

1 **Rule 37. Suggestion of mootness; voluntary dismissal.**

2 (a) Suggestion of mootness. ~~It is the duty of each party at all times during the course~~
3 ~~of an appeal or other proceeding to inform the court of any~~ Any party aware
4 of circumstances which have transpired subsequent to the filing of the appeal or other
5 proceeding which that render moot one or more of the issues ~~raised.~~ presented for review
6 must promptly If a party determines that one or more, but less than all, of the issues have
7 been rendered moot, the party shall promptly advise the court by ~~filing~~ file a “suggestion
8 of mootness” in the form of a motion under Rule 23. ~~If all parties to an appeal or other~~
9 ~~proceeding agree as to the mootness of one or more, but less than all, of the issues raised,~~
10 ~~a stipulation to that effect shall be filed with the suggestion of mootness. If an appellant~~
11 ~~determines all issues raised in the appeal or other proceeding are moot, a motion for~~
12 ~~voluntary dismissal shall be filed pursuant to the provisions of paragraph (b) of this rule.~~

13 (b) Voluntary dismissal. At any time prior to the issuance of a decision an appellant
14 may move to voluntarily dismiss an appeal or other proceeding. If all parties to an appeal
15 or other proceeding agree that dismissal is appropriate, ~~a stipulation to that effect shall be~~
16 ~~filed with the~~ and stipulate to a motion for voluntary dismissal, the appeal will be
17 promptly dismissed. ~~Any such~~ The stipulation shall must specify the terms as to payment
18 of costs and fees, if any. ~~applicable~~, and provide for payment of whatever fees are due.

19 (c) Affidavits. If the appellant has the right to effective assistance of counsel, a
20 motion to voluntarily dismiss the appeal for reasons other than mootness ~~shall~~ must be
21 accompanied by appellant’s personal affidavit or declaration under Section 78B-5-705
22 demonstrating that the appellant’s decision to dismiss the appeal is voluntary and is made
23 with knowledge of the right to an appeal and ~~an understanding of the consequences of~~
24 voluntary dismissal. If counsel for the appellant is unable to obtain the required affidavit
25 or declaration from the appellant, the motion must be accompanied by counsel’s affidavit
26 or declaration stating that, after reasonable efforts, counsel is unable to obtain the
27 required affidavit and certifying that counsel has a reasonable factual basis to believe that
28 the appellant no longer wishes to pursue the appeal.

29 (d) ~~A suggestion of mootness or motion for voluntary dismissal shall be subject to the~~
30 ~~appellate court’s approval.~~

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32 **Advisory Committee Note.**

33 Criminal defendants have a constitutional right to the effective assistance of counsel.
34 *Strickland v. Washington*, 466 U.S. 668 (1984); *State v. Arguelles*, 921 P.2d 439, 441
35 (Utah 1996). Parties in juvenile court proceedings have a statutory right to effective
36 assistance of counsel. *State ex rel. E.H. v. A.H.*, 880 P.2d 11, 13 (Utah App. 1994); ~~see~~
37 ~~Utah Code Ann. § 78-3a-913(1)(a)(Supp. 1998). To protect these rights and the right to~~
38 ~~appeal, Utah Code Ann. § 77-18a-1(1)(Supp. 1998); id. § 78-3a-909(1)(1996), the last~~
39 ~~sentence was added to Rule 37(b) to assure that the decision to abandon an appeal is an~~
40 ~~informed choice made by the appellant, not unilaterally by appellant's attorney.~~