



Agenda

Utah Supreme Court Advisory Committee Utah Rules of Appellate Procedure

Nathalie Skibine, Chair
Stanford Purser, 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=m7d2aa587c7a24aad89a35e244458cf6
Date:	February 6, 2025
Time:	12:00 to 1:30 p.m.

Action: Welcome and approval of December 5, 2024 Minutes	Tab 1	Nathalie Skibine, Chair
Action: Final Approval of Rules 8 and 10	Tab 2	Nathalie Skibine
Action: Rule 44	Tab 3	Bryson King
Action: Rule 29	Tab 4	Judge Orme, Judge Christiansen Forster, Nick Stiles
Action: Rule 35	Tab 5	Tera Peterson
Action: Rules 42 and 43	Tab 6	Nick Stiles
Discussion: Old/new business		Nathalie Skibine, Chair

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

2025 Meeting schedule:

March 6, 2025	June 5, 2025	September 4, 2025	December 4, 2025
April 3, 2025	July 3, 2025	October 2, 2025	
May 1, 2025	August 7, 2025	November 6, 2025	

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, December 5, 2024
12:00 pm to 1:30 pm

PRESENT

Dick Baldwin
Judge Michele
Christiansen Forster
Amber Griffith—Staff
Michael Judd—Recording
Secretary
Caroline Olsen

Martha Pierce
Michelle Quist
Clark Sabey
Nathalie Skibine—
Chair
Nick Stiles—Staff
Mary Westby

EXCUSED

Nicole Gray
Debra Nelson
Judge Gregory Orme
Tera Peterson
Stan Purser
Scarlet Smith

GUESTS

None

1. Action:

Nathalie Skibine

Approval of November 2024 Minutes

The committee reviewed the draft November 2024 minutes and did not note any needed changes.

Mary Westby moved to approve the November 2024 minutes as they appeared in the committee's materials. Dick Baldwin seconded that motion, and it passed without objection by unanimous consent.

2. Action: Nathalie Skibine
Rule 29—Oral Argument

The committee discussed proposed changes to Rule 29, which relates to remote participation in oral argument. Among other changes, the committee made stylistic changes to improve readability, addressed notice issues, and clarified the applicable timeline. The committee then elected to approve the changes conditionally and to make any additional changes based on input from court staff, at the time it receives public comment.

Following that discussion, Ms. Westby moved to conditionally approve Rule 29 as modified and as it appeared on the screen at the committee’s meeting. Michelle Quist seconded that motion, and it passed without objection by unanimous consent.

3. Action: Nathalie Skibine
Rule 42

The committee discussed potential changes to Rule 42, which formalize rules related to transfer and reassignment of cases. The committee inserted a reference to Rule 46, and it discussed whether a provision regarding amicus input is necessary.

Following that discussion, Ms. Quist moved to approve Rule 42 as modified and as it appeared on the screen at the committee’s meeting. Judge Michele Christiansen Forster seconded that motion, and it passed without objection by unanimous consent. The proposed changes will now circulate for public comment.

4. Action: Nathalie Skibine
Rule 40A

The committee discussed a potential new rule, Rule 40A, which would clarify how the appellate courts handle vexatious litigations. The most recent changes are intended to reflect how the appellate courts anticipate these matters playing out in practice.

Following that discussion, Ms. Quist moved to approve Rule 40A as modified and as it appeared on the screen at the committee’s meeting. Ms. Westby seconded that motion, and it passed without objection by unanimous consent. The proposed changes will now circulate for public comment.

5. **Action:** **Dick Baldwin**
Rule 3

The committee discussed a potential clarification of Rule 3, which would parallel changes made in the federal rules. The proposed rule change keys off the language regarding designating “the part thereof being appealed.” The committee noted tension between child-welfare rules and references to “civil rules” here and it discussed the potential plight giving rise to the a need for this change.

Following that discussion, the committee resolved to form a subcommittee. That subcommittee will include Mr. Baldwin, Caroline Olsen, Clark Sabey, and Ms. Westby.

6. **Action:** **Nicole Gray**
References to Business and Chancery Court

This set of proposed changes would change references to “district court” to refer to “trial court” (including a specific instance in Rule 3), with the intent that those rules encompass matters in the Business and Chancery Court matters, as they do in district court and juvenile court matters.

Following that brief discussion, Ms. Quist moved to approve the rules as they appeared in the committee’s materials. Mr. Baldwin seconded that motion, and it passed without objection by unanimous consent. The Supreme Court will determine whether circulation for public comment is needed.

7. **Discussion:** **Nathalie Skibine**
Old/New Business

None.

8. Adjourn

Nathalie Skibine

Following the business and discussions described above, Ms. Quist moved to adjourn, and Judge Christiansen Forster seconded. The committee adjourned. The committee's next meeting will take place on February 6, 2025, as there will be no January meeting.

TAB 2

One thought on “Rules of Appellate Procedure Comment Period Closed December 21, 2024”**KC Hooker****November 6, 2024 at 3:29 pm**

I am strongly in favor of the amendments to Rule 8 of the Utah Rules of Civil Procedure. The current version of the rule can be read to mean that a person can never obtain a stay of enforcement of a money judgment without a bond—and that was exactly how a panel of the court of appeals interpreted it in one of my cases. My client, for all intents and purposes, lost their appellate rights because they could not post a bond. Had this proposed amendment been in place, my client would have likely obtained a stay and could have pursued the appeal.

1 **Rule 8. Stay or injunction pending appeal.**

2 (a) ~~Motion for stay.~~ Stay or injunctive relief.

3 (1) ~~Initial motion in the trial court.~~ Available relief. A party ~~must ordinarily may~~
4 move ~~first in the trial~~ appellate court for the following relief:

5 ~~(A) a stay of the judgment or order without security~~ pending appeal or pending
6 disposition of a petition under Rule ~~5;5~~ or Rule 19:

7 ~~(B) approval of a bond or other security provided to obtain~~

8 (A) a stay of the judgment or order with or without security; or

9 ~~(B)~~ an order suspending, modifying, restoring, or granting ~~an injunction while~~
10 ~~an appeal is pending, unless the~~ injunctive relief.

11 (2) Initial motion in trial court. Before seeking relief in the appellate court under this
12 rule, a party must first seek the requested relief in the trial court unless the party can
13 show extraordinary circumstances or that the trial court has already rejected the basis
14 for the requested relief.

15 ~~(2b) Motion in the appellate court.~~

16 ~~(A) The motion for a stay~~ requirements. Motions filed under this rule must include:

17 ~~(i)~~ the ~~reasons~~ content required by Rule 23(a); and

18 (2) as applicable, the reason the trial court denied the ~~request;~~

19 ~~(ii) the reasons for granting the relief requested and the facts relied on;~~

20 ~~(iii) copies of affidavits or declarations, supporting facts subject to dispute; and~~

21 ~~(iv) relevant parts of the record, including a copy of the trial court's order.~~

22 ~~(B) Any motion must comply with Rule 23.~~

23 ~~(C) Except in extraordinary circumstances, an appellate court will not act on a motion to~~
24 ~~stay a judgment or order or to suspend, modify, restore, or grant an injunction, unless the~~
25 ~~movant first requested a stay or opposed the injunction in the trial~~ relief, the reason the

26 trial court denied the basis for the requested relief, or the extraordinary circumstances
27 justifying seeking relief for the first time in the appellate court.

28 ~~(3) Stays~~ **(c) Security requirement.**

29 (1) Except as provided in paragraphs (c)(2) and (c)(3), the appellate court ordinarily
30 will require the movant to give a bond or other appropriate security as a condition of
31 the requested relief.

32 (2) In the case of a stay, the court may waive the requirement for a bond or other
33 security if the movant demonstrates:

34 (A) a likelihood of prevailing on appeal;

35 (B) a likelihood of irreparable harm to the movant outweighing the harm to any
36 other party; and

37 (C) the stay is not adverse to the public interest.

38 (3) In the case of an injunction, the court may waive the requirement for a bond or
39 other security if the movant demonstrates:

40 (A) a substantial likelihood of prevailing on appeal;

41 (B) the movant will suffer irreparable harm without the injunction;

42 (C) the irreparable harm to the movant outweighs whatever harm the injunction
43 may cause the party enjoined; and

44 (D) the injunction is not adverse to the public interest.

45 **(d) Stay in criminal cases.** Stays pending appeal in criminal cases in which the defendant
46 has been sentenced are governed by Utah Code section ~~77-20-302~~77-20-302 and Rule ~~2727~~
47 of the Utah Rules of Criminal Procedure. Stays in other criminal cases are governed by
48 this rule.

49 ~~(b) Bond requirement.~~

50 ~~(1) Stay ordinarily conditioned upon giving a bond. For requests to stay enforcement of~~
51 ~~a judgment or order to pay money to which Rule 62 of the Utah Rules of Civil Procedure~~
52 ~~applied in the trial court, relief available pending appeal will be conditioned upon giving~~
53 ~~a bond or other appropriate security in the trial court, unless there is no reasonable means~~
54 ~~of quantifying the security in monetary or other terms and the conditions of paragraph~~
55 ~~(b)(2) are met.~~

56 ~~(2) Stay in cases not conditioned on giving a bond. Ordinarily a stay without a bond or~~
57 ~~other security will not be granted unless the movant demonstrates a likelihood of success~~
58 ~~on the merits or the case presents serious issues on the merits warranting appellate~~
59 ~~review and the appellant demonstrates:~~

60 ~~(A) a likelihood of irreparable harm to the movant outweighing the harm to any other~~
61 ~~party and the stay would not be adverse to the public interest; or~~

62 ~~(B) an extraordinary circumstance that justifies issuing a stay.~~

63 ~~(c) **Injunctions.** For requests for injunctive relief to which Rules 65A or 62 of the Utah~~
64 ~~Rules of Civil Procedure applied in the trial court, any relief available pending appeal is~~
65 ~~governed by those rules.~~

66 *Effective May 1, 2023*

67 **Advisory Committee Note**

68 ~~“Declaration” refers to an unsworn declaration as described in Title 78B, Chapter 18a,~~
69 ~~Uniform Unsworn Declarations Act.~~

70 *Adopted 2022*

1 **Rule 10. Procedures for summary disposition or simplified appeal process.**

2 **(a) Time for filing; grounds for motion for summary disposition.**

3 (1) A party may move at any time to dismiss the appeal or the petition for review on
4 the basis that the appellate court lacks jurisdiction. Any response to such motion must
5 be filed within 14 days from the date of service.

6 (2) After a docketing statement has been filed, the court, on its own motion, and on
7 such notice as it directs, may dismiss an appeal or petition for review if the court lacks
8 jurisdiction; or may summarily affirm the judgment or order that is the subject of
9 review, if it plainly appears that no substantial question is presented; or may
10 summarily reverse in cases of manifest error.

11 (3) The time for taking other steps in the appellate process is suspended pending
12 disposition of a motion for summary affirmance, reversal, or dismissal.

13 (4) As to any issue raised by a motion for summary disposition, the court may defer
14 its ruling until plenary presentation and consideration of the case.

15 **(b) Dismissal for failure to prosecute.**

16 (1) If the effective date of a notice of appeal is tolled under the provisions of [Rule 4\(b\)](#)
17 or [4\(c\)](#), the court, on its own motion, may dismiss the appeal for failure to prosecute
18 if:

19 (A) any motion within the scope of [Rule 4\(b\)](#) has not been submitted to the trial
20 court for decision within 150 days after the motion was filed; or

21 (B) a proposed final judgment has not been submitted to the trial court within 150
22 days after the announcement of judgment under [Rule 4\(c\)](#).

23 (2) A dismissal for failure to prosecute under this rule will be without prejudice to the
24 filing of a timely notice of appeal after the entry of a dispositive order or final
25 judgment.

26 **(c) Simplified appeal process; eligible appeals.**

27 (1) For appeals involving the application of well-settled law to a set of facts, the court
28 may designate an appeal for a simplified appeal process. An appellant in a case
29 pending before the Court of Appeals may move for a simplified appeal process under
30 this paragraph within ten days after the docketing statement is filed or the case is
31 transferred to the Court of Appeals, whichever is later.

32 (2) Appeals eligible for a simplified process are those involving the application of
33 well-settled law to a set of facts, which may include, but are not limited to, cases in
34 the following categories:

35 (A) appeals challenging only the sentence in a criminal case;

36 (B) appeals from the revocation of probation or parole;

37 (C) appeals from a judgment in an unlawful detainer action; and

38 (D) petitions for review of a decision of the Department of Workforce Services
39 Workforce Appeals Board or the Labor Commission.

40 **(d) Memoranda in lieu of briefs.**

41 (1) In appeals designated under paragraph (c), the parties must file memoranda in
42 support of their positions instead of briefs. The schedule for preparing memoranda
43 will be set by appellate court order.

44 (2) A party's principal memorandum must include:

45 (A) an introduction describing the nature and context of the dispute, including the
46 disposition in the court or agency whose judgment or order is under review;

47 (B) a statement of the issues for review, including a citation to the record showing
48 that the issue was preserved for review or a statement of grounds for seeking
49 review of an issue not preserved;

50 (C) an argument, explaining with reasoned analysis supported by citations to legal
51 authority and the record, why the party should prevail on appeal; no separate
52 statement of facts is required, but facts asserted in the argument must be
53 supported by citations to the record;

54 (D) a claim for attorney fees, if any, including the legal basis for an award; and

55 (E) a certificate of compliance, certifying that the memorandum complies with
56 [Rule 21](#) regarding public and private documents.

57 (3) An appellant or petitioner may file a reply memorandum limited to responding to
58 the facts and arguments raised in appellee's or respondent's principal memorandum.
59 The reply memorandum must include an argument and a certificate of compliance
60 with [Rule 21](#) regarding public and private documents.

61 (4) Principal memoranda must be no more than 7,000 words or 20 pages if a word
62 count is not provided. A reply memorandum must be no more than 3,500 words or
63 ten pages if a word count is not provided.

64 ~~(e) Extension of time. By stipulation filed with the court prior to the expiration of time in~~
65 ~~which a memorandum is due, the parties may extend the time for filing by no more than~~
66 ~~21 days. Any additional motions for an extension of time will be governed by [Rule 22\(b\)](#).~~

67 *Effective ~~January 22, 2025~~*

TAB 3



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

January 27, 2025

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

To: Advisory Committee on the Rules of Appellate Procedure
From: Bryson King, Associate General Counsel, AOC
Subject: Proposed Amendment to Rule 44

Dear Committee:

Thank you for your time and attention to this proposal to amend URAP 44. The proposed amendments seek to clarify a timing issue not already addressed by the Rule. The issue arises after a litigant improperly files a notice of appeal, a petition for permission to appeal from an interlocutory order, or a petition for review in the incorrect court. For example, a litigant seeking to appeal their conviction in a criminal case, might incorrectly file a notice of appeal with the Court of Appeals, instead of the trial court. In that situation, the court receiving the filing is without jurisdiction and must, per Rule, transfer the case along with all filings to the court with jurisdiction over the matter. However, the turnaround time for effectuating this transfer could be as long as 5-7 business days.

The timing issue addressed by my proposal seeks to avoid the following possibility: a litigant improperly files a notice of appeal with the Court of Appeals 5 days before the deadline. The Court of Appeals transfers the case 7 days after receiving notice, but the trial court, upon receiving the case, dates all filings as of the date the trial court received them. As such, the deadline for the notice of appeal has passed and the appeal is untimely. To avoid this outcome, I propose that Rule 44 be amended to require that a receiving court backdate the time of any filing in a transferred case to the time the *transferring* court received the filing, instead of the date the receiving court received the filing. I have attached two proposals for the Committee's consideration with language that I hope will address these issues. I look forward to discussing the proposals with the Committee at its February meeting.

Warm regards,

/s/ 
Bryson King
Associate General Counsel, AOC

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

1 **Rule 44. Transfer of improperly pursued appeals.**

2 If a notice of appeal, a petition for permission to appeal from an interlocutory order, or a
3 petition for review is filed in a timely manner but is pursued in an appellate court that
4 does not have jurisdiction in the case, the appellate court, either on its own motion or on
5 motion of any party, will transfer the case, including the record on appeal, all motions
6 and other orders, and a copy of the docket entries, dated as of the date the transferring
7 court received the filings, to the court with jurisdiction in the case. The clerk of the
8 transferring court will give notice to all parties and to the clerk of the trial court of the
9 order transferring the case. The time for filing all papers in a transferred case will be
10 calculated according to the time schedule of the receiving court.

1 **Rule 44. Transfer of improperly pursued appeals.**

2 If a notice of appeal, a petition for permission to appeal from an interlocutory order, or a
3 petition for review is filed in a timely manner but is pursued in an appellate court that
4 does not have jurisdiction in the case, the appellate court, either on its own motion or on
5 motion of any party, will transfer the case, including the record on appeal, all motions
6 and other orders, and a copy of the docket entries, to the court with jurisdiction in the
7 case. The clerk of the transferring court will give notice to all parties and to the clerk of
8 the trial court of the order transferring the case. The time for filing all papers in a
9 transferred case will be calculated according to the time schedule of the receiving court.

10 All filings entered into the docket of the transferred case will be dated as of the date the
11 received by the transferring court.

TAB 4

1 **Rule 29. Oral Argument.**

2 (a) **Holding oral argument.**

3 (1) **Supreme Court.** Oral argument will be held in cases before the Supreme Court
4 unless the court determines that oral argument will not aid the decisional process.

5 (2) **Court of Appeals.** Oral argument will be allowed in all cases in which the Court
6 of Appeals determines that oral argument will significantly aid the decisional process.

7 (3) **Argument format.** The court may hold oral argument in person, by phone, or by
8 videoconference.

9 (b) **Notice; waiver; cancellation; ~~appearing remotely~~; continuance; remote appearance.**

10 (1) **Supreme Court.** Not later than 28 days before the date on which a case is
11 calendared, the clerk will give notice of the time and place of oral argument, and the
12 time to be allowed each side.

13 (A) Cancellation. If all parties to a case believe oral argument will not benefit the
14 court, they may file a joint motion to cancel oral argument not later than 14 days
15 from the date of the clerk's notice. The court will grant the motion only if it
16 determines that oral argument will not aid the decisional process.

17 (B) Continuance. A motion to continue oral argument must be supported by (1) a
18 stipulation of all parties or a statement that the movant was unable to obtain such
19 a stipulation, and (2) an affidavit or declaration of counsel specifying the grounds
20 for the motion. A motion to continue filed not later than 14 days from the date of
21 the clerk's notice may be granted on a showing of good cause. A motion to
22 continue filed thereafter will be granted only on a showing of exceptional
23 circumstances.

24 (C) Remote appearance. ~~A motion request to appear remotely will may be granted~~
25 ~~if filed not later than 21 days before oral argument. An emergency request or a~~
26 ~~motion to appear remotely filed within 21 days of oral argument may will be~~

27 ~~granted in the court's discretion on a showing of good cause.~~ A party may appear
28 remotely if the party provides timely notice to the court and, when practicable, the
29 other parties. Notice is timely:

30 (i) if a party e-files or emails notice at least ~~21~~14 days before oral argument; or

31 (ii) if a party emails notice or calls the clerk within a reasonable time under the
32 circumstances.

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

36 (A) Waiver. Any party may waive oral argument by filing a written waiver with
37 the clerk not later than 14 days from the date of the clerk's notice. If one party
38 waives oral argument and any other party does not, the party waiving oral
39 argument may nevertheless present oral argument.

40 (B) Continuance. A request to continue oral argument or for additional argument
41 time must be made by motion. A motion to continue oral argument must be
42 supported by (1) a stipulation of all parties or a statement that the movant was
43 unable to obtain such a stipulation, and (2) an affidavit or declaration of counsel
44 specifying the grounds for the motion. A motion to continue filed not later than 14
45 days from the date of the clerk's notice may be granted on a showing of good
46 cause. A motion to continue filed thereafter will be granted only on a showing of
47 exceptional circumstances.

48 ~~(C) Remote appearance. A motion request to appear remotely will may be granted~~
49 ~~if filed not later than 21 days before oral argument. An emergency request or a~~
50 ~~motion to appear remotely filed within 21 days of oral argument may will be~~
51 ~~granted in the court's discretion on a showing of good cause.~~ A party may appear
52 remotely if the party provides timely notice to the court and, when practicable, the
53 other parties. Notice is timely:

54 (i) if a party e-files or emails notice at least ~~21~~14 days before oral argument; or
55 (ii) if a party emails or calls the clerk within a reasonable time under the
56 circumstances.

57 (c) **Argument order.** The appellant argues first and the appellee responds. The appellant
58 may reply to the appellee's argument if appellant reserved part of appellant's time for
59 this purpose. The time reserved may not exceed five minutes, and such- argument in
60 reply is limited to responding to points made by appellee in appellee's oral argument and
61 answering any questions from the court.

62 (d) **Cross and separate appeals.** A cross or separate appeal is argued with the initial
63 appeal at a single argument, unless the court otherwise directs. If a case involves a
64 separate appeal, the plaintiff in the action below is deemed the appellant for the purpose
65 of this rule unless the parties otherwise agree or the court otherwise directs. If separate
66 appellants support the same argument, care must be taken to avoid duplicative
67 arguments. Unless otherwise agreed by the parties, in cases involving a cross-appeal the
68 appellant, as determined pursuant to Rule 24A, opens the argument and presents only
69 the issues raised in the appellant's opening brief. The cross-appellant then presents an
70 argument that answers the appellant's issues and addresses original issues raised by the
71 cross-appeal. The appellant then presents an argument that replies to the cross-
72 appellant's answer to the appellant's issues and answers the issues raised on the cross-
73 appeal. The cross-appellant may then present an argument that is confined to a reply to
74 the appellant's answer to the issues raised by the cross-appeal. The court will grant
75 reasonable requests, for good cause shown, for extended argument time.

76 (e) **Nonappearance of parties.** If the appellee fails to appear to present argument, the
77 court will hear argument on behalf of the appellant, if present. If the appellant fails to
78 appear, the court may hear argument on behalf of the appellee, if present. If neither party
79 appears, the case may be decided on the briefs, or the court may direct that the case be
80 rescheduled for argument.

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

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

89 *Effective ~~November 1, 2024~~*

90 Advisory Committee Note

91 “Declaration” refers to an unsworn declaration as described in Title 78B, Chapter 18a,
92 Uniform Unsworn Declarations Act.

93 *Note adopted November 1, 2022*

TAB 5

Rule 35. Petition for rehearing.**(a) Petition for rehearing.**

(1) **Petition.** A petition for rehearing seeking to alter a decision in a manner that affects the substantive rights of the parties or any mandate or rule of law established by the decision may be filed only in cases in which the court issues an opinion, memorandum decision, per curiam decision, or order resolving the appeal on the merits.

(2) **Time for filing.** A petition for rehearing may be filed with the clerk within 14 days after the court issues an opinion, memorandum decision, per curiam decision, or order resolving the appeal on the merits, unless the time is shortened or enlarged by order.

(3) **Contents of petition.** The petition must succinctly state and explain the points of law or fact that the petitioner claims the court has overlooked or misapprehended and must contain such argument in support of the petition as the petitioner desires. The petitioner must certify that the petition is presented in good faith and not for delay.

(4) **Response.** No response to a petition for rehearing will be received unless requested by the court. Any response must be filed within 14 days after the entry of the order requesting the response, unless otherwise ordered by the court. A petition for rehearing will not be granted in whole or in part in the absence of a request for a response.

(5) **Form of petition.** The petition must be in the form prescribed by Rule 27(a), (b), and (c) ~~with respect to contents of the cover~~ and must include a copy of the decision to which it is directed.

(6) **Length.** Except by court order, a petition for rehearing and any response requested by the court may not exceed 15 pages.

(7) **Action by court.** The court may dispose of a petition for rehearing without reargument, or may restore the case to the calendar for reargument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(8) **Untimely or consecutive petitions.** Petitions for rehearing that are not timely presented under this rule and consecutive petitions will be rejected by the clerk.

(9) **Amicus curiae.** An amicus curiae may not file a petition for rehearing but may file a response to a petition if the court has requested a response under paragraph (a)(4).

(b) **Nonsubstantive or clerical error.**

(1) If a decision contains a nonsubstantive or clerical error, a party may promptly advise the appellate clerk by letter, with a copy to all other parties, identifying the error, suggesting how the error may be corrected, and stating the position of other parties regarding the requested correction. Any response must be made promptly and concisely.

(2) If the court concludes the letter requests a substantive revision, it may construe the letter as a petition for rehearing if timely filed under paragraph (a)(2) and call for a response.

(3) The court may make nonsubstantive corrections without prior notice to the parties.

TAB 6

1 **Rule 42. Transfer of case from Supreme Court to Court of Appeals; retention requests.**

2 (a) **Discretion of Supreme Court to transfer.** At any time before a case is set for oral
3 argument before the Supreme Court, the Court may transfer to the Court of Appeals any
4 case except those cases within the Supreme Court's exclusive jurisdiction. The ~~order of~~
5 transfer ~~shall~~order will be issued without opinion, written or oral, as to the merits of the
6 appeal or the reasons for the transfer.

7 (b) **Notice of ~~order of~~intent to transfer.** Before transferring a case to the Court of Appeals,
8 the Supreme Court will issue a notice of intent to transfer ~~a case to the Court of Appeals.~~

9 (c) **Retention requests.** ~~Upon entry of the order of transfer the Clerk of~~ When the
10 Supreme Court ~~shall give~~issues a notice of ~~entry of the order of transfer by mail~~ intent to
11 transfer a case to the Court of Appeals, any party to the appeal may submit a letter to the
12 Supreme Court requesting that the case be retained.

13 (1) A letter requesting retention must contain:

14 (A) The title of the action and the appellate case number;

15 (B) The names of all parties involved in the case and the attorneys and firms
16 representing the parties;

17 (C) A concise statement of the issues to be presented on appeal;

18 (D) A brief explanation of the reasons supporting retention, including the
19 considerations indicating a decision is likely to have significant precedential value
20 as provided in Rule 46; and

21 (E) A completed checklist for appellate jurisdiction.

22 (2) The content of paragraphs (c)(1)(C) and (c)(1)(D) must not exceed five pages.

23 (3) The letter must be filed within ten days following issuance of the intent to transfer
24 notice.

25 (4) Any response to a timely letter requesting retention must be filed within five days
26 after service of the letter. The response may not exceed five pages.

27 ~~(4) Any letter or response that does not comply with paragraph (b) will not be~~
28 ~~considered.~~

29 (d) Notice of decision.

30 (1) If the Supreme Court grants a ~~Upon entry of a transfer order or an order granting a~~
31 retention request, the Supreme Court clerk will provide notice of the order granting the
32 request to the parties ~~each party to the proceeding~~ and to the ~~clerk of the~~ trial court. ~~Upon~~
33 ~~entry of the order of transfer, the Clerk of the Supreme Court shall transfer the original~~
34 ~~of the order and the case, including the record and file of the case from the trial court, all~~
35 ~~papers filed in the Supreme Court, and a written statement of all docket entries in the~~
36 ~~case up to and including the order of transfer, to the Clerk of the Court of Appeals.~~

37 (2) (e) Receipt of order of transfer by Court of Appeals. ~~Upon receipt of the original order of~~
38 ~~transfer from the Clerk of~~ clerk. ~~If no timely retention request is received or if the Supreme~~
39 ~~Court declines a retention request, the Clerk of Supreme Court clerk will also provide~~
40 notice of the transfer order to the parties and to the Court of Appeals ~~shall of the transfer~~
41 ~~order.~~

42 (e) Court of Appeals' r ~~Receipt of transfer order by Court of Appeals.~~ Upon receipt from
43 the Supreme Court clerk of the transfer order, the Court of Appeals clerk will enter the
44 appeal upon the Court of Appeals docket. The ~~Clerk of the~~ Court of Appeals ~~shall~~ clerk
45 will immediately give notice to ~~each party~~ the parties ~~to the proceeding~~ and to the ~~clerk~~
46 ~~of the~~ trial court clerk that the appeal has been docketed and that all further filings will
47 be made with the ~~Clerk of the Court of Appeals.~~ ~~The notice shall state the docket number~~
48 ~~assigned to the case in the~~ Court of Appeals clerk.

49 ~~(d) Filing or transfer~~ (f) Transfer of appellate record. If the record on appeal ~~has not~~
50 ~~been~~ was filed with the ~~Clerk of the~~ Supreme Court ~~before a case was transferred to the~~
51 Court of Appeals, ~~as of the date of the order of transfer, the Clerk of the Supreme Court~~
52 ~~shall notify the clerk of the trial court that upon completion of the conditions for filing~~
53 ~~the record by that court, the clerk shall transmit~~ the Supreme Court clerk will transfer the

54 record ~~on appeal will be transmitted~~ to ~~the Clerk of~~ the Court of Appeals. ~~If, however,~~
55 ~~the record on appeal has already been transmitted to and filed with the Clerk of the~~
56 ~~Supreme Court as of the date of the entry of the order of transfer, the Clerk of the Supreme~~
57 ~~Court shall transmit the record on appeal to the Clerk of the Court of Appeals~~ clerk
58 within five days of the date of the entry of the ~~order of~~ transfer order.

59 ~~(e)g~~ **Subsequent proceedings before Court of Appeals.** Upon receipt by the ~~Clerk of~~
60 ~~the~~ Court of Appeals clerk of ~~the order of a~~ transfer ~~and the entry thereof upon the docket~~
61 ~~of the Court of Appeals~~ order, the case ~~shall~~ will proceed before the Court of Appeals to
62 final decision and disposition as in other appellate cases pursuant to these rules.

Rule 43. Certification by the Court of Appeals to the Supreme Court.

(a) **Transfer.** In any case over which the Court of Appeals has original appellate jurisdiction, the court may, upon the affirmative vote of at least four judges of the court, certify a case for immediate transfer to the Supreme Court for determination.

(b) **Procedure for transfer.**

(1) The Court of Appeals may, on its own motion, decide whether a case should be certified. Any party to a case may, however, file a suggestion for certification not exceeding five pages, explaining why the party believes that the case should be certified. The suggestion may not be filed before a docketing statement is filed. Within 14 days of service, an adverse party may file and serve a statement not exceeding five pages either supporting or opposing the suggestion for certification.

(2) Upon entering the certification order, the Court of Appeals Clerk must immediately transfer the case, including the record and file of the case from the trial court, all documents filed in the Court of Appeals, and a written statement of all docket entries in the case up to and including the certification order, to the Supreme Court Clerk. The Court of Appeals Clerk must promptly notify all parties and the trial court clerk that the case has been transferred.

(3) Upon receiving the certification order, the Supreme Court Clerk must enter the appeal on the Supreme Court's docket. The Supreme Court Clerk must immediately send notices to all parties and to the trial court clerk that the case has been docketed and that all further filings will be made with the Supreme Court Clerk. The notice must state the docket number assigned to the case in the Supreme Court. The case will proceed before the Supreme Court to final decision and disposition as in other appellate cases under these rules.

(4) If the record on appeal has not been filed with the Court of Appeals Clerk as of the date of the certification order, the Court of Appeals Clerk must notify the trial court clerk that upon completing the conditions for filing the record by that court, the clerk

must transmit the record on appeal to the Supreme Court Clerk. If, however, the record on appeal has already been transmitted to and filed with the Court of Appeals Clerk as of the date the certification order is entered, the Court of Appeals Clerk must transmit the record on appeal to the Supreme Court Clerk within five days after the certification order is entered.

(c) **Criteria for transfer.** The Court of Appeals will consider certification only in the following cases:

(1) Cases where it is apparent that the case should be decided by the Supreme Court and that the Supreme Court would likely grant a petition for a writ of certiorari in the case if decided by the Court of Appeals, irrespective of how the Court of Appeals might rule; and

(2) Cases that will govern a number of other cases involving the same legal issue or issues pending in the trial courts or the Court of Appeals, or cases raising issues of first impression under state or federal law that will have wide applicability.

Effective January 22, 2025