



## Agenda

### Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

*Chris Ballard, Chair*  
*Nathalie Skibine, Vice Chair*

Location: Meeting held through Webex and in person at:  
Matheson Courthouse, Café Meeting Room-W18A  
450 S. State St.  
Salt Lake City, Utah 84111  
<https://utcourts.webex.com/utcourts/j.php?MTID=m538581f9082cdad50ff1e74adef124f9>

Date: May 4, 2023

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

<b>Action:</b> Welcome and approval of April 6, 2023 Minutes	Tab 1	Chris Ballard, Chair
<b>Action:</b> Rule 4	Tab 2	Chris Ballard, Nathalie Skibine
<b>Action:</b> Rule 5	Tab 3	Stan Purser
<b>Action:</b> Rule 27 option 1 and 2	Tab 4	Stan Purser
<b>Action:</b> Rule 4(b)	Tab 5	Michelle Quist, Scarlet Smith
<b>Discussion:</b> Old/new business		Chris Ballard, Chair

**Committee Webpage:** <https://legacy.utcourts.gov/rules/urap.php>

#### 2023 Meeting schedule:

June 1, 2023	September 7, 2023	December 7, 2023
July 6, 2023	October 5, 2023	
August 3, 2023	November 2, 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

In Person and by WebEx Videoconference  
Thursday, April 6, 2023  
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  
Carol Funk  
Amber Griffith—Staff

Michael Judd—Recording  
Secretary  
Alexandra Mareschal—  
Guest  
Judge Gregory Orme  
Michelle Quist  
Clark Sabey  
Nathalie Skibine—  
Vice Chair  
Scarlet Smith  
Mary Westby

#### EXCUSED

Patrick Burt  
Tyler Green  
Stanford Purser  
Nick Stiles—Staff

1. **Action:** **Chris Ballard**  
**Approval of March 2023 Minutes**

The committee reviewed the March 2023 minutes. Chris Ballard recommended changes to Sections 4 and 5, and the committee approved those changes after reviewing the proposed changes on the screen.

*After that review, Mary Westby moved to approve the March 2023 minutes. Nathalie Skibine seconded that motion, and it passed without objection by*

*unanimous consent.*

**2. Action:  
Rule 57**

**Mary Westby  
Lisa Collins**

Mary Westby provided the committee with an update on progress towards an amended Rule 57. After hearing about a measure of resistance from the juvenile-court clerks about the past proposal, the committee opted to return to the drawing board, beginning with a proposed amendment that says what the record *is*, rather than what it *is not*.

The committee noted that a social file contains deeply personal information and that it is not routine for district court to see those materials along the way. Courts *do*, however, often see summaries, which means that, in best practice, an appellate court would expect to see those types of summaries on appeal, so long as they get incorporated in the record on appeal—or included through supplementation. Alexandra Mareschal spoke to describe the problems created on appeal when important material is missing from the appellate file.

Lisa Collins offered to speak with court administrators about the possibility that in a juvenile appeal, appellate counsel would be automatically added as a party with access to the juvenile docket, through CARE.

*Following that discussion, Ms. Westby moved to table to seek additional information from juvenile court clerks and court administrators. Carol Funk seconded that motion, and it passed without objection by unanimous consent.*

**3. Action:  
Rule 8**

**Chris Ballard**

Mr. Ballard notes that the committee did substantial work on Rule 8 several years ago. In doing so, the committee included references to Rule 62 of the Utah Rules of Civil Procedure, which has since been amended, making Rule 8's cross-references inaccurate (or at risk of being inaccurate after future amendments). This proposed change would correct that inaccuracy and guard against future inaccuracies of the same type.

*Following the committee's brief discussion, Judge Gregory Orme moved to adopt the proposed changes. Ms. Westby seconded that motion, and it passed without objection by unanimous consent. Clark Sabey suggests that this amendment be adopted*

*immediately, and the committee agreed.*

**4. Action: Chris Ballard**  
**HB 317**

Ms. Westby spoke to suggest that there is no need for a rule to address the issues raised by HB 317, as the Court of Appeals has an internal process to expedite the appeals described in the bill. Ms. Westby suggested that the committee pause to see how that existing process works before it dives into crafting another rule to address the expedited appeal described in Utah Code § 77-20-209.

The committee resolved to follow up on this question in six months. One option is to address this issue through a modified briefing order, and in that case the committee will provide notice to stakeholders of what that briefing order may look like.

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

The committee received an update regarding Rule 50. Issues regarding remote hearings will be discussed at the next Court of Appeals judges' meeting, slated for April 19.

Scarlet Smith noted that Rule 4(b)(2) is causing a lot of work for appellate practitioners, including through notices of appeal being filed early. Mr. Ballard invited Ms. Smith to prepare a written proposal that may address those issues.

The committee's next meeting will use a hybrid in-person/remote attendance format, and Judge Orme suggested the committee make that hybrid approach the standing practice.

**6. Adjourn**

*Following the business described above, Michelle Quist moved to adjourn, and Judge Orme seconded. The committee adjourned. The committee's next meeting will take place on May 4, 2023.*

TAB 2

When I again presented to the Supreme Court the proposed changes to rule 4 regarding the deadline for filing a motion to reinstate, no justice raised a concern with placing on the prosecution the burden to prove unreasonable delay. But Justice Hagen did raise a concern, prompted by the Attorney General's public comment, that the proposed changes leave the prosecution to shoot in the dark when trying to carry that burden. The amendments did not require the defendant to allege when she learned that she was deprived of the right to appeal, or any of the grounds supporting a claim that a delay of more than one year was reasonable.

I agreed that Justice Hagen's concern was valid. I should have noticed it earlier. I offered to take the issue up with the Committee. The highlighted portion below is my attempt to address that issue. I also replaced "shall" on lines 14, 37, 44, 54, 62, 120, 121, 122 to make the rule consistent internally and with the style guide.

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

**Appeal as of right.** Except as provided in paragraph (a)(1) or (a)(2), in a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 must be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. If the trial court enters a judgment or order on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the first day following the trial court's entry that is not a Saturday, Sunday, or legal holiday.

(1) When a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 must be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(2) When an order is entered denying, in whole or in part, a motion to dismiss under Utah Code section 78B-25-103, the notice of appeal ~~shall~~must be filed with the clerk of the trial court within 21 days after the date of entry of the order appealed from.

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

~~(f)~~ **Motion to reinstate period for filing a direct appeal in criminal cases.** ~~Upon a showing that~~

(1) The trial court must reinstate the thirty-day period for filing a direct appeal if no timely appeal is filed in a criminal case, if a defendant demonstrates by a

preponderance of the evidence that the defendant was deprived of the right to appeal through no fault of the defendant. ~~the trial court shall reinstate the thirty-day period for filing a direct appeal. A defendant seeking such reinstatement shall may file a written motion in the sentencing court and serve the prosecuting entity. trial court to reinstate the time to appeal.~~

(2) The motion must be filed within one year, or within a reasonable time, whichever is later, from the day on which the defendant personally knew, or should have known in the exercise of reasonable diligence, of evidentiary facts forming the basis of the claim that the defendant was deprived of the right to appeal.

(A) The motion must state:

(i) the date the defendant learned that the defendant's attorney had not pursued an appeal; and

(ii) how the defendant learned that the defendant's attorney had not pursued an appeal, including all efforts the defendant made to learn whether his attorney had pursued an appeal.

(B) If the motion is filed more than one year after the defendant learned that the defendant's attorney had not pursued an appeal, the defendant must allege all of the grounds that support the allegation that the delay in filing the motion was reasonable.

(23) If the defendant is not represented by counsel and is indigent, the trial court shall must appoint counsel.

(34) The motion must be served on the prosecuting entity. The prosecutor ~~shall~~ have ~~30 days after service of the motion to~~ may file a ~~written~~ response. ~~If the prosecutor opposes to~~ the motion within 28 days after being served.

(45) If the motion to reinstate the time to appeal is opposed, the trial court ~~shall must~~ set a hearing at which the parties may present evidence.

(6)(a) If the prosecutor opposes the motion on the ground that the defendant filed it beyond the time limit in paragraph (f)(2), the prosecutor must prove, by a preponderance of the evidence, that the defendant's delay was unreasonable. The court can deny the motion as untimely only if the court finds that the prosecutor has carried this burden.

~~(6) The defendant must show that the defendant was deprived of the right to appeal through no fault of the defendant.~~

(7) If the trial court finds by a preponderance of the evidence that the defendant has demonstrated that the defendant was been deprived of the right to appeal, it shall the court must enter an order reinstating the time for right to appeal. T enters an order reinstating the time for filing a direct appeal, the defendant's notice of appeal must be filed with the clerk of the trial court within 30 days after the date the order is entered of entry of the order.

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

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

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

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

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

(2) A party seeking such reinstatement ~~shall~~must file a written motion in the trial court within one year from the entry of judgment. The party ~~shall~~must comply with Rule 7 of the Utah Rules of Civil Procedure and ~~shall~~must serve

124 each of the parties in accordance with Rule [5](#) of the Utah Rules of Civil  
125 Procedure.

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

TAB 3

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

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

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

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

22 (1) The petition must contain:

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

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

the trial court. Petitioner must state the applicable standard of appellate review and cite supporting authority;

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

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

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

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

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

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

(f) **Response; no reply.** No petition will be granted in the absence of a request by the court for a response. No response to a petition for permission to appeal will be received unless requested by the court. Within 14 days after an order requesting a response, any other party may oppose or concur with the petition. Any response to a petition for permission to appeal is subject to the same page limitation set out in paragraph (d) and

must be filed in the appellate court. The respondent must serve the response on the petitioner. The petition and any response will be submitted without oral argument unless otherwise ordered. No reply in support of a petition for permission to appeal will be permitted unless requested by the court.

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

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

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

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

(1) If the petition is granted, ~~The~~ trial court will ~~not~~ prepare ~~or~~ and transmit the record under rule 11~~(b)~~ or 12~~(b)~~. ~~The record on appeal is as defined in rule 11(a).~~



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

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

Explanation: proposed amendment reflects current appellate practice of following normal record preparation and transmission rules after petition is granted.

TAB 4

**Rule 27. Form of briefs, motions, and other documents.**

(a) **Form of briefs, motions, and other documents.** Except as otherwise provided in this rule or by leave of court, all briefs, motions, and other documents must comply with the following standards:

(1) **Size, line spacing, and margins.** All documents must be prepared on 8½ by 11 inch sized paper. The text must be double spaced, except for matter customarily single spaced and indented. Margins must be at least one inch on all sides. Page numbers are required and may appear in the margins.

(2) **Typeface.** The type must be a plain, roman style with serifs. Italics or boldface may be used for emphasis. Cited case names must be italicized or underlined.

(3) **Typesize.** The typeface must be 13-point or larger for both text and footnotes.

(b) **Documents submitted by unrepresented parties.** An unrepresented party who does not have access to a word-processing system must file typewritten or legibly handwritten briefs, motions, and other appellate documents. An unrepresented party must sign any document filed with the court. These documents must otherwise comply with the form requirements of this rule, and, if applicable, Rules 24 and 24A.

(c) **Caption.** The cover of each brief or the first page of any other document must contain a caption that includes the following information:

(1) Case and document information:

(A) full title given to the case in the court or agency from which the appeal was taken, as modified under Rule 3(g),

(B) the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal

(C) the name of the appellate court;

(D) the number of the case in the appellate court ~~opposite the case title;~~

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**Comment [SP1]:** Frequent appellate advocates know this rule--requiring the case number opposite the title/parties--is not enforced. So let's get rid of it to make the rule conform to allowable practice. The change will allow for better looking covers and make it easier for non-frequent filers.

(E) the title or description of the document (e.g., Brief of Appellant, Petition for Rehearing, Motion to Dismiss);

(F) the nature of the proceeding in the appellate court if not apparent from the title or description of the document (e.g., Appeal, Petition for Review, ~~Extraordinary Writ~~);

(G) the name of the court and judge, agency, or board below.

(2) For motions and other appellate documents, counsel or party information in the upper left-hand corner, including:

(A) name, address, telephone number, Utah State Bar number, and designation as attorney for appellant, petitioner, appellee, or respondent, as the case may be, or

(B) An unrepresented party must list the party's name, address, and telephone number.

(3) For briefs on the merits, the names of all counsel for the respective parties must appear on the bottom half of the cover page. The party filing the document must appear in the lower right **and opposing counsel** in the lower left of the cover.

**(d) Additional requirements for briefs on the merits.**

(1) **Binding.** Briefs must be printed on both sides of the page, and securely bound on the left margin with a compact-type binding so as not unduly to increase the thickness of the brief along the bound side. Coiled plastic and spiral-type bindings are not acceptable.

(2) **Color of cover page.** The cover page of appellant's opening brief must be blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae, green; that of any reply brief, or in cases involving a cross-appeal, the appellant's

**Comment [SP2]:** Is opposing counsel's information really useful or necessary on the cover page, especially considering the separate (redundant) requirement to list all the appellate parties and counsel right after the cover page. See URAP 24(a)(1)?

And if it is useful/necessary to list opposing counsel on the cover page, why do we need to do it again on the following page per rule 24(a)(1)?

second brief, gray. The cover page must be of heavy card stock. There must be adequate contrast between the printing and the color of the cover page.

(3) **Criminal appeals.** In criminal cases, the cover of the defendant's brief must also state whether the defendant is presently incarcerated in connection with the case on appeal and if the brief is an *Anders* brief. An *Anders* brief is a brief filed pursuant to *Anders v. California*, 386 U.S. 793 (1967), in cases where counsel believes no nonfrivolous appellate issues exist.

(4) **Effect of noncompliance.** The clerk will examine all briefs before filing. If the briefs are not prepared in accordance with these rules, the clerk may choose to not file the briefs ~~y will not be filed but will~~ and ~~be~~ returned them to be properly prepared. The clerk will retain one copy of the noncomplying brief and the party must file a brief prepared in compliance with these rules within 5 days. The clerk may grant additional time for bringing a brief into compliance. This rule is not intended to permit ~~significant~~ any substantive changes in briefs.

**Comment [SP3]:** This reflects current practice where the clerk does not return briefs for every violation of the rules (e.g., see above re placement of case number on brief covers).

**Rule 27. Form of briefs, motions, and other documents.**

(a) **Form of briefs, motions, and other documents.** Except as otherwise provided in this rule or by leave of court, all briefs, motions, and other documents must comply with the following standards:

(1) **Size, line spacing, and margins.** All documents must be prepared on 8½ by 11 inch sized paper. The text must be double spaced, except for matter customarily single spaced and indented. Margins must be at least one inch on all sides. Page numbers are required and may appear in the margins.

(2) **Typeface.** The type must be a plain, roman style with serifs. Italics or boldface may be used for emphasis. Cited case names must be italicized or underlined.

(3) **Typesize.** The typeface must be 13-point or larger for both text and footnotes.

(b) **Documents submitted by unrepresented parties.** An unrepresented party who does not have access to a word-processing system must file typewritten or legibly handwritten briefs, motions, and other appellate documents. An unrepresented party must sign any document filed with the court. These documents must otherwise comply with the form requirements of this rule, and, if applicable, Rules 24 and 24A.

(c) **Caption.** The cover of each brief or the first page of any other document must contain a caption that includes the following information:

(1) For briefs on the merits and petitions:

(A) the number of the case in the appellate court (if available);

(B) the name of the appellate court;

(C) full title given to the case in the court or agency from which the appeal was taken, as modified under Rule 3(g);

(D) the designation of the parties both as they appeared in the lower court or agency and as they appear in the appellate proceeding;

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(E) the title or description of the document (e.g., Brief of Appellant, Petition for Permission to File Interlocutory Appeal, Petition for Rehearing, Petition for Extraordinary Relief);

(F) the nature of the proceeding in the appellate court if not apparent from the title or description of the document (e.g., Direct Appeal, Interlocutory Appeal, Petition for Review);

(G) the name of the court and judge, agency, or board below and the case or proceeding number; and

(H) counsel or party information must appear on the bottom half of the cover page. The party or counsel filing the document must appear in the lower right and opposing counsel or party in the lower left of the cover.

(i) counsel information must include their name, Utah State Bar number of the filing counsel, mailing address, email address of the filing counsel, telephone number, and designation as counsel for appellant, petitioner, appellee, or respondent, as the case may be, or

(ii) an unrepresented party must list their name, mailing address, email address (if any), and telephone number (if any), and designation as the appellant, petitioner, appellee, or respondent, as the case may be.

(12) For motions and other appellate documents besides briefs and petitions: Case and document information:

(A) the number of the case in the appellate court;

(B) the name of the appellate court;

**Comment [SP4]:** E.g., when filing a document titled "petition for permission to file interlocutory appeal," there is no reason for the next line on the cover page to say "On petition for permission to file interlocutory appeal." Or when filing a "petition for extraordinary relief," there is no reason to then state "On petition for extraordinary relief."

**Comment [SP5]:** Is opposing counsel's information really useful or necessary on the cover page, especially considering the separate (redundant) requirement to list all the appellate parties and counsel right after the cover page. See URAP 24(a)(1).

And if it is useful/necessary to list opposing counsel on the cover page, why do we need to do it again on the following page per rule 24(a)(1)?

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(C) full title given to the case in the court or agency from which the appeal was taken, as modified under Rule 3(g),

(D) the designation of the parties both as they appeared in the lower court or agency and as they appear in the appellate proceeding;

(E) the title or description of the document (e.g., Motion to Dismiss, Docketing Statement, Stipulation, Motion to Extend Time, Notice); and  
~~(A) full title given to the case in the court or agency from which the appeal was taken, as modified under Rule 3(g),~~

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(F) counsel or party information in the upper left-hand corner, including  
~~(B) the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal~~

:

(i) counsel's ~~(C) the name of the appellate court;~~

~~(D) the number of the case in the appellate court opposite the case title;~~

~~(E) the title or description of the document (e.g., Brief of Appellant, Petition for Rehearing, Motion to Dismiss);~~

~~(F) the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review, Extraordinary Writ);~~

~~(G) the name of the court and judge, agency, or board below.~~

**Comment [SP6]:** This information seems unnecessary for, and is regularly not included with, motion captions. So let's not require it.

~~(2) For motions and other appellate documents, counsel or party information in the upper left hand corner, including:~~

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~~(A)~~ name, Utah State Bar number, mailing address, email address,  
telephone number, ~~Utah State Bar number,~~ and designation as

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~~attorney~~counsel for appellant, petitioner, appellee, or respondent,  
~~as~~ the case may be, or

~~(B) A~~

(ii) an unrepresented party's ~~must list the party's~~ name, mailing  
address, email address (if any), and telephone number (if any), and  
designation as the appellant, petitioner, appellee, or respondent, as  
the case may be.

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~~(3) For briefs on the merits, the names of all counsel for the respective parties  
must appear on the bottom half of the cover page. The party filing the document  
must appear in the lower right and opposing counsel in the lower left of the  
cover.~~

(d) **Additional requirements for briefs on the merits.**

(1) **Binding.** Briefs must be printed on both sides of the page, and securely bound on the left margin with a compact-type binding so as not unduly to increase the thickness of the brief along the bound side. Coiled plastic and spiral-type bindings are not acceptable.

(2) **Color of cover page.** The cover page of appellant's opening brief must be blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae, green; that of any reply brief, or in cases involving a cross-appeal, the appellant's second brief, gray. The cover page must be of heavy card stock. There must be adequate contrast between the printing and the color of the cover page.

(3) **Criminal appeals.** In criminal cases, the cover of the defendant's brief must also state whether the defendant is presently incarcerated in connection with the case on appeal and if the brief is an *Anders* brief. An *Anders* brief is a brief filed pursuant to *Anders v. California*, 386 U.S. 793 (1967), in cases where counsel believes no nonfrivolous appellate issues exist.

100 (4) **Effect of noncompliance.** The clerk will examine all briefs before filing. If the  
101 briefs are not prepared in accordance with these rules, the clerk may choose to  
102 not file the briefs ~~y will not be filed but will~~ and ~~be returned~~ them to be properly  
103 prepared. The clerk will retain one copy of the noncomplying brief and the party  
104 must file a brief prepared in compliance with these rules within 5 days. The clerk  
105 may grant additional time for bringing a brief into compliance. This rule is not  
106 intended to permit ~~significant~~ any substantive changes in briefs.

**Comment [SP7]:** This reflects current practice where the clerk does not return briefs for every violation of the rules (e.g., see above re placement of case number on brief covers).

# TAB 5

Scarlet Smith and Michelle Quist have proposed the below amendment to Rule 4 paragraph (b)(2). In addition to this proposal, Scarlet and Michelle would also like the Committee to review the deadline set forth in paragraph (b)(1)(E) to see if it is inconsistent with the longer deadline permitted by Rule 60 of the Utah Rules of Civil Procedure.

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

**Appeal as of right.** Except as provided in paragraph (a)(1) or (a)(2), in a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 must be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. If the trial court enters a judgment or order on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the first day following the trial court's entry that is not a Saturday, Sunday, or legal holiday.

(1) When a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 must be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

(2) When an order is entered denying, in whole or in part, a motion to dismiss under Utah Code section 78B-25-103, the notice of appeal shall be filed with the clerk of the trial court within 21 days after the date of entry of the order appealed from.

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

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

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

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

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

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

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

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

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

(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in paragraph (b), shall be treated as filed after entry of the order and on the day thereof, except that such a notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of ~~any~~ motion listed in paragraph (b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order. If multiple motions in paragraph (b) are timely filed and the court decides each motion in a separate order, a party must file a notice of appeal or amended notice of appeal with the prescribed time measured from the entry of the last order.

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

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

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

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

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

(f)– **Motion to reinstate period for filing a direct appeal in criminal cases.** ~~Upon a showing that~~

(1) The trial court must reinstate the thirty-day period for filing a direct appeal if no timely appeal is filed in a criminal case, if a defendant demonstrates by a preponderance of the evidence that the defendant was deprived of the right to appeal through no fault of the defendant, the trial court shall reinstate the thirty-day period for filing a direct appeal. A defendant seeking such reinstatement

~~shall may file a written motion in the sentencing court and serve the prosecuting entity, trial court to reinstate the time to appeal.~~

(2) The motion must be filed within one year, or within a reasonable time, whichever is later, from the day on which the defendant personally knew, or should have known in the exercise of reasonable diligence, of evidentiary facts forming the basis of the claim that the defendant was deprived of the right to appeal.

(23) If the defendant is not represented by counsel and is indigent, the trial court  
~~shall~~must appoint counsel.

(34) The motion must be served on the prosecuting entity. The prosecutor shall  
~~have 30 days after service of the motion to may~~ file a ~~written~~ response. ~~If the prosecutor opposes to~~ the motion within 28 days after being served.

(45) If the motion to reinstate the time to appeal is opposed, the trial court  
~~shall~~must set a hearing at which the parties may present evidence.

(6)(a) If the prosecutor opposes the motion on the ground that the defendant filed it beyond the time limit in paragraph (f)(2), the prosecutor must prove, by a preponderance of the evidence, that the defendant's delay was unreasonable. The court can deny the motion as untimely only if the court finds that the prosecutor has carried this burden.

~~(6) The defendant must show that the defendant was deprived of the right to appeal through no fault of the defendant.~~

(7) If the trial court finds by a preponderance of the evidence that the defendant has demonstrated that the defendant was been deprived of the right to appeal, it shall the court must enter an order reinstating the time for right to appeal. T enters an order reinstating the time for filing a direct appeal, the defendant's notice of appeal must be filed with the clerk of the trial court within 30 days after the date the order is entered~~of entry of the order.~~

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

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

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

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

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

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

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



Rule 60. Relief from judgment or order.

*Effective: 5/1/2016*

**(a) Clerical mistakes.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. After a notice of appeal has been filed and while the appeal is pending, the mistake may be corrected only with leave of the appellate court.

**(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon just terms, the court may relieve a party or its legal representative from a judgment, order, or proceeding for the following reasons:

(b)(1) mistake, inadvertence, surprise, or excusable neglect;

(b)(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or other misconduct of an opposing party;

(b)(4) the judgment is void;

(b)(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment should have prospective application; or

(b)(6) any other reason that justifies relief.

**(c) Timing and effect of the motion.** A motion under paragraph (b) must be filed within a reasonable time and for reasons in paragraph (b)(1), (2), or (3), not more than 90 days after entry of the judgment or order or, if there is no judgment or order, from the date of the proceeding. The motion does not affect the finality of a judgment or suspend its operation.

**(d) Other power to grant relief.** This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

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**Advisory Committee Notes**

The 1998 amendment eliminates as grounds for a motion the following: "(4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action." This basis for a motion is not found in the federal rule. The committee concluded the clause was ambiguous and possibly in conflict with rule permitting service by means other than personal service.

**2016 amendments**

The deadlines for a motion are as stated in this rule, but if a motion under paragraph (b) is filed within 28 days after the judgment, it will have the same effect on the time to appeal as a motion under Rule [50](#), [52](#), or [59](#). See the 2016 amendments to Rule of Appellate Procedure [4\(b\)](#).