



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Christopher 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: June 1, 2023

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

Action: Welcome and approval of May 4, 2023 Minutes	Tab 1	Chris Ballard, Chair
Action: Rule 27, option 1 and 2	Tab 2	Stan Purser
Action: Rule 4(b)	Tab 3	Scarlet Smith, Micelle Quist
Action: Rule 5 (for discussion)	Tab 4	Lisa Collins, Mary Westby
Discussion: Old/new business		Chris Ballard, Chair

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

2023 Meeting schedule:

September 7, 2023 December 7, 2023
October 5, 2023
November 2, 2023

TAB 1



[Draft] 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, May 4, 2023
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard – Chair
Troy Booher –
Emeritus Member
Carol Funk
Tyler Green
Amber Griffith – Staff
Judge Michele M.
Christiansen Forster

Judge Gregory Orme
Stanford Purser
Clark Sabey
Scarlet Smith
Nathalie Skibine
Nick Stiles – Staff
Eric Weeks – Guest

EXCUSED

Patrick Burt
Lisa Collins
Michael Judd –
Recording Secretary
Michelle Quist
Mary Westby

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

The Committee reviewed the April 2023 minutes and no changes were suggested.

Judge Christiansen Forster moved to approve the minutes. Stan Purser seconded that motion, and the minutes were unanimously approved.

**2. Action:
Rules 4**

Chris Ballard

Chris Ballard reported to the Committee they had submitted the rule to the Supreme Court for final approval regarding the addition of a deadline for filing the motion to reinstate an appeal in a criminal case. During the discussion with the Supreme Court, Justice Hagen had pointed out that the rule didn't provide any way for the prosecution, who now has the burden, to show proof that the delay was unreasonable.

Nathalie Skibine expressed a couple issues that she had with the new proposal. The first issue is putting the delay solely on the defendant's attorney. The second issue Ms. Skibine had was with the date requirement, as it is hard to keep track of dates while in prison. Ms. Skibine suggested simplifying the language. Emily Adams agreed. Clark Sabey suggested allowing a broader timeframe for the date, so instead of the specific date the defendant could include the month and year. Mr. Ballard disagreed and believes the date, that the defendant learned their appeal was not progressing, is necessary. However, Mr. Ballard did agree that the failure is not always on the attorney.

The Committee then discussed and made changes to the proposed language.

After those changes were made, Clark Sabey moved to approve the Rule as it was shown on the screen. Judge Orme seconded that motion and the rule was unanimously approved with no objections. The rule will be presented to the Supreme Court for approval to be published for public comment.

**3. Action:
Rule 5**

Stan Purser

Stan Purser presented proposed amendments to Rule 5. It is Mr. Purser's understanding that in interlocutory appeals the courts have been requesting the record from the trial court. Mr. Purser's proposal reflects this so that parties know what will occur.

Nathalie Skibine raised a concern that the rule was just recently modified in the past few years to the way it currently is, in an effort to make the appeals go faster.

Carol Funk raised a question about the section regarding transcripts. Ms. Funk explained that in other appeals the parties are not told which transcripts they have to order, and it is up to the appellant to prepare the record how they would like. Ms. Funk proposed that the language be modified so the appeal would work the same as other appeals, just with a shorter timeline to order the transcripts. The Committee agreed and discussed how to phrase this in the rule.

Ms. Funk raised an additional question regarding the five day timeline. Ms. Funk wondered if we need this rule to have expedited ordering of the transcripts because it's an interlocutory appeal. The members expressed that Lisa Collins and Mary Westby would be able to answer this question, but they were unable to attend the meeting. The Committee ultimately decided to direct the parties to Rule 11 and have them follow the guidelines outlined in that rule.

Scarlet Smith then moved to tentatively approve the rule as it was shown on the screen pending Lisa Collins and Mary Westby's input. Emily Adams seconded that motion. No objections were made and the motion passed.

**4. Action: Stan Purser
Rule 27**

The Committee discussed the two proposals presented by Stan Purser to amend Rule 27. Emily Adams questioned what information was necessary in the caption or if less is better. Judge Orme explained that sometimes he is able to easily determine if he has a conflict based on the caption and who are the parties and trial judge involved in the case. Scarlet Smith asked if all counsel need to be listed on the cover page as sometimes this makes the cover page run onto a second page. Additionally Ms. Smith wondered if only the attorney who filed the brief could be listed, then additional attorneys can be listed on the second page. Judge Orme agreed and believed that would be helpful. The language requiring opposing counsel's information to be listed on the cover was then removed from the proposal.

Carol Funk asked why there should be different captions for motions and petitions; could the same caption be used? Mr. Purser believed that would still be an option as there is not a requirement to not include information, nor would it be an issue to use the same caption. The intention of the proposal is to clarify that people don't have to use the same caption. Ms. Funk then asked if there are any circumstances where the motion would be filed first. If so, then the court wouldn't have the information that comes with a petition. Emily Adams listed a few examples of motions that are filed prior to the petition.

Following those discussions Emily Adams moved to table the proposal until the June meeting so the Committee could hear Lisa Collins' input. Scarlet Smith seconded the motion and it passed without objections.

**5. Action: Scarlet Smith
Rule 4(b)**

Scarlet Smith introduced the proposed amendments to Rule 4 paragraph (b). Ms. Smith explained that there is some ambiguity for using the term any and that individuals may view that to mean that they need to file a petition to

appeal after every motion is disposed.

Clark Sabey questioned if there is an issue with Rule 73. Mr. Sabey noted that the rules have been structured so that parties know by the end of day 29 post judgment, that they are done. But looking at Rule 73 there may be an exception to the 14 day. Ms. Smith believes it is only an issue when we refer to these as post judgment motions.

Due to time constraints Carol Funk moved to table this item until June. Stan Purser seconded that motion and it passed with no objections.

**6. Action:
Old/New Business**

Chris Ballard

Chris Ballard discussed the Committee's meeting schedule moving forward, and brought up that the Committee typically takes a summer hiatus. The Committee decided to meet in June, but will cancel the July and August meeting.

With that decision made, Chris Ballard declared the meeting to be adjourned.

TAB 2

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

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

5 (1) **Size, line spacing, and margins.** All documents must be prepared on 8½ by
6 11 inch sized paper. The text must be double spaced, except for matter
7 customarily single spaced and indented. Margins must be at least one inch on all
8 sides. Page numbers are required and may appear in the margins.

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

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

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

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

19 (1) Case and document information:

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

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

24 (C) the name of the appellate court;

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

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.

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

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

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

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

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

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

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

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

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

48 (2) **Color of cover page.** The cover page of appellant's opening brief must be
49 blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae,
50 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)?

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

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

58 (4) **Effect of noncompliance.** The clerk will examine all briefs before filing. If the
59 briefs are not prepared in accordance with these rules, the clerk may choose to
60 not file the briefs ~~y will not be filed but will~~ and ~~be~~ returned them to be properly
61 prepared. The clerk will retain one copy of the noncomplying brief and the party
62 must file a brief prepared in compliance with these rules within 5 days. The clerk
63 may grant additional time for bringing a brief into compliance. This rule is not
64 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).

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

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

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6 11 inch sized paper. The text must be double spaced, except for matter
7 customarily single spaced and indented. Margins must be at least one inch on all
8 sides. Page numbers are required and may appear in the margins.

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

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

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

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

19 (1) For briefs on the merits and petitions:

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

21 (B) the name of the appellate court;

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

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

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

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

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

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

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

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

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

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

49 (B) the name of the appellate court;

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

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

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

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

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

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

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

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

67 ~~(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.

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

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70 ~~(A)~~ name, Utah State Bar number, mailing address, email address,
71 telephone number, ~~Utah State Bar number,~~ and designation as
72 ~~attorney~~ counsel for appellant, petitioner, appellee, or respondent,
73 ~~as~~ the case may be, or

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74 ~~(B)~~ A

75 (ii) an unrepresented party's ~~must list the party's~~ name, mailing
76 address, email address (if any), and telephone number (if any), and

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77 designation as the appellant, petitioner, appellee, or respondent, as
78 the case may be.

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

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

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

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

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

98 (4) **Effect of noncompliance.** The clerk will examine all briefs before filing. If the
99 briefs are not prepared in accordance with these rules, the clerk may choose to
100 not file the briefs ~~y will not be filed but will and~~ be returned them to be properly
101 prepared. The clerk will retain one copy of the noncomplying brief and the party
102 must file a brief prepared in compliance with these rules within 5 days. The clerk

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).

103 may grant additional time for bringing a brief into compliance. This rule is not
104 | intended to permit ~~significant~~any substantive changes in briefs.

TAB 3

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.

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

2 **Appeal as of right.** Except as provided in paragraph (a)(1) or (a)(2), in a case in which
3 an appeal is permitted as a matter of right from the trial court to the appellate court, the
4 notice of appeal required by Rule [3](#) must be filed with the clerk of the trial court within
5 30 days after the date of entry of the judgment or order appealed from. [If the trial court](#)
6 [enters a judgment or order on a Saturday, Sunday, or legal holiday, the date of entry](#)
7 [will be deemed to be the first day following the trial court's entry that is not a Saturday,](#)
8 [Sunday, or legal holiday.](#)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 (C) The party, if any, responsible for serving the judgment under Rule
112 [58A\(d\)](#) of the Utah Rules of Civil Procedure did not promptly serve a copy
113 of the signed judgment on the party seeking to appeal.

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

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

TAB 4

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

84 ~~(3) If a hearing was held regarding the order on appeal, the appellant must order the~~
85 ~~transcript of the hearing as provided in rule 11 within five days after the petition is~~
86 ~~granted. grant of permission to appeal. If a petition is granted, any transcript(s) must~~
87 ~~be ordered in compliance with Rule 11.~~

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