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, Council Room, N. 301 450 S. State St. Salt Lake City, Utah 84111 https://utcourts.webex.com/utcourts/j.php?MTID=m538581f9082cdad50ff1e74adef124f9
Date:	September 7, 2023
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of June 1, 2023 Minutes	Tab 1	Chris Ballard, Chair
Action: Rules 5, 14, and 50 for final committee approval	Tab 2	Chris Ballard
Action: Rule 27	Tab 3	Chris Ballard
Action: Rule 4	Tab 4	Scarlet Smith, Michelle Quist, Mary Westby, Clark Sabey
Action: Rule 52	Tab 5	Nathalie Skibine
Action: Vexatious Litigants	Tab 6	Lisa Collins, Judge Christiansen Forster
Discussion: Old/new business		Chris Ballard, Chair

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

2023 Meeting schedule:

October 5, 2023
November 2, 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

In Person and by WebEx Videoconference
Thursday, June 1, 2023
12:00 pm to 1:30 pm

PRESENT

Emily Adams
Christopher Ballard—Chair
Jacqueline Carlton—Guest
Judge Michele Christiansen Forster
Lisa Collins
Carol Funk
Tyler Green
Amber Griffith—Staff
Michael Judd—Recording Secretary
Stanford Purser
Michelle Quist
Clark Sabey
Nathalie Skibine—Vice Chair
Scarlet Smith
Nick Stiles—Staff
Mary Westby

EXCUSED

Troy Booher—Emeritus Member
Patrick Burt
Judge Gregory Orme

1. Action: Chris Ballard

Approval of May 2023 Minutes

The committee reviewed the May 2023 minutes. The committee had no changes.

After that review, Carol Funk moved to approve the May 2023 minutes. Judge Michele Christiansen Forster seconded that motion, and it passed without objection by unanimous consent.

2. Action: **Stan Purser**

Rule 27—Two Options

Stan Purser introduced two options for how to approach Rule 27's requirements and to simplify caption information. The committee's goal in fashioning amendments is to ensure that the rules conform with existing practice and that experienced and inexperienced counsel operate on a level playing field. The committee worked to revise lines 99 to 101 (in Option 2) to address a concern about "lodging" briefs.

With respect to the choice between Options 1 and 2, Chris Ballard weighed in in favor of Option 2, because it better promotes accessibility. The committee agreed.

Following the committee's discussion, Mr. Purser moved to adopt the proposed changes—Option 2, in particular—as modified during the meeting and as reflected on the screen. Tyler Green seconded that motion, and it passed without objection by unanimous consent.

3. Action: **Scarlet Smith**

Rule 4(b) **Michelle Quist**

The proposed changes to Rule 4(b) addressed issues related to notice-of-appeal timing requirements when *multiple* post-judgment motions are filed, each of which could toll the time to file a notice of appeal.

The committee also took up an additional issue. Mary Westby proposed a sub-paragraph (3) to cut down on drawn-out appeals. That sub-paragraph would allow the appellate court to dismiss an appeal that had been sitting idle for months and months awaiting resolution of a post-judgment motion. The committee discussed that idea at length.

Following the committee's discussion, Ms. Westby moved to refer the new potential subparagraph to a subcommittee. Mr. Green seconded that motion, and it passed without objection by unanimous consent. That subcommittee will include Ms. Westby, Scarlet Smith, Michelle Quist, and Clark Sabey.

Ms. Smith then moved to adopt the initial proposed changes to Rule 4(b), as modified during the meeting and as reflected on the screen. Ms. Westby seconded that motion, and it passed without objection by unanimous consent.

4. Discussion: Lisa Collins
Rule 5 Mary Westby

Ms. Westby and Ms. Collins reported on discussions from the clerk's offices regarding proposed changes to Rule 5. After that discussion, the offices prefer that the rule remain the same. The committee discussed potential changes to the proposed amendment.

After discussion, Mr. Purser moved to adopt the proposed changes to Rule 5, as discussed during the meeting and as reflected on the screen. Ms. Funk seconded that motion, and it passed without objection by unanimous consent.

5. Discussion: Chris Ballard
Old/New Business

The committee thanked Patrick Burt and Tyler Green for their service during the terms that they just completed.

6. Adjourn

Following the business described above, Ms. Funk moved to adjourn, and Ms. Westby seconded. The committee adjourned. The committee's next meeting will take place on September 7, 2023.

TAB 2

Doug Thompson
July 3, 2023 at 2:21 pm

Rule 5 – Seem's pretty uncontroversial and simple. Probably a smart move.

Rule 50 – I strongly support this proposal, especially from the criminal side of appeals. I think the response practice in interlocutory appeals is a good model and works quite well. I fully support this change.

Rule 5. Discretionary appeals from interlocutory orders.

(a) **Petition for permission to appeal**. Any party may seek an appeal from an interlocutory order by filing a petition for permission to appeal from the interlocutory order with the appellate court with jurisdiction over the case. The petition must be filed and served on all other parties to the action within 21 days after the entry of the trial court's order. If the trial court enters an 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. A timely appeal from an order certified under Rule 54(b), Utah Rules of Civil Procedure, that the appellate court determines is not final may, in the appellate court's discretion, be considered by the appellate court as a petition for permission to appeal an interlocutory order. The appellate court may direct the appellant to file a petition that conforms to the requirements of paragraph (c) of this rule.

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

(c) **Content of petition**.

(1) The petition must contain:

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

(B) The issue presented expressed in the terms and circumstances of the case but 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, ~~T~~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.~~ Any transcript(s) must be ordered in compliance with Rule 11.

Rule 14. Review of administrative orders: how obtained; intervention.

(a) **Petition for review of order; joint petition**. When a statute provides for judicial review by or appeal to the Supreme Court or the Court of Appeals of an order or decision of an administrative agency, board, commission, committee, or officer (hereinafter the term "agency" shall include agency, board, commission, committee, or officer), a party seeking review must file a petition for review with the clerk of the appellate court within the time prescribed by statute, or if there is no time prescribed, then within 30 days after the date of the written decision or order. The petition must specify the parties seeking review and must designate the respondent(s) and the order or decision, or part thereof, to be reviewed. In each case, the agency must be named respondent. The State of Utah is a respondent if required by statute, even if not designated in the petition. If two or more persons are entitled to petition for review of the same order and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(b) **Filing fees.** At the time of filing any petition for review or cross-petition for review, the petitioner or cross-petitioner must pay the filing fee established by law, unless waived by the appellate court. The appellate court clerk must accept the petition or cross-petition for review regardless of whether the filing fee has been paid. Failure to pay the required filing fee within seven days may result in dismissal of the petition or cross-petition.

(~~b~~c) **Service of petition**. The petitioner must serve the petition on the respondents and all parties to the proceeding before the agency in a manner provided by Rule 21.

(~~c~~d) **Intervention**. Any person may file with the clerk of the appellate court a motion to intervene. The motion must contain a concise statement of the interest of the moving party and the grounds on which intervention is sought. A motion to intervene must be filed within 40 days of the date on which the petition for review is filed.

(~~d~~e) Additional or Cross-Petition. If a timely petition for review is filed by any party, any other party may file a petition for review within 14 days after the date on which the first petition for review was filed, or within the time otherwise prescribed by paragraph (a) of this rule, whichever period last expires.

Effective ~~November 1, 2022~~

Rule 50. Response; reply.

(a) **Response**. No petition for writ of certiorari will be granted absent a request by the court for a response, and no response will be received unless requested by the court. Within 30 days after an order requesting a response ~~petition for a writ of certiorari is served~~, any other party may file a response. ~~If the petitioner pays the required filing fee or obtains a waiver of that fee after service, then the time for response will run from the date that obligation is satisfied.~~ The response must comply with Rule 27 and, as applicable, Rule 49. ~~A party opposing a petition may so indicate by letter in lieu of a formal response, but the letter may not include any argument or analysis.~~

(b) **Page limitation**. A response must be as short as possible and may not exceed 20 pages, excluding the table of contents, the table of authorities, and the appendix.

(c) **Objections to jurisdiction**. The court will not accept a motion to dismiss a petition for a writ of certiorari. Objections to the Supreme Court's jurisdiction to grant the petition may be included in the response.

(d) **Reply**. A petitioner may file a reply addressed to arguments first raised in the response within 7 days after the response is served, but distribution of the petition and response to the court ordinarily will not be delayed pending the filing of any such reply unless the response includes a new request for relief, such as an award of attorney fees for the response. The reply must be as short as possible, may not exceed five pages, and must comply with Rule 27.

TAB 3

The justices liked our proposed changes but had several good suggestions to make the rule's new requirements clearer and easier to follow. I've incorporated those suggestions below.

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~~**Cover page for briefs on the merits and petitions**. ~~The cover of each brief or the first page of any other document must contain a caption that includes the following information:~~

(1) **Caption.** ~~For briefs on the merits and petitions:~~ The cover of each brief or the first page of a petition must contain a caption that includes the following information:

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

(B) the name of the appellate court;

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

(D) the designation of the parties both as they appeared in the ~~lower~~ court or agency from which the appeal is taken and as they appear in the appellate proceeding;

(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 (e.g., Appeal, Petition for Review) 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~~ from which the appeal is taken and the case or proceeding number.~~; and~~

(2~~H~~) ~~c~~**Counsel or unrepresented party information.** The identifying and contact information of the counsel or unrepresented party filing the document must appear ~~on the bottom half~~ in the lower right ~~-~~corner of the cover page. ~~The party or counsel filing the document must appear in the lower right of the cover. and opposing counsel or party in the lower left of the cover.~~

(A~~i~~) ~~c~~Counsel's information must include: ~~their~~

(i) counsel's name~~,~~;

(ii) the Utah State Bar number of the filing counsel~~,~~;

(iii) counsel's mailing address~~,~~;

(iv) the email address of the filing counsel~~,~~;

(v) counsel's telephone number~~,~~; and

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(vi) ~~and~~a designation ~~as~~indicating the party counsel represents in the appeal (e.g., ~~c~~Counsel for A~~a~~ppellant, ~~p~~Petitioner, ~~a~~Appellee, or ~~r~~Respondent~~, as the case may be~~). ~~, or~~

(~~ii~~B) ~~a~~An unrepresented party's information must ~~list~~include the party's:

(i) ~~their~~ name~~,~~;

(ii) mailing address~~,~~;

(iii) email address (if any)~~,~~; ~~and~~

(iv) telephone number (if any), and

(v) a ~~designation as~~statement identifying the party's designation in the appeal (e.g., ~~the a~~Appellant, ~~p~~Petitioner, ~~a~~Appellee, or ~~r~~Respondent~~, as the case may be~~).

(~~12~~d) **First page ~~For~~ of motions and ~~other~~ appellate documents ~~besides~~other than briefs and petitions~~:~~.** ~~Case and document information:~~

1. **Caption.** The first page of a motion or appellate document other than a brief or petition must include a caption with the following information:

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

(B) the name of the appellate court;

(C) the full title given to the case in the court or agency from which the appeal ~~was~~is 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; and

(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~~

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~~the case in the court or agency from which the appeal was taken, as modified under Rule 3(g),~~

2. **Counsel or unrepresented party information.** The identifying and contact information of the counsel or unrepresented party filing the document must appear in the upper left corner of the first page.

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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.~~

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

~~(A)~~ (A) Counsel's information must include:

(i) counsel's name~~,~~;

(ii) the Utah State Bar number of the filing counsel~~,~~;

(iii) counsel's mailing address~~,~~;

(iv) the email address of the filing counsel~~,~~;

(v) counsel's telephone number~~,~~; ~~Utah State Bar number,~~ and

(vi) a designation indicating which party counsel represents in the appeal (e.g., ~~designation as attorney~~Counsel for ~~a~~Appellant, ~~p~~Petitioner, ~~a~~Appellee, or ~~r~~Respondent)~~, a~~as the case may be, or

~~(B) A~~

~~(B) (ii) a~~An unrepresented party's information must include the party's:

(i) ~~must list the party's~~ name~~,~~

(ii) mailing address~~,~~;

(iii) email address (if any)~~;~~ ~~and~~

(iv) telephone number (if any)~~,~~; and

(v) a ~~designation~~ statement identifying the party's designation in the appeal (e.g., ~~as the a~~Appellant, ~~p~~Petitioner, ~~a~~Appellee, or ~~r~~Respondent)~~, as the case may be~~.

~~(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~~a brief or petition must be of heavy card stock. There must be adequate

contrast between the printing and the color of the cover page. The color of the cover page must be as follows:

Document	Cover Page Color
Opening Brief of Appellant or Petitioner	Blue
Brief of Appellee or Respondent	Red
Brief of Intervenor, Guardian ad Litem, or Amicus Curiae	Green
Reply Brief	Gray
Appellant's or Petitioner's Second Brief in a Case Involving a Cross-Appeal or Cross-Petition	Gray

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(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.

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(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 lodge ~~may choose to not file~~ the briefs ~~y will not be filed but will~~and ~~be returned~~ them ~~to be properly prepared~~notify the party of the deficiency. 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 substantive changes in briefs.

TAB 4

Rule 4. Appeal as of right: when taken.

(a) **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 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.

(A) If a motion listed in paragraph (b)(1) or a fee affidavit pursuant to rule Utah Rule of Civil Procedure 73(d) has not been submitted for decision in the trial court within 150 days after the announcement or entry of judgment, the appellate court may dismiss the appeal without prejudice to the filing of a new timely notice of appeal after the entry of an order disposing of the motion.

(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 was denied the right to an appeal.~~'s attorney had not pursued an appeal~~; and

(ii) how the defendant learned that the defendant was denied the right to ~~'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~~ was denied the right to an appeal, the defendant must allege all of the grounds that support the allegation that the delay in filing the motion was reasonable.

(~~2~~3) If the defendant is not represented by counsel and is indigent, the trial court ~~shall~~must appoint counsel.

(~~3~~4) 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.

(~~4~~5) 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 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.

TAB 5

From: Nathalie Skibine
To: Appellate Rules Committee
Re: Memorandum on Utah Rule of Appellate Procedure 52(c)

Title change rule 52(c).

In *A.S. v. State*, 2023 UT 11, the Utah Supreme Court held that Utah Rule of Appellate Procedure 52(c) extended the time for any party to file a notice of appeal when a timely notice of appeal is filed by another party. The title of rule 52(c) is "Time for cross-appeal," but the opinion held that the appeal does not have to be a cross-appeal to get the benefit of the extension of time. The opinion noted that Utah Rule of Appellate Procedure 4(d) has nearly identical language to rule 52(c) but its title is clearer: Additional or cross-appeal.

The opinion included this footnote: "We encourage the Advisory Committee on the Utah Rules of Appellate Procedure to look at clarifying the title so it better reflects the rule's language and intent." *A.S. v. State*, 2023 UT 11, ¶ 36 n.13. The proposed change is to replace the title in rule 52(c) with the title from rule 4(d).

Adding a procedure to reinstate the period for filing an appeal in child welfare cases.

A.S. v. State also included this footnote:

> The guardian ad litem advocates that we task our rules committee with considering a new rule that would "reinstate the time for appeal in child welfare cases where a parent's right to effective counsel is implicated." We have previously recognized that a trial court may extend the time for appeal in a proceeding on termination of parental rights if a parent was denied effective assistance of counsel. *State ex rel. M.M.*, 2003 UT 54, ¶¶ 6, 9, 82 P.3d 1104. But this is not the same as a rule that says the court shall reinstate the time for appeal when a parent can show that they have been denied effective representation. We encourage the Advisory Committee on the Utah Rules of Appellate Procedure to explore such a rule, and we thank the guardian ad litem for the excellent suggestion.

A.S. v. State, 2023 UT 11, ¶ 43 n.15.

A memorandum from Martha Pierce is attached. My proposed changes attempt to mirror the rule for reinstating the right to appeal in criminal cases. The main difference is timing – I propose we agree on a bright line deadline from the date

of the challenged order after which even a parent who was deprived of the right to appeal cannot reinstate it.

Memo from Martha Pierce

ATTORNEY ERROR AND EXTENSION OF APPEAL PERIOD

Notice of right to appeal, and duty of parental engagement. Currently both the statute and the rule require the juvenile court to advise parties of the right to appeal. Utah Code Ann. § 78A-6-359; Utah R. Juv. P. 46(c).

Unfortunately, both of these provisions require the notice to be provided at disposition, which rarely results in a final appealable order. The two orders that are *always* final and appealable are the adjudication order and the termination order. Disposition is usually a months-long process that rarely involves a final order. The general rule of thumb is that is a disposition results in an ending of juvenile court jurisdiction, the order is likely final. Therefore, I urge the committee to move the notification provision in the rule (and to ask the legislature to move the notification provision in the statute) from disposition to adjudication (or either an initial child welfare petition or a termination petition).

In addition, the statutory notice provision includes the parent's statutory duty to "maintain regular contact with the party's counsel and to keep the party's counsel informed of the party's whereabouts." Utah Code Ann. § 78A-6-359(3)(d). And, a parent is required to sign the notice of appeal to demonstrate some level of commitment to the appellate process. Utah R. App. P. 53(b). These requirements are part of an ongoing requirement in juvenile court proceedings for a parent to stay engaged with counsel and with the court throughout the proceedings. *See, e.g., Id.* 80-3-307. Indeed, juvenile court orders routinely include notices that failure to attend proceedings may result in diminishment of rights.

***Manning*.** The task is to create a rule respecting a constitutional right to appeal, Utah Const. art. viii, § 5; a parent's statutory right to effective counsel, Utah Code Ann. § 80-3-104(2)(a); and the Child's right to swift permanency, as reflected in our statutes, court rules, and appellate rules. *See, e.g., In re M.H.,* 2014 UT 26, ¶ 44, 347 P.3d 368 (Nehring, J., concurring) (policy of swift permanency ensures that Children do not languish in legal limbo); *In re K.C.,* 2015 UT 92, ¶ 23, 362 P.3d 1248, (reasonableness of accommodation must take into account core principles and policies of CWRA, including paramount concern of BIOC).

Utah R. App. P. 4(f), formalized the holding in *Manning v. State,* 2006 UT 61, 122 P.3d 628 and to "provide criminal defendants who have been deprived an appeal through no fault of their own with an avenue for relief. *State v. Brown,* 2021 UT 11, ¶ 15, 489 P.3d 152. *Manning* required that, to have the time for appeal reinstated, a defendant must show loss of appellate rights because

> (1) counsel failed to file an appeal after agreeing to do so;
> (2) despite diligently attempting to file a timely appeal, the defendant was unable to do so through no fault of their own; or
> (3) the court or the defendant's counsel "failed to properly advise [them] of the right to appeal."

Id. ¶ 16.

First, I recommend moving the notification language in the rule and the statute from disposition to adjudication and to include a duty to keep counsel and the court updated on contact information.

Second, I recommend that the burden be on the proponent to show by a preponderance of evidence the three *Manning* requirements as well as the juvenile court requirement of parental engagement:

> (1) counsel failed to file an appeal after agreeing to do so;
> (2) despite diligently attempting to file a timely appeal, the defendant was unable to do so through no fault of their own; or
> (3) the court or the defendant's counsel "failed to properly advise [them] of the right to appeal." *Notwithstanding the party's compliance with the duty to maintain regular contact with the party's counsel and to keep the party's counsel informed of the party's whereabouts."*

Rule 52. Child welfare appeals.

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

(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; or

(D) A motion for a new trial under Rule 59 of the Utah Rules of Civil 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), will be treated as filed after entry of the order and on the day thereof, except that the 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)(1), 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) ~~Time for~~**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 5 days after 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.

(d) Motion to reinstate period for filing a direct appeal in child welfare appeals.

(1) The juvenile court must reinstate the fifteen-day period for filing a direct appeal in a child welfare case if a parent with a right to effective assistance of counsel demonstrates by a preponderance of evidence that the parent was deprived of the right to appeal through no fault of the parent.

(2) The motion must be filed within XX of the entry of the order appealed from.

(3) If the parent is not represented by counsel and has the right to effective assistance of counsel, the juvenile court must appoint counsel.

(4) The motion must be served on the [attorney general and the guardian ad litem]. The attorney general, the guardian ad litem, or both may file a response to the motion within 28 days after being served.

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

(6) If the juvenile court enters an order reinstating the time for filing a direct appeal, the parent's notice of appeal must be filed with the clerk of the juvenile court within 15 days after the date the order is entered.

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(ed) **Appeals of interlocutory orders**. Appeals from interlocutory orders are governed by Rule 5.

TAB 6

To: Judge Harris
From: Heather Robison
Re: Research on Vexatious Litigants at the Appellate Level

States generally address vexatious litigants at the appellate level in three ways. First, states create appellate rules that directly apply to the problem of vexatious litigants in their appellate courts, *see section I*. Second, states craft general rules of civil procedure or pass statutes that are interpreted to include appellate courts, *see section II*. And third, states rely on the "inherent power" of appellate courts to manage their dockets and create case law applying that power to vexatious appellate litigants, *see section III*.

According to the National Center for State Courts, 12 states have rules or statutes that specifically deal with vexatious litigants. Bill Raftery, *Vexatious Litigants*, National Center for State Courts (Jan. 25, 2023), https://www.ncsc.org/information-and-resources/trending-topics/trending-topics-landing-pg/vexatious-litigants [https://perma.cc/ZH27-A435]. Of those 12, the following include appellate courts in one of the three aforementioned ways.

I: Appellate Rules

Michigan:
Mich. R. of App. P. 7.216(C): Miscellaneous Relief (for its Court of Appeals)

> (C) Vexatious Proceedings; Vexatious Litigator.
>
> (1) The Court of Appeals may, on its own initiative or on the motion of any party filed under MCR 7.211(C)(8), assess actual and punitive damages or take other disciplinary action when it determines that an appeal or any of the proceedings in an appeal was vexatious because
>
> (a) the appeal was taken for purposes of hindrance or delay or without any reasonable basis for belief that there was a meritorious issue to be determined on appeal; or
>
> (b) a pleading, motion, argument, brief, document, record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the court.
>
> (2) Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including

reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages. The court may remand the case to the trial court or tribunal for a determination of actual damages.

(3) Vexatious Litigator. If a party habitually, persistently, and without reasonable cause engages in vexatious conduct under subrule (C)(1), the Court may, on its own initiative or on motion of another party, find the party to be a vexatious litigator and impose filing restrictions on the party. The restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Court without first obtaining leave, prohibiting the filing of actions in the Court without the filing fee or security for costs required by MCR 7.209 or MCR 7.219, or other restriction the Court deems just.

Mich. R. of App. P. 7.316(C): Miscellaneous Relief (for its Supreme Court)

(C) Vexatious Proceedings; Vexatious Litigator.

(1) The Court may, on its own initiative or the motion of any party filed before a case is placed on a session calendar, dismiss an appeal, assess actual and punitive damages, or take other disciplinary action when it determines that an appeal or original proceeding was vexatious because

(a) the matter was filed for purposes of hindrance or delay or is not reasonably well-grounded in fact or warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; or

(b) a pleading, motion, argument, brief, document, or record filed in the case or any testimony presented in the case was grossly lacking in the requirements of propriety, violated court rules, or grossly disregarded the requirements of a fair presentation of the issues to the Court.

(2) Damages may not exceed actual damages and expenses incurred by the opposing party because of the vexatious appeal or proceeding, including reasonable attorney fees, and punitive damages in an added amount not exceeding the actual damages. The Court may remand the case to the trial court or tribunal for a determination of actual damages.

(3) Vexatious Litigator. If a party habitually, persistently, and without reasonable cause engages in vexatious conduct under subrule (C)(1), the Court may, on its own initiative or on motion of another party, find the party to be a vexatious litigator and impose filing restrictions on the party. The

restrictions may include prohibiting the party from continuing or instituting legal proceedings in the Court without first obtaining leave, prohibiting the filing of actions in the Court without the filing fee or security for costs required by MCR 7.209 or MCR 7.319, or other restriction the Court deems just.

North Dakota
Among its administrative rules regarding vexatious litigants, North Dakota has a section designated for its supreme court.

ND R. Admin. AR 58, § 7. Supreme Court Order.
The Supreme Court may, on the Court's own motion or the motion of any party to an appeal, enter a pre-filing order prohibiting a vexatious litigant from filing any new litigation in the courts of this state as a self-represented party without first obtaining leave of a judge of the court where the litigation is proposed to be filed. If the Supreme Court finds that there is a basis to conclude that a person is a vexatious litigant and that a pre-filing order should be issued, the Court must issue a proposed pre-filing order along with the proposed findings supporting the issuance of the pre-filing order. The person who would be designated as a vexatious litigant in the proposed order will have 14 days to file a written response to the proposed order and findings. If no response is filed within 14 days, or if the Supreme Court concludes following a response and any subsequent hearing that there is a basis for issuing the order, the pre-filing order may be issued.

Nevada:
Supreme Court Rule 9.5 List of Vexatious Litigants:
1. Purpose and procedure**.** The administrative office of the courts shall maintain for use by the judicial council and the courts of the state a list of litigants that have been declared as vexatious by any court, at any level of jurisdiction, throughout the state:
(a) Each court shall, upon entering an order declaring a litigant to be vexatious, submit a copy of the order to the director of the administrative office of courts or his or her designee.
(b) The director or designee shall enter the name of the litigant identified in the aforementioned order on a list of vexatious litigants and post the list in such a place so that it will be readily accessible to the various courts. The director or designee shall maintain the list in good order.
(c) If a court takes any action that affects the status of a litigant declared vexatious, the court shall forward record of that action to the director or designee forthwith for amendment of the list.

II: General Rules that Incorporate Appellate Courts

Idaho:
Idaho Admin. Code r.59 (2011): Entitled "Vexatious Litigation," this rule sets forth how to "address this impediment to the proper functioning of the courts while protecting the constitutional right of all individuals to access to the courts. Subsection (b) states, "'Litigation,' as used in this rule, means any civil action or proceeding, and includes any appeal from an administrative agency, any appeal from the small claims department of the magistrate division, any appeal from the magistrate division to the district court, and *any appeal to the Supreme Court*." (Emphasis added.)

California:
Cal. Civ. Proc. Code § 391.7 (2012)
"In addition to other relief provided in this title, the court may, on its own motion or the motion of any party, enter a prefiling order which prohibits a vexatious litigant from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding judge or presiding judge of the court where the litigation is proposed to be filed." *See also John v. Superior Ct.*, 369 P.3d 238, 239 (Cal. 2016) (explaining that "the vexatious litigant statutory scheme . . . authorizes a trial *or appellate court* to enter, on its own motion or the motion of any party, a prefiling order that prohibits a self-represented vexatious litigant from filing any new litigation in the courts of this state" (emphasis added)).

Texas:
The Texas Vexatious Litigant Statute (Tex. Civ. Prac. & Rem. § 11.001 et. seq.) defines "litigation" as "a civil action commenced, maintained, or pending in *any state or federal court*." (Emphasis added.) One Texas court has interpreted this phrase as "plainly encompass[ing] appeals." *See Retzlaff v. GoAmerica Commc'ns. Corp.*, 356 S.W.3d 689, 699 (Tex. App. 2011).

Ohio:
Their vexatious litigant statute applies to both pro se and represented persons, and applies to any court, including their court of appeals:

Ohio Rev. Code Ann. § 2323.52 (2016)
"'Vexatious litigator' means any person who has habitually, persistently, and without reasonable grounds engaged in vexatious conduct in a civil action or actions, whether in the court of claims *or in a court of appeals*, court of common pleas, municipal court, or county court, whether the person or another person instituted the civil action or actions,

and whether the vexatious conduct was against the same party or against different parties in the civil action or actions." (Emphasis added.) *See also RRL Holding Co. of Ohio, LLC v. Stewart*, 2021 Ohio 3989, ¶ 11, 180 N.E. 3d 699 (stating that the "plain language of [the vexatious litigators statute] makes clear that a vexatious litigator must first seek leave of the court before bringing a new legal proceeding").

III: "Inherent Power"

Massachusetts:
"In some appeals involving vexatious litigants, the Supreme Judicial Court has instructed the appellate court clerk not to accept new petitions or appeals from a frequent, frivolous litigant unless they were accompanied by a motion for leave to file and first approved by a single justice." § 71:4. Vexatious litigants and orders not to accept repetitive filing of vexatious self-represented litigant, 41A Mass. Prac., Appellate Procedure § 71:4 (4th ed. 2022). *See Cooper v. CVS Pharmacy*, 482 Mass. 1019, 1020, 121 N.E.3d 1287 (2019); *Murray v. Massachusetts Parole Board*, 481 Mass. 1019, 1020-1021, 113 N.E.3d 327 (2018); *Watson v. Justice of Boston Div. of Housing Court Dept.*, 458 Mass. 1025, 1027, 941 N.E.2d 593 (2011); *Devon Services, Inc. v. Wellman*, 432 Mass. 1013, 731 N.E.2d 1089 (2000); *Russell v. Nichols*, 434 Mass. 1015, 750 N.E.2d 1008 (2001); *Camoscio v. Board of Registration in Podiatry*, 408 Mass. 1001, 561 N.E.2d 516 (1990); *Gorod v. Tabachnick*, 428 Mass. 1001, 696 N.E.2d 547 (1998).

Illinois:
"In extreme cases, where an appellant has been found to be a vexatious litigant, the court may direct the clerk of the court to refuse to file any further appeals." Timothy J. Storm, "Sanctions for Frivolous Appeals or Improper Conduct—Vexatious Litigant," *Ill. App. Practice Manual* § 38-9 (Mar. 2022); *see People v. Austin*, 387 Ill. Dec. 923, 23 N.E.3d 615 (App. Ct. 4th Dist. 2014); *Williams v. Commissary Dept. of Illinois Dept. of Corrections*, 407 Ill. App. 3d 1135, 1138, 350 Ill. Dec. 554, 948 N.E.2d 1061 (4th Dist. 2011).

Florida:
"Appellate courts likewise possess inherent power to prevent frivolous and repetitious filings by pro se litigants." Jani Maurer, "Increase Your Toolbox: Lesser-Known Sanctions in Probate and Trust Litigation," 35 *Quinnipiac Probate Law Journal*, 116, 147 (2022). *See Cafaro v. Estate of Wyllins,* 164 So.2d 146 (Fla. 2d Dist. Ct. App. 2015).
This inherent-power theory is important in Florida because its vexatious litigant statute does not specifically incorporate appellate courts.