's brief; conversely, an issue raised in the docketing statement
39 does not have to be included in the appellant's brief.

40 (5) A concise summary of the facts necessary to provide context for the issues
41 presented.

42 (6) A reference to all related or prior appeals in the case, with case numbers and
43 citations.

44 (d) **Content of a docketing statement in a criminal case.** The docketing statement in an
45 appeal arising from a criminal case must include:

46 (1) A concise statement of the nature of the proceeding, including the highest
47 degree of any of the charges in the trial court, and the district court case number,
48 e.g., "This appeal is from a judgment of conviction and sentence of the Third
49 District Court on a third degree felony charge in case number 001900055."

50 (2) The following dates relevant to a determination of the appeal's timeliness and
51 the appellate court's jurisdiction:

52 (A) The date the final judgment or order from which the appeal is taken is
53 entered.

54 (B) The date the notice of appeal was filed in the district court.

55 (C) If the notice of appeal was filed after receiving a time extension under
56 rule 4(e), the date the motion for an extension was granted.

57 (D) If a motion under Rule 24 of the Utah Rules of Criminal Procedure
58 was filed, the date such motion was filed in the trial court and the date
59 any order disposing of such motion was entered.

60 (E) If a motion to reinstate the time to appeal was filed under Rule 4(f), the
61 date the order disposing of such motion was entered.

62 (F) If the appellant is an inmate confined to an institution and is invoking
63 Rule 21(f), the date the notice of appeal was deposited in the institution's
64 internal mail system.

65 (3) The charges of which the defendant was convicted, and any sentence
66 imposed; or, if the defendant was not convicted, the dismissed or pending
67 charges.

68 (4) A statement of at least one substantial issue appellant intends to assert on
69 appeal. An issue not raised in the docketing statement may nevertheless be
70 raised in appellant's brief; conversely, an issue raised in the docketing statement
71 does not have to be included in appellant's brief.

72 (5) A concise summary of the facts necessary to provide context for the issues
73 presented. If the conviction was pursuant to a plea, the statement of facts should
74 include whether a motion to withdraw the plea was made before sentencing, and
75 whether the plea was conditional.

76 (6) A reference to all related or prior appeals in the case, with case numbers and
77 citations.

78 (e) **Content of a docketing statement in a review of an administrative order.** The
79 docketing statement in a case arising from an administrative proceeding must include:

80 (1) A concise statement of the nature of the proceedings and the effect of the
81 order appealed, e.g., “This petition is from an order of the Workforce Appeals
82 Board denying reconsideration of the denial of benefits.”

83 (2) The statutory provision that confers jurisdiction on the appellate court.

84 (3) The following dates relevant to a determination of the timeliness of the
85 petition for review:

86 (A) The date the final order from which the petition for review is filed.

87 (B) The date the petition for review was filed.

88 (4) A statement of at least one substantial issue petitioner intends to assert on
89 review. An issue not raised in the docketing statement may nevertheless be
90 raised in petitioner’s brief; conversely, an issue raised in the docketing statement
91 does not have to be included in petitioner’s brief.

92 (5) A concise summary of the facts necessary to provide context for the issues
93 presented.

94 (6) If applicable, a reference to all related or prior petitions for review in the same
95 case.

96 (7) The following documents must be attached to the docketing statement:

97 (A) The final order from which the petition for review is filed.

98 (B) In appeals arising from an order of the Public Service Commission, any
99 application for rehearing filed pursuant to Utah Code section 54-7-15.

100 (f) Content of a docketing statement in a child welfare case. The docketing statement
101 in an appeal arising from a child welfare case must include:

102 (1) A statement of the nature of the case and the relief sought.

103 (2) The entry date of the judgment or order on appeal.

104 (3) The date and disposition of any post-judgment motions.

105 (4) A concise statement of the material adjudicated facts as they relate to the
106 issues presented in the appeal.

107 (5) A statement of at least one substantial legal issues presented for appeal, how
108 they were preserved for appeal, and the applicable standard of review. The issue
109 statements should be concise in nature, setting forth specific legal questions.
110 General, conclusory statements such as "the juvenile court's ruling is not
111 supported by law or the facts" are not acceptable. An issue not raised in the
112 docketing statement may nevertheless be raised in appellant's brief; conversely,
113 an issue raised in the docketing statement does not have to be included in
114 appellant's brief.

115 (6) The docketing statement must have attached to it:

116 (A) a copy of the order, judgment, or decree on appeal;

117 (B) a copy of any rulings on post-judgment motions.

118 (g) **Consequences of failure to comply.** In a civil appeal, failure to file a docketing
119 statement within the time period provided in subsection (b) may result in dismissal of a
120 civil appeal or a petition for review. In a criminal case, failure to file a docketing
121 statement within the time period provided in subsection (b) may result in a finding of
122 contempt or other sanction.

123 ~~(g)~~ **h) Appeals from interlocutory orders.** When a petition for permission to appeal
124 from an interlocutory order is granted under Rule 5, a docketing statement may not be
125 filed unless otherwise ordered.

1 ~~**Rule 55. Petition on appeal.**~~

2 ~~(a) **Filing; dismissal for failure to timely file.** The appellant must file with the Court of~~
3 ~~Appeals clerk a petition on appeal within 15 days from transmission of the record on~~
4 ~~appeal by the Court of Appeals to each party. The petition will be deemed filed on the~~
5 ~~date of the postmark if first-class mail is used. Filing of the petition must be in~~
6 ~~accordance with Rule 21(a). If the petition on appeal is not timely filed, the court may~~
7 ~~dismiss the appeal or take other appropriate action. The petition must be accompanied~~
8 ~~by proof of service. The appellant must serve a copy on counsel of record of each party,~~
9 ~~including the Guardian ad Litem, or, if the party is not represented by counsel, then on~~
10 ~~the party at the party's last known address, in the manner prescribed in Rule 21(c).~~

11 ~~(b) **Preparation by counsel.** If the petitioner has appointed counsel in the juvenile court,~~
12 ~~or has been found to be indigent, then the petition on appeal must be prepared by~~
13 ~~appellate counsel appointed pursuant to the requirements of Rule 11-401 of the Utah~~
14 ~~Code of Judicial Administration. Counsel must be appointed within 21 days from the~~
15 ~~filing of the original notice of appeal. Otherwise, the petition on appeal must be~~
16 ~~prepared by appellant's trial counsel.~~

17 ~~(c) **Format.** All petitions on appeal must substantially comply with the Petition on~~
18 ~~Appeal form that accompanies these rules. The petition must not exceed 5,000 words,~~
19 ~~excluding the attachments required by Rule 55(d)(7). The petition must comply with~~
20 ~~Rule 27(a) and (b), except that it may be printed or duplicated on one side of the sheet.~~

21 ~~(d) **Contents.** The petition on appeal must include all of the following elements:~~

22 ~~(1) A statement of the nature of the case and the relief sought.~~

23 ~~(2) The entry date of the judgment or order on appeal.~~

24 ~~(3) The date and disposition of any post judgment motions.~~

25 ~~(4) A concise statement of the material adjudicated facts as they relate to the~~
26 ~~issues presented in the petition on appeal.~~

27 ~~(5) A statement of the legal issues presented for appeal, how they were preserved~~
28 ~~for appeal, and the applicable standard of review. The issue statements should be~~
29 ~~concise in nature, setting forth specific legal questions. General, conclusory~~
30 ~~statements such as "the juvenile court's ruling is not supported by law or the~~
31 ~~facts" are not acceptable.~~

32 ~~(6) The petition should include supporting statutes, case law, and other legal~~
33 ~~authority and argument for each issue raised, including authority contrary to~~
34 ~~appellant's case, if known.~~

35 ~~(7) The petition on appeal must have attached to it:~~

36 ~~(A) a copy of the order, judgment, or decree on appeal;~~

37 ~~(B) a copy of any rulings on post-judgment motions.~~

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

2 ~~(a) **Filing.** Any appellee, including the Guardian ad Litem, may file a response to the~~
3 ~~petition on appeal with the appellate clerk within 15 days after service of the appellant's~~
4 ~~petition on appeal. Filing of the petition must be in accordance with Rule 21(a). The~~
5 ~~response must be accompanied by proof of service to counsel of record of each party,~~
6 ~~including the Guardian ad Litem, or, on the party if the party is not represented by~~
7 ~~counsel. The response will be deemed filed on the date of the postmark if first-class mail~~
8 ~~is utilized.~~

9 ~~(b) **Format.** A response must substantially comply with the Response to Petition on~~
10 ~~Appeal form that accompanies these rules. The response may not exceed 5,000 words,~~
11 ~~excluding any attachments, and must comply with Rule 27.~~

1 **Rule 58. Ruling.**

2 (a) After reviewing the ~~petition on appeal, any response,~~docketing statement and the
3 record, the Court of Appeals may rule by opinion, memorandum decision, or order. ~~The~~
4 ~~Court of Appeals may issue a decision or may set the case for full briefing under in~~
5 accordance with Rule ~~24.10(a)(2)~~. The Court of Appeals may order an expedited briefing
6 schedule and specify which issues must be 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.~~

1 **Rule 59. Extensions of time.**

2 (a) Extension of time to appeal. The juvenile court, upon a showing of good cause or
3 excusable neglect, may extend the time for filing a notice of appeal upon motion filed
4 prior to the expiration of time prescribed by Rule 52. No extension shall exceed 10 days
5 past the prescribed time or 10 days from the date of entry of the order granting the
6 motion, whichever occurs later.

7 ~~(b) Extension of time to file petition on appeal or response. The Court of Appeals for~~
8 ~~good cause shown may extend the time for filing a petition on appeal or a response to~~
9 ~~the petition on appeal upon motion filed prior to the expiration of the time for which~~
10 ~~the extension is sought. No extension shall exceed 10 days past the original due date or~~
11 ~~10 days from the date of entry of the order granting the motion, whichever occurs later.~~
12 ~~The motion shall comply with Rule 22(b)(4).~~

TAB 3

UTAH SUPREME COURT

Matthew B. Durrant

Chief Justice

John A. Pearce

Associate Chief Justice

Paige Petersen

Justice

Diana Hagen

Justice

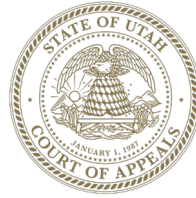
Jill M. Pohlman

Justice

Nicole I. Gray

Clerk of Court

Appellate Court Board



Nicholas Stiles
Appellate Court Administrator

450 South State Street
Salt Lake City, Utah 84114-0230
Telephone: (801) 578-3834
Email: nicks@utcourts.gov

UTAH COURT OF APPEALS

Michele M. Christiansen Forster

Presiding Judge

Gregory K. Orme

Judge

David N. Mortensen

Judge

Ryan M. Harris

Judge

Ryan D. Tenney

Judge

Lisa A. Collins

Clerk of Court

To: Chris Ballard, Chair, Advisory Committee on the Rules of Appellate Procedure
From: Nick Stiles, Appellate Court Administrator
Re: Disqualification of Appellate Judges

Chris –

A member of the Court of Appeals recently brought this issue before all of our appellate judges. We do not currently have a rule regarding how a party may move for an appellate judge to be disqualified, recused, or be determined to be constitutionally or statutorily incompetent.

I have provided a draft version of a Utah rule. I have also provided two examples of other jurisdictions' relevant rules. One question in addition to the drafting considerations, is where within our appellate rules would be most appropriate for this new rule to be located.

Thanks!

Respectfully,

Nick Stiles

Attached:

Tab 1 Draft Utah Rule

Tab 2 Example Nevada Rule

Tab 3 Example Tennessee Rule

TAB 1

1 Rule XX - Disqualification of a Justice or Judge

2 (a) **Motion for Disqualification.** A request that a justice or judge of the Supreme Court or Court of
3 Appeals be disqualified from sitting in a particular case shall be made by motion. Unless the court
4 permits otherwise, the motion shall be in writing and shall be in the form required by Rule 23.

5 (1) Time to File. A motion to disqualify a justice or judge shall be filed with the clerk of the
6 appropriate court within 60 days after filing of the notice of appeal under Rule 4, together
7 with proof of service on all other parties. Except for good cause shown, the failure to file a
8 timely motion to disqualify shall be deemed a waiver of the moving party's right to object to
9 a justice's or judge's participation in a case.

10 (2) Contents of a Motion.

11 (A) Grounds, Supporting Facts, and Legal Authorities. A motion shall state clearly and
12 concisely in separately numbered paragraphs each ground relied upon as a basis for
13 disqualification with the specific facts alleged in support thereof and the legal argument,
14 including citations to relevant cases, statutes or rules, necessary to support it.

15 (B) Verification. All assertions of fact in a motion must be supported by proper
16 sworn averments in an affidavit or by citations to the specific page and line where
17 support appears in the record of the case.

18 (i) A verification by affidavit shall be served and filed with the motion.

19 (ii) The affidavit shall be made upon personal knowledge by a person or
20 persons affirmatively shown competent to testify and shall set forth only those facts
21 that would be admissible in evidence.

22 (iii) The affidavit shall set forth the date or dates when the moving party first
23 became aware of the facts set forth in the motion.

24 (C) Attorney's Certificate. A motion under this Rule filed by a party represented by
25 counsel shall contain a certificate signed by at least 1 attorney of record who is an active
26 member of the bar of this state. The certificate must contain the following information:

27 (i) A representation that the signing attorney has read the motion and supporting
28 documents;

29 (ii) A representation that the motion and supporting documents are in the form
30 required by this Rule; and

31 (iii) A representation that, based on personal investigation, the signing
32 attorney believes all grounds asserted to be legally valid and all supporting factual
33 allegations to be true, and that the motion is made in good faith and not for purposes
34 of delay or for other improper motive.

35 (D) Striking a Motion Without an Attorney's Certificate. If a motion does not contain the
36 certification required by Rule XX(a)(2)(C) it shall be stricken unless such a certification is
37 provided within 14 days after the omission is called to the attorney's attention.

38 **(b) Response.**

39 (1) By a Party. Any party may file a response to a motion to disqualify a justice or judge. The
40 response shall be filed within 14 days after service of the motion unless the court shortens or
41 extends the time.

42 (2) By the Justice or Judge. The challenged justice or judge may submit a response to the
43 motion in writing or orally at any hearing that may be ordered by the court.

44 **(c) Reply.** A reply may not be filed unless permission is first obtained from the court.

45 **(d) Order.** The judge in question shall act promptly by written order and either grant or deny the
46 motion. If the motion is denied, the judge shall state in writing the grounds upon which he or she
47 denies the motion. If the judge denies the motion, the movant, within 21 days of entry of the
48 order, may file a motion for court review to be determined promptly by three other judges of the
49 intermediate court upon a de novo standard of review.

50
51 **(e) Motion concerning more than one judge.** If a motion is filed seeking disqualification, recusal,
52 or determination of constitutional or statutory incompetence of more than one judge of the
53 intermediate appellate court ("recusal motion"), and if the recusal motion is denied by the judges
54 in question, the movant, within twenty-one days of entry of the order, may file a motion for court
55 review to be determined promptly by three other judges of the intermediate appellate court who
56 were not subjects of the recusal motion, upon a de novo standard of review. If there are not three
57 judges of the intermediate appellate court who were not subjects of the recusal motion, then a
58 motion for court review is not available; under such circumstances, the order denying the recusal
59 motion may be appealed pursuant to Rule XX(f).

60
61 **(f) Review unavailable or denied.** If the motion for court review is denied, or if a motion for court
62 review is not available pursuant to the third sentence of Rule XX(e), an accelerated appeal as of
63 right lies to the Utah Supreme Court, which shall expeditiously decide the appeal based upon the
64 petition and other papers filed in the intermediate appellate court. The appeal to the Supreme
65 Court shall be titled "recusal appeal from the Court of Appeals" and shall be filed within 21 days
66 of the intermediate appellate court's order denying the motion for court review or, if a motion for
67 court review was not available pursuant to the third sentence of Rule XX(e), within 21 days of the
68 order denying the motion seeking disqualification or recusal of the appellate judges in question.

69
70 **(g) Supreme Court justices.** If a motion is filed seeking disqualification, recusal, or determination
71 of constitutional or statutory incompetence of a Supreme Court justice, the justice in question
72 shall act promptly by written order and either grant or deny the motion. If the motion is denied,
73 the justice shall state in writing the grounds upon which he or she denies the motion. If the justice
74 denies the motion, the movant, within 21 days of entry of the order, may file a motion for court
75 review, which shall be determined promptly by the remaining justices upon a de novo standard
76 of review.

Potential Utah Rule

77 (h) If a motion is filed seeking disqualification, recusal, or determination of constitutional or
78 statutory incompetence of all of the justices of the Supreme Court, and if the motion is denied by
79 the justices, no motion for further review is available.

TAB 2

1 Rule 35 - Disqualification of a Justice or Judge

2 (a) Motion for Disqualification. A request that a justice or judge of the Supreme Court or Court of
3 Appeals be disqualified from sitting in a particular case shall be made by motion. Unless the court permits
4 otherwise, the motion shall be in writing and shall be in the form required by Rule 27.

5 (1) Time to File. A motion to disqualify a justice or judge shall be filed with the clerk of the
6 Supreme Court within 60 days after docketing of the appeal under Rule 12, together with proof of
7 service on all other parties. Except for good cause shown, the failure to file a timely motion to
8 disqualify shall be deemed a waiver of the moving party's right to object to a justice's or judge's
9 participation in a case.

10 (2) Contents of a Motion.

11 (A) Grounds, Supporting Facts, and Legal Authorities. A motion shall state clearly and
12 concisely in separately numbered paragraphs each ground relied upon as a basis for
13 disqualification with the specific facts alleged in support thereof and the legal argument,
14 including citations to relevant cases, statutes or rules, necessary to support it.

15 (B) Verification. All assertions of fact in a motion must be supported by proper sworn
16 averments in an affidavit or by citations to the specific page and line where support
17 appears in the record of the case.

18 (i) A verification by affidavit shall be served and filed with the motion.

19 (ii) The affidavit shall be made upon personal knowledge by a person or persons
20 affirmatively shown competent to testify and shall set forth only those facts that
21 would be admissible in evidence.

22 (iii) The affidavit shall set forth the date or dates when the moving party first
23 became aware of the facts set forth in the motion.

24 (C) Attorney's Certificate. A motion under this Rule filed by a party represented by
25 counsel shall contain a certificate signed by at least 1 attorney of record who is an active
26 member of the bar of this state. The certificate must contain the following information:

27 (i) A representation that the signing attorney has read the motion and supporting
28 documents;

29 (ii) A representation that the motion and supporting documents are in the form
30 required by this Rule; and

31 (iii) A representation that, based on personal investigation, the signing attorney
32 believes all grounds asserted to be legally valid and all supporting factual
33 allegations to be true, and that the motion is made in good faith and not for
34 purposes of delay or for other improper motive.

35 (D) Striking a Motion Without an Attorney's Certificate. If a motion does not contain the
36 certification required by Rule 35(a)(2)(C), it shall be stricken unless such a certification is
37 provided within 14 days after the omission is called to the attorney's attention.

38 (b) Response.

39 (1) By a Party. Any party may file a response to a motion to disqualify a justice or judge. The
40 response shall be filed within 14 days after service of the motion unless the court shortens or
41 extends the time.

42 (2) By the Justice or Judge. The challenged justice or judge may submit a response to the motion
43 in writing or orally at any hearing that may be ordered by the court.

44 (c) Reply. A reply may not be filed unless permission is first obtained from the court.

45 Nev. R. App. P. 35

TAB 3

1 Section 3 - Motion Seeking Disqualification or Recusal of Appellate Judge or Justice

2
3 **3.01.** Any party seeking disqualification, recusal, or a determination of constitutional or statutory
4 incompetence of a judge or justice of an appellate court shall do so by a timely filed written
5 motion. The motion shall be supported by an affidavit under oath or a declaration under penalty
6 of perjury on personal knowledge and by other appropriate materials; the motion shall state, with
7 specificity, all factual and legal grounds supporting disqualification of the judge or justice and
8 shall affirmatively state that it is not being presented for any improper purpose, such as to harass
9 or to cause unnecessary delay or needless increase in the cost of litigation. A party who is
10 represented by counsel is not permitted to file a pro se motion under this rule.

11
12 **3.02.(a)** Upon the filing of a motion seeking disqualification, recusal, or determination of
13 constitutional or statutory incompetence of an intermediate appellate judge, the judge in question
14 shall act promptly by written order and either grant or deny the motion. If the motion is denied,
15 the judge shall state in writing the grounds upon which he or she denies the motion. If the judge
16 denies the motion, the movant, within twenty-one days of entry of the order, may file a motion
17 for court review to be determined promptly by three other judges of the intermediate court upon
18 a de novo standard of review.

19 **(b)** If a motion is filed seeking disqualification, recusal, or determination of constitutional or
20 statutory incompetence of more than one judge of the intermediate appellate court ("recusal
21 motion"), and if the recusal motion is denied by the judges in question, the movant, within
22 twenty-one days of entry of the order, may file a motion for court review to be determined
23 promptly by three other judges of the intermediate appellate court who were not subjects of the
24 recusal motion, upon a de novo standard of review. If there are not three judges of the
25 intermediate appellate court who were not subjects of the recusal motion, then a motion for court
26 review pursuant to this section 3.02(b) is not available; under such circumstances, the order
27 denying the recusal motion may be appealed pursuant to section 3.02(c). **(c)** If the motion for
28 court review is denied, or if a motion for court review is not available pursuant to the second
29 sentence of section 3.02(b), an accelerated appeal as of right lies to the Tennessee Supreme
30 Court, which shall expeditiously decide the appeal based upon the petition and other papers filed
31 in the intermediate appellate court. The appeal to the Supreme Court shall be titled "recusal
32 appeal from the [Court of Appeals or Court of Criminal Appeals]" and shall be filed within
33 twenty-one days of the intermediate appellate court's order denying the motion for court review
34 or, if a motion for court review was not available pursuant to the second sentence of
35 section 3.02(b), within twenty-one days of the order denying the motion seeking disqualification
36 or recusal of the appellate judges in question.

37
38 **3.03.(a)** If a motion is filed seeking disqualification, recusal, or determination of constitutional or
39 statutory incompetence of a Supreme Court justice, the justice in question shall act promptly by
40 written order and either grant or deny the motion. If the motion is denied, the justice shall state in
41 writing the grounds upon which he or she denies the motion. If the justice denies the motion, the
42 movant, within twenty-one days of entry of the order, may file a motion for court review, which
43 shall be determined promptly by the remaining justices upon a de novo standard of review.

44 **(b)** If a motion is filed seeking disqualification, recusal, or determination of constitutional or
45 statutory incompetence of all of the justices of the Supreme Court, and if the motion is denied by
46 the justices, no motion for court review shall be available pursuant to section 3.03(a).

47 **3.04.** The time periods for filing a motion for court review pursuant to sections 3.02(a), 3.02(b),
48 or 3.03(a) and for filing a "recusal appeal from the [Court of Appeals or Court of Criminal
49 Appeals]" pursuant to section 3.02(c) are jurisdictional and cannot be extended by the court. The
50 computation of time for filing the foregoing matters under section 3 shall be governed by Tenn.
51 R. App. P. 21(a).