

# AGENDA

## 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

Judicial Council Room  
Thursday, May 7, 2015  
12:00 p.m. to 1:30 p.m.

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12:00 p.m.	Welcome and Approval of Minutes (Tab 1)	Rod Parker
12:05 p.m.	Subcommittee Updates <ul style="list-style-type: none"><li>• Public Briefs (Tab 2)</li><li>• Forms (Tab 3)</li><li>• Federal Rules</li><li>• Efiling Subcommittee</li></ul>	Tim Shea
12:30 p.m.	Rule 24 (Tab 4) Rule 24 and <i>State v. Nielsen</i> (Tab 5) Rule 27 (Tab 6)	Troy Booher
1:25 p.m.	Other Business	
1:30 p.m.	Adjourn	

### Upcoming Meetings:

June 4, 2015  
September 3, 2015  
October 1, 2015

# 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

Conference Room A, 1st Floor  
Thursday, April 9, 2015  
12:00 p.m. to 1:30 p.m.

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### PRESENT

Joan Watt – Chair  
Alison Adams-Perlac – Staff  
Troy Booher  
Paul Burke  
Marian Decker  
Alan Mouritsen  
Judge Gregory Orme  
Rodney Parker  
Bryan Pattison (by phone)  
John Plimpton – Recording Secretary  
Clark Sabey  
Lori Seppi  
Tim Shea  
Anne Marie Taliaferro  
Judge Fred Voros  
Mary Westby

### EXCUSED

Bridget Romano

#### 1. Welcome and Approval of Minutes

**Joan Watt**

Ms. Watt welcomed the committee to the meeting. She asked for any comments on the minutes from the previous meeting. Ms. Decker pointed out that she did not make the comment referred to in the first sentence of the seventh full paragraph on page 5. Ms. Taliaferro said she made the comment.

*Ms. Seppi moved to approve the minutes from the last meeting as amended. Ms. Taliaferro seconded the motion and it passed unanimously.*

#### 2. Subcommittee Updates

**Tim Shea**

##### a. Public Briefs

Mr. Shea said that the committee would be discussing public briefs later in the meeting.

## **b. Forms**

Mr. Shea said that the Forms subcommittee had met and drafted some forms that would be included with the agenda for the next meeting.

## **c. Federal Rules**

Mr. Shea said that the Federal Rules subcommittee had met and would meet again the following Monday. He said that the subcommittee was going to recommend adopting the federal approach regarding when a post-trial proceeding does not render the underlying judgment nonfinal. Judge Voros asked what the federal rule is. Mr. Shea said that, under the federal rule, a post-trial proceeding does not render the judgment nonfinal if that is the direction given by the trial judge. Mr. Sabey asked what is the default consequence if the judge does not say anything. Mr. Shea said that he thought the default is that a post-trial proceeding renders the judgment nonfinal. Mr. Mouritsen said it was the reverse, that a judgment is final unless the judge declares that a post-trial proceeding renders it nonfinal. Mr. Sabey said that the Utah rules currently do not countenance any such declaration by a judge. Mr. Mouritsen said that the federal rules require motions for attorney's fees to be filed within 14 days after judgment, and that the Utah rules do not have an analogous timeline. Mr. Shea said that the subcommittee was going to recommend such a timeline, as well.

Mr. Booher said that the subcommittee's recommendation would overturn *Meadowbrook*, which says that a party must move for attorney's fees before the entry of final judgment. Mr. Shea said that the subcommittee was going to recommend adding a motion for relief under Rule 60 if the motion is filed no later than 28 days after the judgment. He said that motion would extend the time to appeal. Mr. Shea said, under the subcommittee's current draft, the judge would need to expressly decide that the post-trial proceedings would not delay the time for appeal. He said that the subcommittee would probably need to edit that part of the draft.

Judge Voros said that the federal rules are very convoluted. Mr. Shea said that the subcommittee was trying to emulate the substance of the federal rules with simpler language. Judge Orme asked if there is a possibility of two appeals in the same case. Mr. Sabey said that Utah rules already create the possibility of two appeals in the same case with many kinds of post-judgment motions. Judge Orme said he was worried about separate appeals from attorney's fees awards because so many cases involve litigation over attorney's fees. Mr. Sabey asked Ms. Westby how often litigants try to appeal before attorney's fees are resolved. Ms. Westby said it happens, but not often.

Mr. Booher said that the real problem is not in the appellate courts. He said that the real problem is in the civil rules, because the civil rules mirror the federal rules almost verbatim, but they have a different definition of what constitutes a final judgment. He said that this sometimes leads to paradoxical results. He said that adopting the federal definition of final judgment in the

civil rules would clear up this problem, and issues in the appellate courts can be dealt with through stays and consolidations of appeals. He said it would be worth finding out how often there are two appeals in the federal system, and how often the appeals end up getting consolidated.

Judge Orme said that adopting the federal rule would create litigation on appeal over whether a judge declared a judgment nonfinal. Ms. Westby said that if the rules create the possibility of two appeals in the same case, the timelines should be such that the appellate courts could consolidate in most cases. Mr. Sabey said that there would be no problem if the courts could treat attorney's fees as any other post-judgment motion that has its own life.

Mr. Shea said that the subcommittee's recommendation would be brought back to the committee and well as to the civil rules committee. He said that each committee would be responsible for its own set of rules, but that they needed to agree on the overarching policy. Ms. Watt asked if this sort of discussion is helpful. Mr. Shea said that the subcommittee seemed favorable to the federal rule. Ms. Watt suggested that the subcommittee look into whether the federal system results in separate appeals from attorney's fees awards. Mr. Shea indicated that that would be a good idea.

#### **d. Efiling Subcommittee**

Mr. Shea said that the Efiling subcommittee has continued to meet and is making good progress. Judge Orme said that the subcommittee is being very thorough and it is taking a while. Mr. Shea said that the subcommittee has taken on more and more tasks as it works through the Rules and it is taking a long time. He said that the end product will be good and there is no urgency because there is no projected date for efilings in the appellate courts.

### **3. Public Briefs**

**Tim Shea**

Mr. Shea said that all the committee members seem to agree that briefs need to be public. He said that the question in his mind is when they need to be public. He said that there is also agreement on the redaction option, under which parties would be able to protect confidential information by filing two briefs: one for the public in which confidential information is redacted, and one for the court in which there are no redactions. He said that there are three options for when a brief becomes public: immediately upon filing, seven days after filing, or seven days after filing in certain types of cases in which the trial records are nonpublic. He said that the primary reason to delay public access would be because briefs are immediately publicly available online upon filing, which is not currently the case. He said that might be the case in the future, but the committee should deal with that when the time comes. He said that currently, if briefs were immediately public, someone who wanted to see a brief would need to come to the court to do so. He also said that when electronic filing goes into effect, it will not entail immediate online public availability of briefs.

Ms. Watt asked Mr. Shea to walk the committee through the draft rules in the agenda. Mr. Shea began with Rule 21. He said that he believed the committee members agreed on

proposed Rule 21(g). Judge Voros said that the list of adjectives in proposed Rule 21(g) is long. He asked if “nonpublic” would suffice. Mr. Shea said that the list is more thorough and informative, but “nonpublic” would be just as accurate. Ms. Watt said that the list would alert parties to the distinctions between kinds of nonpublic records. Ms. Adams-Perlac said the list would be more helpful to parties because many people do not know about the different classifications. Ms. Watt agreed. Judge Voros asked if the word “records” on line 29 should be deleted. Mr. Shea said that it should be. Ms. Westby asked about confidential information in addenda. Mr. Shea said that addenda are treated differently from briefs, and proposed Rule 24 addresses them.

Judge Orme said that accidental inclusion of confidential information in addenda is of particular concern. Judge Voros said that the appellate rules would provide the only relief or consequences when someone, intentionally or otherwise, included confidential information in an addendum because GRAMA does not apply to private parties. Mr. Sabey said that courts would have contempt power. Mr. Shea said that there needs to be a process by which nonfiling parties could ask for sanctions. He said he did not know whether the appellate rules currently provide for such a process. He said that if such a process does not yet exist, then it should. The other committee members agreed. Mr. Booher said a sentence could be added saying that a failure to comply could result in sanctions. Mr. Shea said that that question can be reserved for now. Ms. Watt said Rule 40(b) provides for the possibility of sanctions for failing to comply with the Rules. Ms. Watt noted that in the draft of the committee note to Rule 21, the “and” on line 36 should be changed to “as.” Mr. Shea agreed.

Mr. Shea moved on to Rule 24. He said that the only proposed change to Rule 24 is to require a separate addendum when the addendum contains classified information. Judge Voros said that the addendum should be treated just like the brief: a full addendum for the court and a redacted addendum for the public. Mr. Shea said he treated the addendum differently than the brief. Mr. Parker said that the addendum is part of the brief, so it should be treated the same. Ms. Seppi said that an addendum might be a classified document, such as a presentence report, or it might just contain some classified information, such as a social security number, in which case it could be redacted. Judge Voros said that his preference would be to get one brief that has everything in it, including the addendum, and a redacted version for the public, including the addendum. Ms. Adams-Perlac said that proposed Rule 21A, which has gone out for public comment, addresses Judge Voros’s concerns. Mr. Shea said that the approach in proposed Rule 21A might render the proposed amendments to Rule 24 unnecessary.

Mr. Sabey said that redacting addenda is a substantial burden. Judge Voros said parties will just leave addenda out, and addenda will be outmoded once briefs are electronic. Mr. Parker said that Mr. Sabey had a point and that the committee might be underestimating the burden of redacting. He recalled a case he had years back where the question was whether a juvenile could be tried as an adult. He said that he would not have been able to redact that brief. Judge Voros said that, in such a situation, the attorney can move to classify the entire brief as nonpublic. Mr. Parker said that his case attracted a lot of media attention and classifying it as nonpublic could have started a firestorm. Judge Voros said that striking the right balance between public and private interests will inevitably involve something of a burden.

Mr. Booher noted that the Utah classification system does not exist in federal law, so it might create some issues with adopting the federal rules. He said that writing a public brief based on a nonpublic record is problematic. Mr. Sabey said that the brief can just be filed as nonpublic. Ms. Westby noted that many of the facts of the case will become public once the appellate decision is issued. Mr. Parker said that the Rules cannot address judgment calls about what information should be redacted. He expressed his view that appellate courts are a public setting, and parties who take advantage of that setting need to deal with the realities of it. Judge Orme said he is more concerned about respecting the privacy of nonparties, or “innocent bystanders.” Ms. Adams-Perlac said that people should not need to sacrifice their privacy just because they seek relief from an erroneous trial court decision. Mr. Pattison said that ideally cases on appeal will be treated the same way as they are at trial. Ms. Adams-Perlac said that is a sticking point because no one is suggesting that all the records of a case that is nonpublic in the trial court will be nonpublic on appeal, and the problem is deciding what records become public on appeal in such a case.

Judge Voros said that, as a judge considering an appeal, he would want a brief that contains everything, including the addendum, unredacted; he would not want a separate addendum. Mr. Booher said that the judges should know which parts of the brief are nonpublic so that appellate decisions do not quote material that is redacted from the briefs. Mr. Parker said that the addendum issue would probably disappear with electronic filing. Mr. Booher said addenda are included with petitions as well as briefs, and the rule for addenda should apply to all addenda.

Mr. Shea said that his takeaway from the discussion was that the committee rejects the proposed change to Rule 24. The other committee members agreed.

Mr. Shea moved on to Rule 40. He said that the significant proposed amendments to Rule 40 are subparagraphs (b)(4)(A) and (b)(4)(B). He said that those subparagraphs provide that filing a document entails certifying that nonpublic information is kept nonpublic in the briefs. Judge Voros said that the language tracks Rule 11, which he favors. The other committee members agreed. Ms. Decker pointed out that “and” in the first line of the committee note should be changed to “as.” Mr. Shea agreed.

Mr. Shea moved on to Rule 4-202.02. He asked the committee members if an appellate brief should be public immediately upon filing. Mr. Booher said that he did not mind if briefs are immediately public so long as nonfiling parties (opposing parties and third-parties) could seek a remedy and sanctions. The committee members agreed that appellate briefs should be public upon filing. Mr. Parker asked if the language “an appellate brief” is not so broad that it would include redacted briefs. Mr. Shea said proposed Rule 21(g) would control redacted briefs. Mr. Booher asked if all documents filed in the appellate courts, such as petitions and motions, would be public as well. Mr. Shea said that all documents that are filed in the appellate courts other than briefs would be governed by the other parts of Rule 4-202.02. Mr. Parker asked about a petition for interlocutory appeal. Mr. Shea said that he did not recall a rule governing other appellate records, but that all records filed with the courts are presumed to be public. Mr. Booher asked, if

that is the case, then why do appellate briefs need to be expressly listed as public. Mr. Shea said that the list of records that are expressly public is there because people otherwise could not believe that certain records are public. He said that there are a lot of records that clerks are treating as nonpublic when they should not be. Mr. Sabey said that either the presumption should govern or all appellate records should expressly be public. Judge Voros suggested that “appellate briefs” be replaced with “appellate filings.” Mr. Shea said that he was comfortable with the change.

Judge Voros asked if the committee could approve the proposed Rules of Judicial Administration. Mr. Shea said no, but the committee’s recommendations would go to the Judicial Council.

Mr. Shea moved onto Rule 4-202.04. He said that he forgot to include “juvenile court legal and social” in paragraph (3). Ms. Westby asked if paragraph (3) could be divided into (3)(a) and (3)(b). Mr. Shea said yes. Judge Voros asked if (3)(a) and (3)(b) could have parallel construction. Mr. Shea said yes. Mr. Burke asked if the word “redact” was broad enough to apply to things like videos and photographs. The committee concluded that it was.

Mr. Parker asked why paragraph (7)(C) was necessary. Mr. Shea said that it is not necessary because an order under Rule 4-202.04 is not binding on anyone or anything other than the court, the parties, and the State Law Library. He said that (7)(C) was included because law school libraries wanted to be notified of an order issued under Rule 4-202.04, even though such an order is not binding on them. Judge Voros said it seems strange to say that the order can be “served” on parties not bound by it. He said that it makes more sense to say that they can be notified of the order. Mr. Parker said (7)(C) should not be in there because it makes it seem like there is a consequence for someone served with or notified of an order. Mr. Sabey suggested that it might be appropriate for a committee note. Mr. Parker said that, at the very least, the Rule needs to say that compliance is voluntary. Ms. Watt agreed. Mr. Shea said he could revise the Rule to reflect voluntary compliance.

Mr. Shea moved on to Rule 4-202.09. Mr. Shea said that it was not particularly important that the committee consider this Rule. Mr. Shea said that paragraph (10) was being deleted because it was obsolete. Mr. Booher asked if Greenfiling constitutes a “vendor,” in which case paragraph (10) might not be obsolete. Mr. Shea said he was unfamiliar with the Greenfiling service. Mr. Booher explained that he could access records in cases that are not his through Greenfiling. Mr. Parker noted that appellate efilings will be hosted by the appellate courts, so the committee need not concern itself with paragraph (10).

Mr. Shea moved on to Rule 4-205. He said that proposed paragraph (4)(B)(ii) provides that an order of expungement in a case will not affect the classification of appellate briefs that were filed in the case. Mr. Burke asked why the court would not sequester briefs in its possession. Mr. Shea said it would make sense to require the court to sequester briefs in its possession, in which case Rule 4-205 need not be amended. He noted, however, that many briefs will no longer be in the court’s possession, and the court would not be responsible for those. Judge Voros asked about opinions, whether the court would need to sequester the opinion. Mr.

Parker said the interest in public access to appellate opinions outweighs the private interest in sequestering opinions in expunged cases. Ms. Watt said that this is something the committee should discuss further at a later time.

#### 4. Rule 24 and *State v. Nielsen*

The committee amended the advisory committee note to Rule 24 read as follows:

##### **Rule 24. Briefs.**

##### **Advisory Committee Note**

~~Rule 24(a)(9) now reflects what Utah appellate courts have long held. See *In re Beesley*, 883 P.2d 1343, 1349 (Utah 1994); *Newmeyer v. Newmeyer*, 745 P.2d 1276, 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate counsel must play the devil's advocate. 'Attorneys must extricate themselves from the client's shoes and fully assume the adversary's position. In order to properly discharge the marshaling duty..., the challenger must present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.'" *ONEIDA/SLIC, v. ONEIDA Cold Storage and Warehouse, Inc.*, 872 P.2d 1051, 1052-53 (Utah App. 1994)(alteration in original)(quoting *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App. 1991)). See also *State ex rel. M.S. v. Salata*, 806 P.2d 1216, 1218 (Utah App. 1991); *Bell v. Elder*, 782 P.2d 545, 547 (Utah App. 1989); *State v. Moore*, 802 P.2d 732, 738-39 (Utah App. 1990).~~

The rule reflects the marshaling requirement articulated in *State v. Nielsen*, 2014 UT 10, 326 P.3d 645, which holds that the failure to marshal is no longer a technical deficiency that will result in default, but is the manner in which an appellant carries its burden of persuasion when challenging a finding or verdict based upon evidence.

Briefs that do not comply with the technical requirements of this rule are subject to Rule 27(e).

The brief must contain for each issue raised on appeal, a statement of the applicable standard of review and citation of supporting authority.

*Mr. Burke moved to approve the amendment to the advisory committee note to Rule 24. Judge Voros seconded the motion, and it passed unanimously.*

#### 5. Rules 24 and 27

The committee did not discuss Rule 24 or Rule 27.

#### 6. Adjourn

The meeting was adjourned at 1:54 p.m. The next meeting will be held on Thursday, May 7, 2015.

# Tab 2



Timothy M. Shea  
Appellate Court Administrator

Andrea R. Martinez  
Clerk of Court

## Supreme Court of Utah

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April 21, 2015

Matthew B. Durrant  
Chief Justice  
Thomas R. Lee  
Associate Chief Justice  
Christine M. Durham  
Justice  
Jill N. Parrish  
Justice  
Deno G. Himonas  
Justice

**To:** Appellate Rules Committee  
**From:** Tim Shea *T. Shea*  
**Re:** Public briefs

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I have removed URAP 24 and CJA 4-202.09 from consideration. The committee agreed to changes to the committee note to Rule 24, but they are not needed for this project. There are a few technical changes to Rule 4-202.09 warranted, but again not needed for this project. The remaining amendments are:

**URAP 21. Filing and service.** If a filing includes confidential information, the filer must also file a version with the confidential information omitted. The filer must certify that the information is confidential, citing the law that makes that classification. Highlights an addendum, since confidential trial court records might be in an addendum.

**URAP 40. Attorney's or party's certificate; sanctions and discipline.** Adds to the representations made by signing a filing that the filing does not contain confidential information or that a version without the confidential information is being filed simultaneously. (Relies on existing provision for sanctions.)

**CJA 4-202.02. Records classification.** Classifies appellate records as public.

**CJA 4-202.04. Request to access a record associated with a case; request to classify a record associated with a case.** Mostly technical changes to the existing process for requesting that a record be edited or classified. The process long available by motion would be available by petition if the court with custody of the record no longer has jurisdiction of the case. Special provisions for the effect of an order regarding an appellate brief.

**CJA 4-205. Security of court records.** Special provisions for the effect of an expungement order regarding an appellate brief.

1 **Rule 21. Filing and service.**

2 **(a) Filing.** Papers required or permitted to be filed by these rules shall be filed with the clerk of the  
3 appropriate court. Filing may be accomplished by mail addressed to the clerk. Except as provided in  
4 subpart (f), filing is not considered timely unless the papers are received by the clerk within the time fixed  
5 for filing, except that briefs shall be deemed filed on the date of the postmark if first class mail is utilized. If  
6 a motion requests relief which may be granted by a single justice or judge, the justice or judge may  
7 accept the motion, note the date of filing, and transmit it to the clerk.

8 **(b) Service of all papers required.** Copies of all papers filed with the appellate court shall, at or  
9 before the time of filing, be served on all other parties to the appeal or review. Service on a party  
10 represented by counsel shall be made on counsel of record, or, if the party is not represented by counsel,  
11 upon the party at the last known address. A copy of any paper required by these rules to be served on a  
12 party shall be filed with the court and accompanied by proof of service.

13 **(c) Manner of service.** Service may be personal or by mail. Personal service includes delivery of the  
14 copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on  
15 mailing.

16 **(d) Proof of service.** Papers presented for filing shall contain an acknowledgment of service by the  
17 person served or a certificate of service in the form of a statement of the date and manner of service, the  
18 names of the persons served, and the addresses at which they were served. The certificate of service  
19 may appear on or be affixed to the papers filed. If counsel of record is served, the certificate of service  
20 shall designate the name of the party represented by that counsel.

21 **(e) Signature.** All papers filed in the appellate court shall be signed by counsel of record or by a party  
22 who is not represented by counsel.

23 **(f) Filing by inmate.** Papers filed by an inmate confined in an institution are timely filed if they are  
24 deposited in the institution's internal mail system on or before the last day for filing. Timely filing may be  
25 shown by a notarized statement or written declaration setting forth the date of deposit and stating that  
26 first-class postage has been prepaid.

27 **(g) Filings containing other than public information and records.** If a filing, including an  
28 addendum, contains information classified as private, controlled, protected, safeguarded, sealed, juvenile  
29 court legal, or juvenile court social or any other information to which the right of public access is restricted  
30 by statute, rule, order, or caselaw, the filer must also file a version with all non-public information  
31 removed. The filer must certify that the removed information is classified as other than public, citing the  
32 statute, rule, or order that makes that classification.

33 **Advisory Committee Notes**

34 Paragraph (e) is added to Rule 21 to consolidate various signature provisions formerly found in other  
35 sections of the rules.

36 Records are classified as public, private, controlled, protected, safeguarded, sealed, juvenile court  
37 legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access

38 might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by  
39 other statutes, rules, or caselaw, or by court order. If a filing contains information or records that are not  
40 public, Rule 21(g) requires the filer to file an unredacted version for the court and a version for the public  
41 that does not contain the confidential information.

42

1 **Rule 40. Attorney's or party's ~~certificate~~ signature; representations to the court; sanctions and**  
2 **discipline.**

3 **(a) Attorney's or party's certificate.** Every motion, brief, and other paper of a party represented by  
4 ~~an attorney shall document must~~ be signed by at least one attorney of record who is an active member in  
5 good standing of the Bar of this state or by a party who is self-represented. ~~The attorney shall sign his or~~  
6 ~~her individual name and give his or her business address, telephone number, and Utah State Bar~~  
7 ~~number. A party who is not represented by an attorney shall sign any motion, brief, or other paper and~~  
8 ~~state the party's address and telephone number. Except when otherwise specifically provided by rule or~~  
9 ~~statute, motions, briefs, or other papers need not be verified or accompanied by affidavit. The signature of~~  
10 ~~an attorney or party constitutes a certificate that the attorney or party has read the motion, brief, or other~~  
11 ~~paper; that to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, it~~  
12 ~~is not frivolous or interposed for the purpose of delay as defined in Rule 33. If a motion, brief, or other~~  
13 ~~paper is not signed as required by this rule, it shall be stricken unless it is signed promptly after the~~  
14 ~~omission is called to the attention of the attorney or party. If a motion, brief, or other paper is signed in~~  
15 ~~violation of this rule, the authority and the procedures of the court provided by Rule 33 shall apply. A~~  
16 person may sign a document using any form of signature recognized by law as binding.

17 **(b) Representations to court.** The signature of an attorney or self-represented party certifies that to  
18 the best of the person's knowledge formed after an inquiry reasonable under the circumstances:

19 (b)(1) the filing is not being presented for any improper purpose, such as to harass or to cause  
20 unnecessary delay or needless increase in the cost of litigation;

21 (b)(2) the legal contentions are warranted by existing law or by a nonfrivolous argument for the  
22 extension, modification, or reversal of existing law or the establishment of new law;

23 (b)(3) the factual contentions are supported by the record on appeal; and

24 (b)(4)(A) the filing contains no information or records classified as private, controlled, protected,  
25 safeguarded, sealed, juvenile court legal, or juvenile court social or any other information or records  
26 to which the right of public access is restricted by statute, rule, order, or caselaw; or

27 (b)(4)(B) a filing required by Rule 21(g) that does not contain information or records classified as  
28 private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social or any  
29 other information or records to which the right of public access is restricted by statute, rule, order, or  
30 caselaw is being filed simultaneously.

31 **~~(b)~~(c) Sanctions and discipline of attorneys and parties.** The court may, after reasonable notice  
32 and an opportunity to show cause ~~to the contrary~~, and upon hearing, if requested, take appropriate action  
33 against any attorney or person who practices before it for inadequate representation of a client, conduct  
34 unbecoming a member of the Bar or a person allowed to appear before the court, or for failure to comply  
35 with these rules or order of the court. Any action to suspend or disbar a member of the Utah State Bar  
36 shall be referred to the Office of Professional Conduct of the Utah State Bar.

37 ~~(c)~~ **(d) Rule does not affect contempt power.** This rule ~~shall not be construed to~~ does not limit or  
38 impair the court's inherent and statutory contempt powers.

39 ~~(d)~~ **(e) Appearance of counsel pro hac vice.** An attorney who is licensed to practice before the bar  
40 of another state or a foreign country but who is not a member of the Bar of this state, may appear, pro  
41 hac vice upon motion, filed pursuant to ~~the Code of Judicial Administration Rule 14-806 of the Rules~~  
42 Governing the Utah State Bar. A separate motion is not required in the appellate court if the attorney has  
43 previously been admitted pro hac vice in the ~~lower tribunal~~ trial court or agency, but the attorney shall file  
44 in the appellate court a notice of appearance pro hac vice to that effect.

45 **Advisory Committee Notes**

46 ~~Refer to Rule 14-806 of the Rules Governing the Utah State Bar for qualification of out of state~~  
47 ~~counsel to practice before the courts of Utah.~~

48 Records are classified as public, private, controlled, protected, safeguarded, sealed, juvenile court  
49 legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access  
50 might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by  
51 other statutes, rules, or caselaw, or by court order. If a filing contains information or records that are not  
52 public, Rule 21(g) requires the filer to file an unredacted version for the court and a version for the public  
53 that does not contain the confidential information.

54

1 **Rule 4-202.02. Records classification.**

2 Intent:

3 To classify court records as public or non-public.

4 Applicability:

5 This rule applies to the judicial branch.

6 Statement of the Rule:

7 (1) Court records are public unless otherwise classified by this rule.

8 (2) Public court records include but are not limited to:

9 (2)(A) abstract of a citation that redacts all non-public information;

10 (2)(B) aggregate records without non-public information and without personal identifying information;

11 ~~(2)(C) an appellate filing, including a brief;~~

12 ~~(2)(G)-(2)(D)~~ arrest warrants, but a court may restrict access before service;

13 ~~(2)(D)-(2)(E)~~ audit reports;

14 ~~(2)(E)-(2)(F)~~ case files;

15 ~~(2)(F)-(2)(G)~~ committee reports after release by the Judicial Council or the court that requested the  
16 study;

17 ~~(2)(G)-(2)(H)~~ contracts entered into by the judicial branch and records of compliance with the terms of  
18 a contract;

19 ~~(2)(H)-(2)(I)~~ drafts that were never finalized but were relied upon in carrying out an action or policy;

20 ~~(2)(I)-(2)(J)~~ exhibits, but the judge may regulate or deny access to ensure the integrity of the exhibit, a  
21 fair trial or interests favoring closure;

22 ~~(2)(J)-(2)(K)~~ financial records;

23 ~~(2)(K)-(2)(L)~~ indexes approved by the Management Committee of the Judicial Council, including the  
24 following, in courts other than the juvenile court; an index may contain any other index information:

25 ~~(2)(K)(i)-(2)(L)(i)~~ amount in controversy;

26 ~~(2)(K)(ii)-(2)(L)(ii)~~ attorney name;

27 ~~(2)(K)(iii)-(2)(L)(iii)~~ case number;

28 ~~(2)(K)(iv)-(2)(L)(iv)~~ case status;

29 ~~(2)(K)(v)-(2)(L)(v)~~ civil case type or criminal violation;

30 ~~(2)(K)(vi)-(2)(L)(vi)~~ civil judgment or criminal disposition;

31 ~~(2)(K)(vii)-(2)(L)(vii)~~ daily calendar;

32 ~~(2)(K)(viii)-(2)(L)(viii)~~ file date;

33 ~~(2)(K)(ix)-(2)(L)~~ party name;

34 ~~(2)(L)-(2)(M)~~ name, business address, business telephone number, and business email address of an  
35 adult person or business entity other than a party or a victim or witness of a crime;

36 ~~(2)(M)-(2)(N)~~ name, address, telephone number, email address, date of birth, and last four digits of  
37 the following: driver's license number; social security number; or account number of a party;

38 ~~(2)(N)~~-~~(2)(O)~~ name, business address, business telephone number, and business email address of a  
39 lawyer appearing in a case;

40 ~~(2)(O)~~-~~(2)(P)~~ name, business address, business telephone number, and business email address of  
41 court personnel other than judges;

42 ~~(2)(P)~~-~~(2)(Q)~~ name, business address, and business telephone number of judges;

43 ~~(2)(Q)~~-~~(2)(R)~~ name, gender, gross salary and benefits, job title and description, number of hours  
44 worked per pay period, dates of employment, and relevant qualifications of a current or former court  
45 personnel;

46 ~~(2)(R)~~-~~(2)(S)~~ unless classified by the judge as private or safeguarded to protect the personal safety of  
47 the juror or the juror's family, the name of a juror empaneled to try a case, but only 10 days after the jury  
48 is discharged;

49 ~~(2)(S)~~-~~(2)(T)~~ opinions, including concurring and dissenting opinions, and orders entered in open  
50 hearings;

51 ~~(2)(T)~~-~~(2)(U)~~ order or decision classifying a record as not public;

52 ~~(2)(U)~~-~~(2)(V)~~ private record if the subject of the record has given written permission to make the  
53 record public;

54 ~~(2)(V)~~-~~(2)(W)~~ probation progress/violation reports;

55 ~~(2)(W)~~-~~(2)(X)~~ publications of the administrative office of the courts;

56 ~~(2)(X)~~-~~(2)(Y)~~ record in which the judicial branch determines or states an opinion on the rights of the  
57 state, a political subdivision, the public, or a person;

58 ~~(2)(Y)~~-~~(2)(Z)~~ record of the receipt or expenditure of public funds;

59 ~~(2)(Z)~~-~~(2)(AA)~~ record or minutes of an open meeting or hearing and the transcript of them;

60 ~~(2)(AA)~~-~~(2)(BB)~~ record of formal discipline of current or former court personnel or of a person  
61 regulated by the judicial branch if the disciplinary action has been completed, and all time periods for  
62 administrative appeal have expired, and the disciplinary action was sustained;

63 ~~(2)(BB)~~-~~(2)(CC)~~ record of a request for a record;

64 ~~(2)(CC)~~-~~(2)(DD)~~ reports used by the judiciary if all of the data in the report is public or the Judicial  
65 Council designates the report as a public record;

66 ~~(2)(DD)~~-~~(2)(EE)~~ rules of the Supreme Court and Judicial Council;

67 ~~(2)(EE)~~-~~(2)(FF)~~ search warrants, the application and all affidavits or other recorded testimony on  
68 which a warrant is based are public after they are unsealed under Utah Rule of Criminal Procedure 40;

69 ~~(2)(FF)~~-~~(2)(GG)~~ statistical data derived from public and non-public records but that disclose only  
70 public data;

71 ~~(2)(GG)~~-~~(2)(HH)~~ Notwithstanding subsections (6) and (7), if a petition, indictment, or information is  
72 filed charging a person 14 years of age or older with a felony or an offense that would be a felony if  
73 committed by an adult, the petition, indictment or information, the adjudication order, the disposition order,  
74 and the delinquency history summary of the person are public records. The delinquency history summary

75 shall contain the name of the person, a listing of the offenses for which the person was adjudged to be  
76 within the jurisdiction of the juvenile court, and the disposition of the court in each of those offenses.

77 (3) The following court records are sealed:

78 (3)(A) records in the following actions:

79 (3)(A)(i) Title 78B, Chapter 6, Part 1, Utah Adoption Act six months after the conclusion of  
80 proceedings, which are private until sealed;

81 (3)(A)(ii) Title 78B, Chapter 15, Part 8, Gestational Agreement, six months after the conclusion of  
82 proceedings, which are private until sealed; and-

83 (3)(A)(iii) Title 76, Chapter 7, Part 304.5, Consent required for abortions performed on minors; and

84 (3)(B) expunged records;

85 (3)(C) orders authorizing installation of pen register or trap and trace device under Utah Code Section  
86 77-23a-15;

87 (3)(D) records showing the identity of a confidential informant;

88 (3)(E) records relating to the possession of a financial institution by the commissioner of financial  
89 institutions under Utah Code Section 7-2-6;

90 (3)(F) wills deposited for safe keeping under Utah Code Section 75-2-901;

91 (3)(G) records designated as sealed by rule of the Supreme Court;

92 (3)(H) record of a Children's Justice Center investigative interview after the conclusion of any legal  
93 proceedings; and

94 (3)(I) other records as ordered by the court under Rule 4-202.04.

95 (4) The following court records are private:

96 (4)(A) records in the following actions:

97 (4)(A)(i) Section 62A-15-631, Involuntary commitment under court order;

98 (4)(A)(ii) Title 78B, Chapter 6, Part 1, Utah Adoption Act, until the records are sealed; and

99 (4)(A)(iii) Title 78B, Chapter 15, Part 8, Gestational Agreement, until the records are sealed; and

100 (4)(B) records in the following actions, except that the case history; judgments, orders and decrees;  
101 letters of appointment; and the record of public hearings are public records:

102 (4)(B)(i) Title 30, Husband and Wife, except that an action for consortium due to personal injury under  
103 Section 30-2-11 is public;

104 (4)(B)(ii) Title 77, Chapter 3a, Stalking Injunctions;

105 (4)(B)(iii) Title 75, Chapter 5, Protection of Persons Under Disability and their Property;

106 (4)(B)(iv) Title 78B, Chapter 7, Protective Orders;

107 (4)(B)(v) Title 78B, Chapter 12, Utah Child Support Act;

108 (4)(B)(vi) Title 78B, Chapter 13, Utah Uniform Child Custody Jurisdiction and Enforcement Act;

109 (4)(B)(vii) Title 78B, Chapter 14, Uniform Interstate Family Support Act;

110 (4)(B)(viii) Title 78B, Chapter 15, Utah Uniform Parentage Act; and

111 (4)(B)(ix) an action to modify or enforce a judgment in any of the actions in this subparagraph (B);

- 112 (4)(C) aggregate records other than public aggregate records under subsection (2);
- 113 (4)(D) alternative dispute resolution records;
- 114 (4)(E) applications for accommodation under the Americans with Disabilities Act;
- 115 (4)(F) citation, but an abstract of a citation that redacts all non-public information is public;
- 116 (4)(G) judgment information statement;
- 117 (4)(H) judicial review of final agency action under Utah Code Section 62A-4a-1009;
- 118 (4)(I) the following personal identifying information about a party: driver's license number, social  
119 security number, account description and number, password, identification number, maiden name and  
120 mother's maiden name, and similar personal identifying information;
- 121 (4)(J) the following personal identifying information about a person other than a party or a victim or  
122 witness of a crime: residential address, personal email address, personal telephone number; date of birth,  
123 driver's license number, social security number, account description and number, password, identification  
124 number, maiden name, mother's maiden name, and similar personal identifying information;
- 125 (4)(K) medical, psychiatric, or psychological records;
- 126 (4)(L) name of a minor, except that the name of a minor party is public in the following district and  
127 justice court proceedings:
- 128 (4)(L)(i) name change of a minor;
- 129 (4)(L)(ii) guardianship or conservatorship for a minor;
- 130 (4)(L)(iii) felony, misdemeanor or infraction;
- 131 (4)(L)(iv) child protective orders; and
- 132 (4)(L)(v) custody orders and decrees;
- 133 (4)(M) personnel file of a current or former court personnel or applicant for employment;
- 134 (4)(N) photograph, film or video of a crime victim;
- 135 (4)(O) record of a court hearing closed to the public or of a child's testimony taken under URCrP 15.5:
- 136 (4)(O)(i) permanently if the hearing is not traditionally open to the public and public access does not  
137 play a significant positive role in the process; or
- 138 (4)(O)(ii) if the hearing is traditionally open to the public, until the judge determines it is possible to  
139 release the record without prejudice to the interests that justified the closure;
- 140 (4)(P) record submitted by a senior judge or court commissioner regarding performance evaluation  
141 and certification;
- 142 (4)(Q) record submitted for in camera review until its public availability is determined;
- 143 (4)(R) reports of investigations by Child Protective Services;
- 144 (4)(S) victim impact statements;
- 145 (4)(T) name of a prospective juror summoned to attend court, unless classified by the judge as  
146 safeguarded to protect the personal safety of the prospective juror or the prospective juror's family;
- 147 (4)(U) records filed pursuant to Rules 52 - 59 of the Utah Rules of Appellate Procedure, except briefs  
148 filed pursuant to court order;

- 149 (4)(V) records in a proceeding under Rule 60 of the Utah Rules of Appellate Procedure;  
150 (4)(W) an addendum to an appellate brief filed in a case involving:  
151 (4)(W)(i) adoption;  
152 (4)(W)(ii) termination of parental rights;  
153 (4)(W)(iii) abuse, neglect and dependency;  
154 (4)(W)(iv) substantiation under Section 78A-6-323; or  
155 (4)(W)(v) protective orders or dating violence protective orders;  
156 (4)(X) other records as ordered by the court under Rule 4-202.04.  
157 (5) The following court records are protected:  
158 (5)(A) attorney's work product, including the mental impressions or legal theories of an attorney or  
159 other representative of the courts concerning litigation, privileged communication between the courts and  
160 an attorney representing, retained, or employed by the courts, and records prepared solely in anticipation  
161 of litigation or a judicial, quasi-judicial, or administrative proceeding;  
162 (5)(B) records that are subject to the attorney client privilege;  
163 (5)(C) bids or proposals until the deadline for submitting them has closed;  
164 (5)(D) budget analyses, revenue estimates, and fiscal notes of proposed legislation before issuance  
165 of the final recommendations in these areas;  
166 (5)(E) budget recommendations, legislative proposals, and policy statements, that if disclosed would  
167 reveal the court's contemplated policies or contemplated courses of action;  
168 (5)(F) court security plans;  
169 (5)(G) investigation and analysis of loss covered by the risk management fund;  
170 (5)(H) memorandum prepared by staff for a member of any body charged by law with performing a  
171 judicial function and used in the decision-making process;  
172 (5)(I) confidential business records under Utah Code Section 63G-2-309;  
173 (5)(J) record created or maintained for civil, criminal, or administrative enforcement purposes, audit or  
174 discipline purposes, or licensing, certification or registration purposes, if the record reasonably could be  
175 expected to:  
176 (5)(J)(i) interfere with an investigation;  
177 (5)(J)(ii) interfere with a fair hearing or trial;  
178 (5)(J)(iii) disclose the identity of a confidential source; or  
179 (5)(J)(iv) concern the security of a court facility;  
180 (5)(K) record identifying property under consideration for sale or acquisition by the court or its  
181 appraised or estimated value unless the information has been disclosed to someone not under a duty of  
182 confidentiality to the courts;  
183 (5)(L) record that would reveal the contents of settlement negotiations other than the final settlement  
184 agreement;

- 185 (5)(M) record the disclosure of which would impair governmental procurement or give an unfair  
186 advantage to any person;
- 187 (5)(N) record the disclosure of which would interfere with supervision of an offender's incarceration,  
188 probation or parole;
- 189 (5)(O) record the disclosure of which would jeopardize life, safety or property;
- 190 (5)(P) strategy about collective bargaining or pending litigation;
- 191 (5)(Q) test questions and answers;
- 192 (5)(R) trade secrets as defined in Utah Code Section 13-24-2;
- 193 (5)(S) record of a Children's Justice Center investigative interview before the conclusion of any legal  
194 proceedings;
- 195 (5)(T) presentence investigation report; and
- 196 (5)(U) other records as ordered by the court under Rule 4-202.04.
- 197 (6) The following are juvenile court social records:
- 198 (6)(A) correspondence relating to juvenile social records;
- 199 (6)(B) custody evaluations, parent-time evaluations, parental fitness evaluations, substance abuse  
200 evaluations, domestic violence evaluations;
- 201 (6)(C) medical, psychological, psychiatric evaluations;
- 202 (6)(D) pre-disposition and social summary reports;
- 203 (6)(E) probation agency and institutional reports or evaluations;
- 204 (6)(F) referral reports;
- 205 (6)(G) report of preliminary inquiries; and
- 206 (6)(H) treatment or service plans.
- 207 (7) The following are juvenile court legal records:
- 208 (7)(A) accounting records;
- 209 (7)(B) discovery filed with the court;
- 210 (7)(C) pleadings, summonses, subpoenas, motions, affidavits, calendars, minutes, findings, orders,  
211 decrees;
- 212 (7)(D) name of a party or minor;
- 213 (7)(E) record of a court hearing;
- 214 (7)(F) referral and offense histories
- 215 (7)(G) and any other juvenile court record regarding a minor that is not designated as a social record.
- 216 (8) The following are safeguarded records:
- 217 (8)(A) upon request, location information, contact information and identity information other than  
218 name of a petitioner and other persons to be protected in an action filed under Title 77, Chapter 3a,  
219 Stalking Injunctions or Title 78B, Chapter 7, Protective Orders;
- 220 (8)(B) upon request, location information, contact information and identity information other than  
221 name of a party or the party's child after showing by affidavit that the health, safety, or liberty of the party

222 or child would be jeopardized by disclosure in a proceeding under Title 78B, Chapter 13, Utah Uniform  
223 Child Custody Jurisdiction and Enforcement Act or Title 78B, Chapter 14, Uniform Interstate Family  
224 Support Act or Title 78B, Chapter 15, Utah Uniform Parentage Act;

225 (8)(C) location information, contact information and identity information of prospective jurors on the  
226 master jury list or the qualified jury list;

227 (8)(D) location information, contact information and identity information other than name of a  
228 prospective juror summoned to attend court;

229 (8)(E) the following information about a victim or witness of a crime:

230 (8)(E)(i) business and personal address, email address, telephone number and similar information  
231 from which the person can be located or contacted;

232 (8)(E)(ii) date of birth, driver's license number, social security number, account description and  
233 number, password, identification number, maiden name, mother's maiden name, and similar personal  
234 identifying information.

235

1 **Rule 4-202.04. Request to access a record associated with a case; request to classify a record**  
 2 **associated with a case.**

3 Intent:

4 To establish the process for accessing a court record associated with a case.

5 Applicability:

6 This rule applies to court records associated with a case.

7 Statement of the Rule:

8 (1) A request to access a public court record shall be presented in writing to the clerk of the court  
 9 unless the clerk waives the requirement. A request to access a non-public court record to which a person  
 10 is authorized access shall be presented in writing to the clerk of the court. A written request shall contain  
 11 the requester's name, mailing address, daytime telephone number and a description of the record  
 12 requested. If the record is a non-public record, the person making the request shall present identification.

13 (2)(A) If a written request to access a court record is denied by the clerk of court, the person making  
 14 the request may file a motion to access the record.

15 (2)(B) A person not authorized to access a non-public court record may file a motion to access the  
 16 record. If the court allows access, the court may impose any reasonable conditions to protect the interests  
 17 favoring closure.

18 ~~(2)(C) A~~ (3)(A) If the court record is associated with a case over which the court has jurisdiction, a  
 19 person with an interest in a court record may file a motion to classify the record as private, protected, ~~or~~  
 20 sealed, safeguarded, juvenile court legal, or juvenile court social, or to have information redacted from the  
 21 record. The court shall deny access to the record until the court enters an order is entered.

22 (3)(B) If the court record is associated with a case over which the court no longer has jurisdiction, a  
 23 person with an interest in the record may file a petition to classify the record as private, protected, sealed,  
 24 safeguarded, juvenile court legal, or juvenile court social, or or to have information redacted from the  
 25 record. The court shall deny access to the record until the court enters an order.

26 (4) The court may classify the record as private, protected, or sealed, if it safeguarded, juvenile court  
 27 legal, or juvenile court social, or redact information from the record if the record or information :

28 ~~(2)(C)(i)~~ (4)(A) is so classified as private, protected, sealed, or safeguarded under Rule 4-202.02;

29 ~~(2)(C)(ii)~~ (4)(B) is classified as private, controlled, or protected by a governmental entity and shared  
 30 with the court under the Government Records Access and Management Act;

31 ~~(2)(C)(iii)~~ (4)(C) is a record regarding the character or competence of an individual; or

32 ~~(2)(C)(iv)~~ (4)(D) is a record containing information the disclosure of which constitutes an unwarranted  
 33 invasion of personal privacy.

34 ~~(2)(D) Motions~~ (5) As appropriate for the nature of the case with which the record is associated, the  
 35 motion or petition shall be filed and proceedings shall be conducted under Utah Rule of Civil Procedure 7  
 36 and served under Utah Rule of Civil Procedure 5 the rules of civil procedure, criminal procedure, juvenile  
 37 procedure, or appellate procedure. The person filing the motion or petition shall serve any representative

38 of the press who has requested notice in the case. The court shall conduct a closure hearing when a  
39 motion or petition to close a record is contested, when the press has requested notice of closure motions  
40 or petitions in the particular case, or when the judge-court decides public interest in the record warrants a  
41 hearing.

42 ~~(3)-(6)~~ In deciding whether to allow access to a court record or whether to classify a court record as  
43 private, protected, ~~or sealed,~~ or safeguarded or to redact information from the record, the court may  
44 consider any relevant factor, interest, or policy ~~presented by the parties,~~ including but not limited to the  
45 interests described in Rule 4-202. In ruling on a motion or petition under this rule the judge-court shall:

46 ~~(3)(A)-(6)(A)~~ make findings and conclusions about specific records;

47 ~~(3)(B)-(6)(B)~~ identify and balance the interests favoring opening and closing the record; and

48 ~~(3)(C)-(6)(C)~~ if the record is ordered closed, determine there are no reasonable alternatives to closure  
49 sufficient to protect the interests favoring closure.

50 (7)(A) If an appellate brief is sealed, the clerk of the court shall seal the brief under Rule 4-205. If an  
51 appellate brief is classified as private, protected, or safeguarded, the clerk of the court shall allow access  
52 only to persons authorized by Rule 4-202.03. If the court orders information redacted from the brief, the  
53 clerk of the court shall obliterate the information and allow public access to the edited brief.

54 (7)(B) If the petitioner serves the order on the director of the State Law Library, the director shall  
55 comply with the order in the same manner as the clerk of the court under paragraph (7)(A).

56 (7)(C) The order is binding only on the court, the parties to the petition, and the state law library.  
57 Compliance with the order by any other person is voluntary.

58 ~~(4)-(8)~~ A request under this rule is governed also by Rule 4-202.06. A motion or petition under this  
59 rule is not governed by Rule 4-202.06 or Rule 4-202.07.

60

1       **Rule 4-205. Security of court records.**

2       Intent:

3       To assure that the security and accuracy of court records are maintained.

4       To assure that authorized personnel have access to court records when appropriate.

5       To establish responsibility of court personnel for security of court records.

6       To establish the procedures for securing non-public records.

7       Applicability:

8       This rule shall apply to all courts of record and not of record.

9       Statement of the Rule:

10       (1) Court records restricted. All court records shall be kept in a restricted area of the court closed to  
11 public access.

12       (2) The clerk of the court may authorize, in writing, abstractors, credit bureau representatives, title  
13 company representatives and others who regularly research court records to have direct access to public  
14 court records. The clerk of the court shall ensure that persons to whom such authorization is granted are  
15 trained in the proper retrieval and filing of court records. The clerk of court may set reasonable restrictions  
16 on time and place for inspecting and copying records.

17       (3) Removal of records. Court records shall not be removed from their normal place of storage except  
18 by court personnel or by individuals obtaining the written authorization of the clerk of the court or the  
19 judge assigned to the case. Court records shall not be removed from the courthouse without permission  
20 of the court. Records removed from the courthouse shall be returned within two days, except that records  
21 removed for the purpose of an appeal shall be returned within such time as specified by the clerk of the  
22 court, unless otherwise ordered by the judge. Any person removing a record is responsible for the  
23 security and the integrity of the record.

24       (4) Management of non-public records.

25       (4)(A) Method of sealing and storage. Non-public records which are part of a larger public record shall  
26 be filed apart from the public record or in a manner that clearly distinguishes the record as not public.  
27 Sealed records shall be placed in an envelope which is securely sealed. The clerk of the court shall  
28 record the case number and record classification on the envelope and shall inscribe across the sealed  
29 part of the envelope the words "Not to be opened except upon permission of the court."

30       (4)(B) Expunged records.

31       (4)(B)(i) Upon entry of an order of expungement, the clerk of the court shall:

32       (4)(B)(i)(a) obliterate or destroy all reference to the expunged portion of the record in the paper copy  
33 of the index and maintain a separate index of expunged records not available to the public;

34       ~~(4)(B)(ii)~~ (4)(B)(i)(b) cover, without obliterating or destroying, all entries in the paper copy of the  
35 register of actions, including case identifying information other than the court docket number; and

36 ~~(4)(B)(iii)~~ (4)(B)(i)(c) place an entry in the computer record that restricts retrieval of case identifying  
37 information and the register of actions to court personnel with authorization to review such information.  
38 The security restriction shall not be removed except upon written order of the court.

39 (4)(B)(ii) Upon being served with an order of expungement, the clerk of an appellate court shall  
40 comply with paragraph (4)(B)(i). A brief will not be classified as private, protected, sealed, or safeguarded  
41 as the result of an expungement order, but only if a motion or petition to do so under Rule 4-202.04 is  
42 granted.

43 (4)(C) Record of event. The record of expunging or sealing a record shall be entered in the register of  
44 actions.

45

# Tab 3

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

I am the  Appellant

Attorney for the Appellant and my Utah Bar Number is \_\_\_\_\_

In the Utah  Supreme Court  Court of Appeals  
450 South State Street, Salt Lake City, Utah 84111

<p>_____ Plaintiff</p> <p>VS.</p> <p>_____ Defendant</p>	<p style="text-align: center;"><b>Notice of Appeal</b></p> <p>_____ Appellate Court Case Number</p> <p>_____ Trial Court Case Number</p>
--	--

(1) I am appealing the judgment in this case to the:

Utah Supreme Court, which has authority for this type of case under Section 78A-3-102.

Utah Court of Appeals, which has authority for this type of case under Section 78A-4-103.

(2) The appeal is taken from (Choose [x] one):

the entire judgment entered on \_\_\_\_\_ (date).

the part of the judgment entered on \_\_\_\_\_ (date) that states:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Date

Sign here ► \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

**REQUEST FOR TRANSCRIPT**

---

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

\_\_\_\_\_  
Court Location

\_\_\_\_\_  
Case Name

\_\_\_\_\_  
Trial Court Case Number

\_\_\_\_\_  
Appellate Court Case Number

(1) To: Transcript Coordinator

Please arrange for a transcript of the proceedings (for example, a hearing or trial) held in this case before Judge \_\_\_\_\_ (name) to be prepared, certified and filed with the trial court. (List as many as you need; attach more sheets if needed.)

Date	Proceeding Start Time	Proceeding Stop Time	Courtroom

(2) The transcript [ ] is [ ] is not for an appeal.

\_\_\_\_\_  
Date

Sign here ► \_\_\_\_\_  
\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

I am the  Appellant

Attorney for the Appellant and my Utah Bar Number is \_\_\_\_\_

In the Utah  Supreme Court  Court of Appeals  
450 South State Street, Salt Lake City, Utah 84111

<p>_____ Appellant</p> <p>VS.</p> <p>_____ Appellee</p>	<p><b>Certificate that Transcript is not being Requested</b></p> <p>_____ Appellate Court Case Number</p> <p>_____ Trial Court Case Number</p>
---	--

Notice: If you want to challenge a finding or conclusion, you **must** order a transcript of all evidence related to the finding or conclusion. Rule of Appellate Procedure 11.

I certify I am not requesting a transcript.

\_\_\_\_\_  
Date

Sign here ► \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

I am the  Appellant  Appellee  
 Attorney for the  Appellant  Appellee and my Utah Bar number is \_\_\_\_\_

In the Utah  Supreme Court  Court of Appeals  
450 South State Street, Salt Lake City, Utah 84111

<p>_____ Appellant</p> <p>vs.</p> <p>_____ Appellee</p>	<p style="text-align: center;"><b>Motion for Extension of Time</b></p> <p>_____ Appellate Court Case Number</p> <p>_____ Trial Court Case Number</p>
---	--

(1) I request an extension of time to file \_\_\_\_\_ (document name).

(2) The document is due on \_\_\_\_\_ (date).

(3) I cannot file the document by the due date because:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(4) Choose [x] one:

I have not been granted a previous extension of time to file this document.

I have been granted \_\_\_\_\_ (number) previous extensions of time to file this document.

\_\_\_\_\_  
Date

Sign here ► \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

I am the  Appellant

Attorney for the Appellant and my Utah Bar Number is \_\_\_\_\_

In the Utah  Supreme Court  Court of Appeals  
450 South State Street, Salt Lake City, Utah 84111

<p>_____ Appellant</p> <p>vs.</p> <p>_____ Appellee</p>	<p style="text-align: center;"><b>Docketing Statement (Civil Appeal URAP 9(c))</b></p> <p>_____ Appellate Court Case Number</p> <p>_____ Trial Court Case Number</p>
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**(1) Nature of the appeal.** This appeal is from the:

- final judgment after a jury trial
- final judgment after a bench trial
- final order
- default judgment
- judgment after order granting summary judgment
- order granting a motion to dismiss

**(2) Important dates.** The following dates are important to determining whether I filed my Notice of Appeal on time:

- When was the judgment of the trial court entered? \_\_\_\_\_.
- When was the notice of appeal filed in the trial court? \_\_\_\_\_.
- Did you receive an extension of the time under Rule 4(e) to file the notice of appeal?  
 Yes  No
  - If yes, when was the motion for an extension granted? \_\_\_\_\_.

- Did you file any of the following motions?  
 Yes    No

Motion filed under:	Date motion filed:	Date of order ruling on the motion:
URCP 50(b)		
URCP 52(b)		
URCP 59		
URAP 4 (g)		

- Are you an inmate confined in an institution?  
 Yes    No
  - If yes, when was the notice of appeal deposited in the institution's internal mail system? \_\_\_\_\_.

**(3) Claims or parties remaining before the trial court.** Is this appeal taken from an order certified as final under Rule 54(b) of the Utah Rules of Civil Procedure?

Yes    No

- If yes, what claims and parties remain before the trial court?

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**(4) Issues on appeal.** Describe at least one substantial issue that you intend to assert on appeal.

- (a) First issue (required). The trial court made the following mistake:

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- (b) Second issue (optional). The trial court made the following mistake:

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**(5) Summary of what happened in the trial court.** Describe the facts and the process in the trial court relating to the mistake(s) described above.

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**(6) Related appeals.** Have there been any appeals in this matter before this appeal? Are there any other appeals related to this appeal?

Yes    No

- If yes to either question, provide the appellate court case numbers. If the earlier or related appeal resulted in an opinion, provide the opinion citation.

Case Number	Citation (For example, 2015 UT 36 or 2015 UT App 103.)

\_\_\_\_\_  
Date

Sign here ► \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

I am the  Appellant  
 Attorney for the Appellant and my Utah Bar Number is \_\_\_\_\_

In the Utah  Supreme Court  Court of Appeals  
 450 South State Street, Salt Lake City, Utah 84111

<p>_____ Appellant</p> <p>vs.</p> <p>_____ Appellee</p>	<p><b>Docketing Statement (Criminal Appeal URAP 9(d))</b></p> <p>_____ Appellate Court Case Number</p> <p>_____ Trial Court Case Number</p>
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**(1) Nature of the appeal.** This appeal is from the:

- final judgment and sentence
- order of restitution

**(2) Important dates.** The following dates are important to determining whether I filed my Notice of Appeal on time:

- When was the judgment of the trial court entered? \_\_\_\_\_.
- When was the notice of appeal filed in the trial court? \_\_\_\_\_.
- Did you receive an extension of the time under Rule 4(e) to file the notice of appeal?  
 Yes  No
  - If yes, when was the motion for an extension granted? \_\_\_\_\_.
- Did you file any of the following motions?  
 Yes  No

Motion filed under:	Date motion filed:	Date of order ruling on the motion:
URCrP 24		
URAP 4(f)		

- Are you an inmate confined in an institution?  
[ ] Yes [ ] No
- If yes, when was the notice of appeal deposited in the institution's internal mail system? \_\_\_\_\_.

**(3) Charges, conviction, sentence.**

I was convicted of the following crimes (Include the offense and the level of the offense. For example, robbery, second degree felony.):

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I received the following sentence:

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**(4) Issues on appeal.** Describe at least one substantial issue that you intend to assert on appeal.

(a) First issue (required). The trial court made the following mistake:

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(b) Second issue (optional). The trial court made the following mistake:

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**(5) Summary of what happened in the trial court.** (Describe the facts and the process in the trial court relating to the mistake(s) described above. If the conviction was due to a plea of guilty or no contest, include whether you moved to withdraw the plea before sentencing, and whether the plea was conditional.)

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\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State Zip

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Email

I am the  Petitioner

Attorney for the Petitioner and my Utah Bar Number is \_\_\_\_\_

In the Utah  Supreme Court  Court of Appeals  
450 South State Street, Salt Lake City, Utah 84111

**Docketing Statement  
(Agency Review URAP 9(e))**

\_\_\_\_\_  
Petitioner

VS.

\_\_\_\_\_  
Respondent

\_\_\_\_\_  
Appellate Court Case Number

\_\_\_\_\_  
Agency Case Number

**(1) Nature of the review.** This petition is to review an order of the \_\_\_\_\_ (name of agency), which has the following effects (Briefly describe what the order does.):

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**(2) Jurisdiction.** This court has jurisdiction under:

- Section 78A-2-102 (Supreme Court)
- Section 78A-3-103 (Court of Appeals)
- Section \_\_\_\_\_

**(3) Important dates.** The following dates are important to determining whether I filed my Petition for Review on time:

- When was the final order of the agency entered? \_\_\_\_\_.
- When was the Petition for Review filed? \_\_\_\_\_.

**(4) Issues on review.** Describe at least one substantial issue that you intend to assert on review.

- o (a) First issue (required). The agency made the following mistake:

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- o (b) Second issue (optional). The agency made the following mistake:

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**(5) Summary of what happened in the agency.** Describe the facts and the process in the trial court relating to the mistake(s) described above.

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**(6) Related reviews.** Have there been any petitions for review in this matter before this review? Are there any other reviews related to this review?

Yes    No

- o If yes to either question, provide the appellate court case numbers. If the earlier or related reviews resulted in an opinion, provide the opinion citation.

Case Number	Citation (For example, 2015 UT 36 or 2015 UT App 103.)

**(7) Attachments.**

- o I have attached a copy of the final order I want the court to review.
- o If the review is of an order of the Public Service Commission, I have attached any application for rehearing filed under Section 54-7-15.

\_\_\_\_\_  
Date

Sign here ► \_\_\_\_\_

\_\_\_\_\_  
Typed or Printed Name





# Tab 4

1       **Rule 24. Briefs.**

2       (a) Definitions. For purposes of this rule, the terms “appeal,” “cross-appeal,”  
3       “appellant,” and “appellee” include the equivalent elements of original proceedings filed  
4       in the appellate court.

5       (b) Brief of the appellant. The ~~b~~Brief of the ~~a~~Appellant shall contain under  
6       appropriate headings and in the order indicated:

7       (ab)(1) List of parties. A complete list of all parties to the proceeding in the court or  
8       agency whose judgment or order is sought to be reviewed, except where the caption of  
9       the case on appeal contains the names of all such parties and except as provided in  
10       paragraph (e). The list should be set out on a separate page ~~which appears immediately~~  
11       inside the cover.

12       (ab)(2) Table of contents. A table of contents, ~~including the contents of the~~  
13       ~~addendum,~~ with page references to the items included in the brief, including page or tab  
14       references to items in the addendum.

15       (ab)(3) Table of authorities. A table of authorities including all ~~with cases,~~  
16       ~~alphabetically arranged and with parallel citations,~~ rules, statutes and other authorities  
17       cited, with references to the pages of the brief where they are cited.

18       (ab)(4) Introduction. A ~~brief~~succinct statement of the nature of the case, intended to  
19       provide a brief explanation of the case for the purpose of orienting the reader as to the  
20       general context in which the appeal arises. ~~showing the jurisdiction of the appellate~~  
21       ~~court.~~

22       (b)(5) Contention statement. A statement of error that the appellant contends  
23       warrants relief on appeal.

24       (b)(6) Preservation. A citation to the record in accordance with paragraph (f) of this  
25       rule showing that the contention was preserved in the trial court or administrative  
26       agency. An party contending that evidence was erroneously admitted or excluded shall  
27       identify the pages of the record where the evidence was identified, offered, and  
28       admitted or excluded. If a contention was not preserved, a statement of the grounds for  
29       seeking review of the unpreserved contention of error.

30 (b)(7) Standard of review. The standard of review governing the contention, with  
31 supporting authority.

32 ~~(a)(5) A statement of the issues presented for review, including for each issue: the~~  
33 ~~standard of appellate review with supporting authority; and~~

34 ~~(a)(5)(A) citation to the record showing that the issue was preserved in the trial court;~~  
35 ~~or~~

36 ~~(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the~~  
37 ~~trial court.~~

38 ~~(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose~~  
39 ~~interpretation is determinative of the appeal or of central importance to the appeal shall~~  
40 ~~be set out verbatim with the appropriate citation. If the pertinent part of the provision is~~  
41 ~~lengthy, the citation alone will suffice, and the provision shall be set forth in an~~  
42 ~~addendum to the brief under paragraph (11) of this rule.~~

43 ~~(ab)(785) A sStatement of the case. To the extent relevant to the contentions on~~  
44 ~~appeal, a procedural history including the disposition(s) below, and a statement of the~~  
45 ~~facts. Both the procedural history and statement of facts The statement shall first~~  
46 ~~indicate briefly the nature of the case, the course of proceedings, and its disposition in~~  
47 ~~the court below. A statement of the facts relevant to the issues presented for review~~  
48 ~~shall follow. All statements of fact and references to the proceedings below shall be~~  
49 ~~supported by citations to the record in accordance with paragraph (ef) of this rule.~~

50 ~~(ba)(98) Summary of arguments. The summary of arguments, suitably paragraphed,~~  
51 ~~shall be a succinct condensation of the arguments actually made in the body of the~~  
52 ~~brief. It shall not be a mere repetition of the heading under which the argument is~~  
53 ~~arranged.~~

54 ~~(ab)(9610) An aArgument. For each ground for relief presented, Tthe argument~~  
55 ~~section shall contain the following under appropriate subheadings and in the order~~  
56 ~~indicated:~~

57 ~~(b)(6)(A) Contention statement. A statement of error that the appellant contends~~  
58 ~~warrants relief on appeal. contentions and reasons of the appellant with respect to the~~  
59 ~~issues presented, including the grounds for reviewing any issue not preserved in the~~

60 trial court, with citations to the authorities, statutes, and parts of the record relied on. A  
61 party challenging a fact finding must first marshal all record evidence that supports the  
62 challenged finding. A party seeking to recover attorney's fees incurred on appeal shall  
63 state the request explicitly and set forth the legal basis for such an award.

64 (b)(6)(B) Preservation. A citation to the record in accordance with paragraph (f) of  
65 this rule showing that the contention was preserved in the trial court or administrative  
66 agency. An appellant contending that evidence was erroneously admitted or excluded  
67 shall identify the pages of the record where the evidence was identified, offered, and  
68 admitted or excluded. If the contention was not preserved, a statement of the grounds  
69 for seeking review of the unpreserved claim/contention of error.

70 (b)(6)(C) Standard of review. The standard of review governing the contention, with  
71 supporting authority.

72 (ab)(106)(D) Relief sought. A statement of short conclusion stating the precise relief  
73 sought. A party seeking to recover attorney's fees incurred on appeal shall state the  
74 request explicitly and set forth the legal basis for such an award.

75 (b)(6)(E) Grounds for relief requested. An argument setting forth controlling legal  
76 authority together with reasoned analysis explaining why that authority requires/supports  
77 reversal of the order or verdict challenged on appeal.

78 (b)(10)(A) Emphasis. No text in a brief shall be bold, underlined, or in ALL CAPS  
79 unless it is a quotation. Headings and the cover may contain bold text.

80 (b)(10)(B) Citations. The legal citations shall conform to the public domain citation  
81 format and shall use italics. No text in a brief shall be bold, underlined or in ALL CAPS  
82 unless it is a quotation.

83 (b)(10)(C) Unpublished Opinions. The unpublished decisions of the Court of Appeals  
84 issued on or after October 1, 1998, may be cited as precedent in all courts of the State.  
85 Other unpublished decisions may also be cited, so long as all parties and the court are  
86 supplied with accurate copies at the time all such decisions are first cited.

87 (b)(10)(D) Reference to the Record. References to the proceedings below shall be  
88 accompanied with citations to the relevant pages of the record. Where the appellant

89 contends that a finding or verdict is not supported by sufficient evidence, the appellant  
90 should marshal the record evidence supporting the finding or verdict.

91 (b)(11) Attorney fees. A party seeking to recover attorney fees incurred on appeal  
92 shall state the request explicitly and set forth the legal basis for such an award.

93 (b)(712) Conclusion and ~~. A brief conclusion.~~ Relief sought. A statement of the  
94 precise relief sought.

95 (b)(813) Signature. A signature in compliance with Rule 21(e).

96 (b)(914) Proof of Service. A proof of service in compliance with Rule 21(d).

97 (b)(150) Certificate of Compliance. If applicable, a certificate of compliance in  
98 accordance with paragraph (g)(1)(C) of this rule.

99 (ab)(1116) Addendum. An addendum to the brief or a statement that no addendum  
100 is necessary under this paragraph. The addendum shall be bound as part of the brief  
101 unless doing so makes the brief unreasonably thick, in which case it shall be separately  
102 bound and contain a table of contents. If the addendum is bound separately, the  
103 addendum shall contain a table of contents. The addendum shall contain a copy of  
104 the following:

105 (a)(11)(A) any constitutional provision, statute, rule, or regulation of central  
106 importance cited in the brief but not reproduced verbatim in the brief;

107 (ab)(1116)(BA) in cases being reviewed on certiorari, a copy of the decision of the  
108 Court of Appeals under reviewopinion; in all cases any court opinion of central  
109 importance to the appeal but not available to the court as part of a regularly published  
110 reporter service; and

111 (b)(146)(B) the text of any constitutional provision, statute, rule, or regulation whose  
112 interpretation is necessary to a resolution on the contentions set forth in the brief;

113 (b)(146)(C) the order or judgment appealed from or sought to be reviewed, together  
114 with any related minute entries, memorandum decisions, and findings of fact and  
115 conclusions of law; and

116 (ab)(1116)(CD) ~~these~~other parts of the record necessary to an understanding of the  
117 issues on appeal such as jury instructions, insurance policies, leases, search warrants,  
118 real estate purchase contracts, and transcript pages. ~~that are of central importance to~~

119 the determination of the appeal, such as the challenged instructions, findings of fact and  
120 conclusions of law, memorandum decision, the transcript of the court's oral decision, or  
121 the contract or document subject to construction.

122 ~~[(b)(12) Citation of decisions. Published decisions of the Supreme Court and the~~  
123 ~~Court of Appeals, and unpublished decisions of the Court of Appeals issued on or after~~  
124 ~~October 1, 1998, may be cited as precedent in all courts of the State. Other unpublished~~  
125 ~~decisions may also be cited, so long as all parties and the court are supplied with~~  
126 ~~accurate copies at the time all such decisions are first cited.]~~

127 (bc) Brief of the appellee. The ~~b~~Brief of the ~~a~~Appellee shall conform to the  
128 requirements of paragraph (ab) of this rule, except that the brief of appellee need not  
129 include:

130 (bc)(1) a contention statement, the standard of review, or a citation to the record  
131 showing that a contention was preserved unless the appellee is dissatisfied with those  
132 subsections of the brief of appellant; of the issues or of the case unless the appellee is  
133 dissatisfied with the statement of the appellant; or

134 (bc)(2) an addendum, except to provide relevant material not included in the  
135 addendum of the appellant Brief of Appellant. The appellee may refer to the addendum  
136 of the appellant.

137 (cd) Reply brief. The appellant may file a Reply bBrief of Appellant, in reply to the  
138 ~~brief of the appellee~~, and if the appellee has cross-appealed, the appellee may file a  
139 Reply Brief of Cross-Appellant, ~~brief in reply to the response of the appellant to the~~  
140 ~~issues presented by the cross-appeal. Reply briefs shall be limited to answering any~~  
141 ~~new matter set forth in the opposing brief. The content of the reply brief shall conform to~~  
142 ~~the requirements of paragraphs (a)(2), (3), (9), and (10) of this rule. No further briefs~~  
143 ~~may be filed except with leave of the appellate court.~~

144 (d)(1) A reply shall conform to the requirements of paragraphs (b)(2), (3), (4), (710),  
145 (811), (912), (13), and (104) of this rule.

146 (d)(2) A reply brief shall be limited to addressing arguments raised in the Brief of  
147 Appellee or the Brief of Cross-Appellee. The beginning of each section of a reply brief

148 shall specify those pages in the Brief of Appellee or the Brief of Cross-Appellee where  
149 the arguments being addressed appear.

150 (de) References in briefs to parties. Counsel will be expected in their briefs and oral  
151 arguments to keep to a minimum references to parties by such designations as  
152 "appellant" and "appellee-" or by initials. ~~†To~~ promotes clarity, counsel are encouraged  
153 to use the designations used in the lower court or in the agency proceedings; ~~or the~~  
154 ~~actual names of parties, or descriptive terms such as "the employee," "the injured~~  
155 ~~person," "the taxpayer,"~~ or the actual names of parties. Counsel shall avoid references  
156 by name to minors or to biological, adoptive, or foster parents in cases involving child  
157 abuse, neglect, or dependency, termination of parental rights, or adoption. With respect  
158 to the names of minors or parents in those cases, counsel are encouraged to use  
159 descriptive terms such as "child," "the 11-year old," "mother," "adoptive parent," and  
160 "foster father." etc.

161 (ef) References in briefs to the record. References shall be made to the pages of the  
162 original record as paginated pursuant to Rule 11(b) or to pages of any statement of the  
163 evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g).  
164 References to pages of published depositions or transcripts shall identify the sequential  
165 number of the cover page of each volume as marked by the clerk on the bottom right  
166 corner and each separately numbered page(s) referred to within the deposition or  
167 transcript as marked by the transcriber. References to exhibits shall be made to the  
168 exhibit numbers. References to "Trial Transcript" or "Memorandum in Support of Motion  
169 for Summary Judgment" do not comply with this rule unless accompanied by the  
170 relevant page numbers in the record on appeal. ~~If reference is made to evidence the~~  
171 ~~admissibility of which is in controversy, reference shall be made to the pages of the~~  
172 ~~record at which the evidence was identified, offered, and received or rejected.~~

173 (fg) Length of briefs.

174 (fg)(1) Type-volume limitation.

175 (fg)(1)(A) In an appeal involving the legality of a death sentence, a principal brief is  
176 acceptable if it contains no more than 28,000 words or it uses a monospaced face and  
177 contains no more than 2,600 lines of text; and a reply brief is acceptable if it contains no

178 more than 14,000 words or it uses a monospaced face and contains no more than  
179 1,300 lines of text. In all other appeals, Aa principal brief is acceptable if it contains no  
180 more than 14,000 words or it uses a monospaced face and contains no more than  
181 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000  
182 words or it uses a monospaced face and contains no more than 650 lines of text.

183 (fg)(1)(B) Headings, footnotes and quotations count toward the word and line  
184 limitations, but the table of contents, table of citations, and any addendum containing  
185 statutes, rules, regulations or portions of the record as required by paragraph (ab)(11) of  
186 this rule do not count toward the word and line limitations.

187 (fg)(1)(C) Certificate of compliance. A brief submitted under Rule 24(fg)(1) must  
188 include a certificate by the attorney or an unrepresented party that the brief complies  
189 with the type-volume limitation. The person preparing the certificate may rely on the  
190 word or line count of the word processing system used to prepare the brief. The  
191 certificate must state either the number of words in the brief or the number of lines  
192 of monospaced type in the brief.

193 (fg)(2) Page limitation. Unless a brief complies with Rule 24(fg)(1), a principal briefs  
194 shall not exceed 30 pages, and a reply briefs shall not exceed 15 pages, exclusive of  
195 pages containing the table of contents, tables of citations and any addendum containing  
196 statutes, rules, regulations, or portions of the record as required by paragraph (ab)(11)  
197 of this rule. In cases involving cross-appeals, paragraph (gh) of this rule sets forth the  
198 length of briefs.

199 (gh) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first  
200 filing a notice of appeal shall be deemed the appellant, unless the parties otherwise  
201 agree or the court otherwise orders. Each party shall be entitled to file two briefs.

202 (gh)(1) Brief of appellant. The appellant shall file a Brief of Appellant, ~~which shall~~  
203 ~~present the issues raised in the appeal~~ in compliance with paragraph (b) of this rule.

204 (gh)(2) Brief of appellee and cross-appellant. The appellee shall then file one brief,  
205 entitled Brief of Appellee and Cross-Appellant, ~~The brief which~~ shall respond to the  
206 ~~issues raised in the~~ Brief of Appellant and present the issues raised in the cross-appeal  
207 and shall comply with the relevant provisions in paragraphs (b) and (c) of this rule.

208 (gh)(3) Reply brief of appellant and brief of cross-appellee. The appellant shall then  
209 file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee. The brief  
210 ~~which~~ shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant  
211 and shall comply with the relevant provisions in paragraphs (c) and (d) of this rule.

212 (gh)(4) Reply brief of cross-appellant. The appellee may then file a Reply Brief of  
213 Cross-Appellant, which shall reply to the Brief of Cross-Appellee. The brief shall comply  
214 with paragraph (d) of this rule.

215 (gh)(5) Type-Volume Limitation.

216 (gh)(5)(A) The ~~appellant's~~ Brief of Appellant is acceptable if it contains no more than  
217 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of  
218 text.

219 (gh)(5)(B) The ~~appellee's~~ Brief of Appellee and Cross-Appellant is acceptable if it  
220 contains no more than 16,500 words or it uses a monospaced face and contains no  
221 more than 1,500 lines of text.

222 (gh)(5)(C) The ~~appellant's~~ Reply Brief of Appellant and Brief of Cross-Appellee is  
223 acceptable if it contains no more than 14,000 words or it uses a monospaced face and  
224 contains no more than 1,300 lines of text.

225 (gh)(5)(D) The ~~appellee's~~ Reply Brief of Cross-Appellant is acceptable if it contains  
226 no more than half of the type volume specified in Rule 24(gh)(5)(A).

227 (gh)(6) Certificate of Compliance. A brief submitted under Rule 24(gh)(5) must  
228 comply with Rule 24(fg)(1)(C).

229 (gh)(7) Page Limitation. Unless it complies with Rule 24(gh)(5) and (6), the  
230 ~~appellant's~~ Brief of Appellant must not exceed 30 pages; the ~~appellee's~~ Brief  
231 of Appellee and Cross-Appellant, 35 pages; the ~~appellant's~~ Reply Brief of Appellant and  
232 Brief of Cross-Appellee, 30 pages; and the ~~appellee's~~ Reply Brief of Cross-Appellant,  
233 15 pages.

234 (hi) Permission for over length brief. While such motions are disfavored, the court for  
235 good cause shown may upon motion permit a party to file a brief that exceeds the page,  
236 word, or line limitations of this rule. The motion shall state with specificity the issues to  
237 be briefed, the number of additional pages, words, or lines requested, and the good

238 cause for granting the motion. A motion filed at least seven days prior to the date the  
239 brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words,  
240 or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion  
241 filed within seven days of the date the brief is due and seeking more than three  
242 additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a  
243 copy of the finished brief. If the motion is granted, the responding party is entitled to an  
244 equal number of additional pages, words, or lines without further order of the court.  
245 Whether the motion is granted or denied, the draft brief will be destroyed by the court.

246 (ij) Briefs in cases involving multiple appellants or appellees. In cases involving more  
247 than one appellant or appellee, including cases consolidated for purposes of the appeal,  
248 any number of either may join in a single brief, and any appellant or appellee may adopt  
249 by reference any part of the brief of another. Parties may similarly join in reply briefs.

250 (jk) Citation of supplemental authorities. When pertinent and significant authorities  
251 come to the attention of a party after briefing or that party's brief has been filed, or after  
252 oral argument but before decision, at that party may promptly advise the clerk of the  
253 appellate court, by letter setting forth the citations. The letter shall identify the authority,  
254 indicate the page of the brief or point argued orally to which it pertains, and briefly state  
255 its relevance. Any other party may respond by letter within seven days of the filing of the  
256 original letter. The body of any letter filed pursuant to this rule may not exceed 350  
257 words. An original letter and nine copies shall be filed in the Supreme Court. An original  
258 letter and seven copies shall be filed in the Court of Appeals. There shall be a reference  
259 either to the page of the brief or to a point argued orally to which the citations pertain,  
260 but the letter shall state the reasons for the supplemental citations. The body of the  
261 letter must not exceed 350 words. Any response shall be made within seven days of  
262 filing and shall be similarly limited.

263 (kl) Compliance with Rule 21A. Any filing made under this rule that contains  
264 information or records classified as other than public shall comply with Rule 21A.

265 (m) Requirements and sanctions. All briefs under this rule must be concise,  
266 presented with accuracy, logically arranged with proper headings and free from  
267 burdensome, irrelevant, immaterial or scandalous matters. Briefs ~~which~~ that are not in

268 compliance may be disregarded or stricken, on motion or sua sponte by the court, and  
269 the court may assess attorney fees against the offending lawyer.

270 **Advisory Committee Notes**

271 Paragraph (a) clarifies that in briefs governed by this rule the parties should use the  
272 terms “appellant” and “appellee” rather than “petitioner” and respondent.”

273 The 2014 amendments eliminate, add, and change a number of requirements. The  
274 rule eliminates the statement of jurisdiction, the setting forth of determinative provisions,  
275 and the nature of the case. , and the summary of the argument. The rule adds to what  
276 must be included in the addendum, an introduction that replaces some of the eliminated  
277 requirements, and a citation requirement at the beginning of each section of a reply  
278 brief. And the rule changes the statement of issues to contention statements and moves  
279 the contention statements, standards of review, and preservation requirements to the  
280 argument section of the brief.

281 The rule reflects the marshaling requirement articulated in *State v. Nielsen*, 2014 UT  
282 10, 326 P.3d 645, which holds that the failure to marshal is no longer a technical  
283 deficiency that will result in default, but is the manner in which an appellant carries its  
284 burden of persuasion when challenging a finding or verdict based upon evidence.

285 Briefs that do not comply with the technical requirements of this rule are subject to  
286 Rule 27(e).

287 Examples of the public domain citation format referenced in paragraph (b)(6)(E) are  
288 as follows:

289 Before publication in Utah Advanced Reports:

290 *Smith v. Jones*, 1999 UT 16.

291 *Smith v. Jones*, 1999 UT App 16.

292 Before publication in Pacific Reporter but after publication in Utah Advance  
293 Reports:

294 *Smith v. Jones*, 1999 UT 16, 380 Utah Adv. Rep. 24.

295 *Smith v. Jones*, 1999 UT App 16, 380 Utah Adv. Rep. 24.

296 After publication in Pacific Reporter:

297 *Smith v. Jones*, 1999 UT 16, 998 P.2d 250.

298 Smith v. Jones, 1999 UT App 16, 998 P.2d 250.

299 Examples of a pinpoint citation to a Utah Supreme Court opinion or a Utah Court of  
300 Appeals opinion issued on or after January 1, 1999, would be as follows:

301 Before publication in Utah Advance Reports:

302 Smith v. Jones, 1999 UT 16, ¶ 21.

303 Smith v. Jones, 1999 UT App 16, ¶ 21.

304 Smith v. Jones, 1999 UT App 16, ¶¶ 21-25.

305 Before publication in Pacific Reporter but after publication in Utah Advance  
306 Reports:

307 Smith v. Jones, 1999 UT 16, ¶ 21, 380 Utah Adv. Rep. 24.

308 Smith v. Jones, 1999 UT App 16, ¶ 21, 380 Utah Adv. Rep. 24.

309 After publication in Pacific Reporter:

310 Smith v. Jones, 1999 UT 16, ¶ 21, 998 P.2d 250.

311 Smith v. Jones, 1999 UT App 16, ¶ 21, 998 P.2d 250.

312 If the immediately preceding authority is a post-January 1, 1999, opinion, cite to  
313 the paragraph number:

314 Id. ¶ 15.

315 ~~The brief must contain for each issue raised on appeal, a statement of the applicable~~  
316 ~~standard of review and citation of supporting authority.~~

317

1       **Rule 24. Briefs.**

2       (a) Definitions. For purposes of this rule, the terms “appeal,” “cross-appeal,”  
3 “appellant,” and “appellee” include the equivalent elements of original proceedings filed  
4 in the appellate court.

5       (b) Brief of the appellant. The Brief of Appellant shall contain under appropriate  
6 headings and in the order indicated:

7       (b)(1) List of parties. A complete list of all parties to the proceeding in the court or  
8 agency whose judgment or order is sought to be reviewed, except where the caption of  
9 the case on appeal contains the names of all such parties and except as provided in  
10 paragraph (e). The list should be set out on a separate page immediately inside the  
11 cover.

12       (b)(2) Table of contents. A table of contents with page references to the items  
13 included in the brief, including page or tab references to items in the addendum.

14       (b)(3) Table of authorities. A table of authorities including all cases, rules, statutes  
15 and other authorities cited, with references to the pages of the brief where they are  
16 cited.

17       (b)(4) Introduction. A succinct statement of the nature of the case, intended to  
18 provide a brief explanation of the case for the purpose of orienting the reader as to the  
19 general context in which the appeal arises.

20       (b)(5) Contention statement. A statement of error that the appellant contends  
21 warrants relief on appeal.

22       (b)(6) Preservation. A citation to the record in accordance with paragraph (f) of this  
23 rule showing that the contention was preserved in the trial court or administrative  
24 agency. An party contending that evidence was erroneously admitted or excluded shall  
25 identify the pages of the record where the evidence was identified, offered, and  
26 admitted or excluded. If a contention was not preserved, a statement of the grounds for  
27 seeking review of the unpreserved contention of error.

28       (b)(7) Standard of review. The standard of review governing the contention, with  
29 supporting authority.

30 (b)(8) Statement of the case. To the extent relevant to the contentions on appeal, a  
31 procedural history including the disposition(s) below and a statement of the facts. Both  
32 the procedural history and statement of facts shall be supported by citations to the  
33 record in accordance with paragraph (f) of this rule.

34 (b)(9) Summary of arguments. The summary of arguments, suitably paragraphed,  
35 shall be a succinct condensation of the arguments actually made in the body of the  
36 brief. It shall not be a mere repetition of the heading under which the argument is  
37 arranged.

38 (b)(10) Argument. An argument setting forth controlling legal authority together with  
39 reasoned analysis explaining why that authority supports reversal.

40 (b)(10)(A) Emphasis. No text in a brief shall be bold, underlined, or in ALL CAPS  
41 unless it is a quotation. Headings and the cover may contain bold text.

42 (b)(10)(B) Citations. The legal citations shall conform to the public domain citation  
43 format and shall use italics.

44 (b)(10)(C) Unpublished Opinions. The unpublished decisions of the Court of Appeals  
45 issued on or after October 1, 1998, may be cited as precedent in all courts of the State.  
46 Other unpublished decisions may also be cited, so long as all parties and the court are  
47 supplied with accurate copies at the time all such decisions are first cited.

48 (b)(10)(D) Reference to the Record. References to the proceedings below shall be  
49 accompanied with citations to the relevant pages of the record. Where the appellant  
50 contends that a finding or verdict is not supported by sufficient evidence, the appellant  
51 should marshal the record evidence supporting the finding or verdict.

52 (b)(11) Attorney fees. A party seeking to recover attorney fees incurred on appeal  
53 shall state the request explicitly and set forth the legal basis for such an award.

54 (b)(12) Conclusion and Relief sought. A statement of the precise relief sought.

55 (b)(13) Signature. A signature in compliance with Rule 21(e).

56 (b)(14) Proof of service. A proof of service in compliance with Rule 21(d).

57 (b)(15) Certificate of compliance. If applicable, a certificate of compliance in  
58 accordance with paragraph (g)(1)(C) of this rule.

59 (b)(16) Addendum. An addendum shall be bound as part of the brief unless doing so  
60 makes the brief unreasonably thick, in which case it shall be separately bound and  
61 contain a table of contents. The addendum shall contain copies of the following:

62 (b)(16)(A) in cases on certiorari, a copy of the decision of the Court of Appeals under  
63 review;

64 (b)(16)(B) the text of any constitutional provision, statute, rule, or regulation whose  
65 interpretation is necessary to a resolution on the contentions set forth in the brief;

66 (b)(16)(C) the order or judgment appealed from or sought to be reviewed, together  
67 with any related minute entries, memorandum decisions, and findings of fact and  
68 conclusions of law; and

69 (b)(16)(D) other parts of the record necessary to an understanding of the issues on  
70 appeal such as jury instructions, insurance policies, leases, search warrants, real estate  
71 purchase contracts, and transcript pages.

72 (c) Brief of the appellee. The Brief of Appellee shall conform to the requirements of  
73 paragraph (b) of this rule, except that the brief of appellee need not include:

74 (c)(1) a contention statement, the standard of review, or a citation to the record  
75 showing that a contention was preserved unless the appellee is dissatisfied with those  
76 subsections of the brief of appellant;

77 (c)(2) an addendum, except to provide relevant material not included in the  
78 addendum of the Brief of Appellant.

79 (d) Reply brief. The appellant may file a Reply Brief of Appellant, and if  
80 the appellee has cross-appealed, the appellee may file a Reply Brief of Cross-Appellant.  
81 No further briefs may be filed except with leave of the appellate court.

82 (d)(1) A reply shall conform to the requirements of paragraphs (b)(2), (3), (4), (10),  
83 (11), (12), (13), and (14) of this rule.

84 (d)(2) A reply brief shall be limited to addressing arguments raised in the Brief of  
85 Appellee or the Brief of Cross-Appellee. The beginning of each section of a reply brief  
86 shall specify those pages in the Brief of Appellee or the Brief of Cross-Appellee where  
87 the arguments being addressed appear.

88 (e) References in briefs to parties. Counsel will be expected in their briefs and oral  
89 arguments to keep to a minimum references to parties by such designations as  
90 "appellant" and "appellee" or by initials. To promote clarity, counsel are encouraged to  
91 use the designations used in the lower court or in the agency proceedings; descriptive  
92 terms such as "the employee," "the injured person," "the taxpayer"; or the actual names  
93 of parties. Counsel shall avoid references by name to minors or to biological, adoptive,  
94 or foster parents in cases involving child abuse, neglect, or dependency, termination of  
95 parental rights, or adoption. With respect to the names of minors or parents in those  
96 cases, counsel are encouraged to use descriptive terms such as "child," "the 11-year  
97 old," "mother," "adoptive parent," and "foster father."

98 (f) References in briefs to the record. References shall be made to the pages of the  
99 original record as paginated pursuant to Rule 11(b) or to pages of any statement of the  
100 evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g).  
101 References to pages of published depositions or transcripts shall identify the sequential  
102 number of the cover page of each volume as marked by the clerk on the bottom right  
103 corner and each separately numbered page(s) referred to within the deposition or  
104 transcript as marked by the transcriber. References to exhibits shall be made to the  
105 exhibit numbers. References to "Trial Transcript" or "Memorandum in Support of Motion  
106 for Summary Judgment" do not comply with this rule unless accompanied by the  
107 relevant page numbers in the record on appeal.(g) Length of briefs.

108 (g)(1) Type-volume limitation.

109 (g)(1)(A) In an appeal involving the legality of a death sentence, a principal brief is  
110 acceptable if it contains no more than 28,000 words or it uses a monospaced face and  
111 contains no more than 2,600 lines of text; and a reply brief is acceptable if it contains no  
112 more than 14,000 words or it uses a monospaced face and contains no more than  
113 1,300 lines of text. In all other appeals, a principal brief is acceptable if it contains no  
114 more than 14,000 words or it uses a monospaced face and contains no more than  
115 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000  
116 words or it uses a monospaced face and contains no more than 650 lines of text.

117 (g)(1)(B) Headings, footnotes and quotations count toward the word and line  
118 limitations, but the table of contents, table of citations, and any addendum containing  
119 statutes, rules, regulations or portions of the record as required by paragraph (b)(11) of  
120 this rule do not count toward the word and line limitations.

121 (g)(1)(C) Certificate of compliance. A brief submitted under Rule 24(g)(1) must  
122 include a certificate by the attorney or an unrepresented party that the brief complies  
123 with the type-volume limitation. The person preparing the certificate may rely on the  
124 word or line count of the word processing system used to prepare the brief. The  
125 certificate must state either the number of words in the brief or the number of lines  
126 of monospaced type in the brief.

127 (g)(2) Page limitation. Unless a brief complies with Rule 24(g)(1), a principal brief  
128 shall not exceed 30 pages, and a reply brief shall not exceed 15 pages, exclusive of  
129 pages containing the table of contents, tables of citations and any addendum containing  
130 statutes, rules, regulations, or portions of the record as required by paragraph (b)(11) of  
131 this rule. In cases involving cross-appeals, paragraph (h) of this rule sets forth the  
132 length of briefs.

133 (h) Briefs in cases involving cross-appeals. If a cross-appeal is filed, the party first  
134 filing a notice of appeal shall be deemed the appellant, unless the parties otherwise  
135 agree or the court otherwise orders. Each party shall be entitled to file two briefs.

136 (h)(1) Brief of appellant. The appellant shall file a Brief of Appellant in compliance  
137 with paragraph (b) of this rule.

138 (h)(2) Brief of appellee and cross-appellant. The appellee shall then file one brief,  
139 entitled Brief of Appellee and Cross-Appellant. The brief shall respond to the Brief of  
140 Appellant and present the issues raised in the cross-appeal and shall comply with the  
141 relevant provisions in paragraphs (b) and (c) of this rule.

142 (h)(3) Reply brief of appellant and brief of cross-appellee. The appellant shall then  
143 file one brief, entitled Reply Brief of Appellant and Brief of Cross-Appellee. The brief  
144 shall reply to the Brief of Appellee and respond to the Brief of Cross-Appellant and shall  
145 comply with the relevant provisions in paragraphs (c) and (d) of this rule.

146 (h)(4) Reply brief of cross-appellant. The appellee may then file a Reply Brief of  
147 Cross-Appellant, which shall reply to the Brief of Cross-Appellee. The brief shall comply  
148 with paragraph (d) of this rule.

149 (h)(5) Type-Volume Limitation.

150 (h)(5)(A) The Brief of Appellant is acceptable if it contains no more than 14,000  
151 words or it uses a monospaced face and contains no more than 1,300 lines of text.

152 (h)(5)(B) The Brief of Appellee and Cross-Appellant is acceptable if it contains no  
153 more than 16,500 words or it uses a monospaced face and contains no more than  
154 1,500 lines of text.

155 (h)(5)(C) The Reply Brief of Appellant and Brief of Cross-Appellee is acceptable if it  
156 contains no more than 14,000 words or it uses a monospaced face and contains no  
157 more than 1,300 lines of text.

158 (h)(5)(D) The Reply Brief of Cross-Appellant is acceptable if it contains no more than  
159 half of the type volume specified in Rule 24(h)(5)(A).

160 (h)(6) Certificate of Compliance. A brief submitted under Rule 24(h)(5) must comply  
161 with Rule 24(g)(1)(C).

162 (h)(7) Page Limitation. Unless it complies with Rule 24(h)(5) and (6), the Brief of  
163 Appellant must not exceed 30 pages; the Brief of Appellee and Cross-Appellant, 35  
164 pages; the Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the  
165 Reply Brief of Cross-Appellant, 15 pages.

166 (i) Permission for over length brief. While such motions are disfavored, the court for  
167 good cause shown may upon motion permit a party to file a brief that exceeds the page,  
168 word, or line limitations of this rule. The motion shall state with specificity the issues to  
169 be briefed, the number of additional pages, words, or lines requested, and the good  
170 cause for granting the motion. A motion filed at least seven days prior to the date the  
171 brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words,  
172 or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion  
173 filed within seven days of the date the brief is due and seeking more than three  
174 additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a  
175 copy of the finished brief. If the motion is granted, the responding party is entitled to an

176 equal number of additional pages, words, or lines without further order of the court.

177 Whether the motion is granted or denied, the draft brief will be destroyed by the court.

178 (j) Briefs in cases involving multiple appellants or appellees. In cases involving more  
179 than one appellant or appellee, including cases consolidated for purposes of the appeal,  
180 any number of either may join in a single brief, and any appellant or appellee may adopt  
181 by reference any part of the brief of another. Parties may similarly join in reply briefs.

182 (k) Citation of supplemental authorities. When pertinent and significant authorities  
183 come to the attention of a party after briefing or oral argument but before decision, that  
184 party may promptly advise the clerk of the appellate court, by letter. The letter shall  
185 identify the authority, indicate the page of the brief or point argued orally to which it  
186 pertains, and briefly state its relevance. Any other party may respond by letter within  
187 seven days of the filing of the original letter. The body of any letter filed pursuant to this  
188 rule may not exceed 350 words. An original letter and nine copies shall be filed in the  
189 Supreme Court. An original letter and seven copies shall be filed in the Court of  
190 Appeals.

191 (l) Compliance with Rule 21A. Any filing made under this rule that contains  
192 information or records classified as other than public shall comply with Rule 21A.

193 (m) Requirements and sanctions. All briefs under this rule must be concise,  
194 presented with accuracy, logically arranged with proper headings and free from  
195 burdensome, irrelevant, immaterial or scandalous matters. Briefs that are not in  
196 compliance may be disregarded or stricken, on motion or sua sponte by the court, and  
197 the court may assess attorney fees against the offending lawyer.

#### 198 **Advisory Committee Notes**

199 The 2014 amendments eliminate, add, and change a number of requirements. The  
200 rule eliminates the statement of jurisdiction, the setting forth of determinative provisions,  
201 and the nature of the case. The rule adds to what must be included in the addendum,  
202 an introduction that replaces some of the eliminated requirements, and a citation  
203 requirement at the beginning of each section of a reply brief. And the rule changes the  
204 statement of issues to contention statements.

205 The rule reflects the marshaling requirement articulated in *State v. Nielsen*, 2014 UT  
206 10, 326 P.3d 645, which holds that the failure to marshal is no longer a technical  
207 deficiency that will result in default, but is the manner in which an appellant carries its  
208 burden of persuasion when challenging a finding or verdict based upon evidence.

209 Briefs that do not comply with the technical requirements of this rule are subject to  
210 Rule 27(e).

211 Examples of the public domain citation format referenced in paragraph (b)(6)(E) are  
212 as follows:

213 Before publication in Utah Advanced Reports:

214 *Smith v. Jones*, 1999 UT 16.

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216 Before publication in Pacific Reporter but after publication in Utah Advance  
217 Reports:

218 *Smith v. Jones*, 1999 UT 16, 380 Utah Adv. Rep. 24.

219 *Smith v. Jones*, 1999 UT App 16, 380 Utah Adv. Rep. 24.

220 After publication in Pacific Reporter:

221 *Smith v. Jones*, 1999 UT 16, 998 P.2d 250.

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223 Examples of a pinpoint citation to a Utah Supreme Court opinion or a Utah Court of  
224 Appeals opinion issued on or after January 1, 1999, would be as follows:

225 Before publication in Utah Advance Reports:

226 *Smith v. Jones*, 1999 UT 16, ¶ 21.

227 *Smith v. Jones*, 1999 UT App 16, ¶ 21.

228 *Smith v. Jones*, 1999 UT App 16, ¶¶ 21-25.

229 Before publication in Pacific Reporter but after publication in Utah Advance  
230 Reports:

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232 *Smith v. Jones*, 1999 UT App 16, ¶ 21, 380 Utah Adv. Rep. 24.

233 After publication in Pacific Reporter:

234 *Smith v. Jones*, 1999 UT 16, ¶ 21, 998 P.2d 250.

235                    *Smith v. Jones*, 1999 UT App 16, ¶ 21, 998 P.2d 250.

236                    If the immediately preceding authority is a post-January 1, 1999, opinion, cite to  
237 the paragraph number:

238                    Id. ¶ 15.

# Tab 5

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State offers two lines of response. First it asks us to stop short of reaching the merits in light of Nielsen’s purported failure to marshal the evidence—specifically, his failure to present, “in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists.” *Chen v. Stewart*, 2004 UT 82, ¶ 77, 100 P.3d 1177 (internal quotation marks omitted). Second, and alternatively, the State challenges Nielsen’s position on the merits, identifying evidence in the record that it sees as sufficient to sustain an inference that Trisha was taken against her will.

¶32 We reject the State’s first point but agree with its second. Before addressing the merits of Nielsen’s challenge to the sufficiency of the evidence, we first consider the State’s marshaling argument—acknowledging some dicta in our prior cases that appears to support it, but refining and clarifying the standard going forward.

1. Marshaling

¶33 Our rules of appellate procedure prescribe standards for the form, organization, and content of a brief on appeal. *See* UTAH R. APP. P. 24. Some of the standards in rule 24 are sufficiently clear and objective that the failure to follow them may result in the rejection of a noncompliant brief by our clerk’s office. A brief that exceeds the rule’s limits on length, for example, would be rejected by our clerk’s office, as would a brief that fails to include a table of contents or statement of the standard of review. *See id.* 24(a)(2), (5). Typically a party filing a noncompliant brief would be given an opportunity to correct these sorts of deficiencies. But failure to do so theoretically could result in our failure to reach the merits on the basis of the party’s procedural default under rule 24.

¶34 Other standards in rule 24 are more subjective, and not susceptible to rejection by the clerk’s office or to procedural default by the court. Such standards are often an outgrowth of a party’s burden of persuasion on appeal. Thus, rule 24 requires the appellant’s brief to set forth “the contentions and reasons of the appellant with respect to the issues presented . . . with citations to the authorities, statutes, and parts of the record relied on.” *Id.* 24(a)(9). Our clerk’s office makes no attempt to police this rule at the outset. That assessment is left to the court. And we perform it not as a matter of gauging procedural compliance with the rule, but as a necessary component of our evaluation of the case on its

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merits, as viewed through the lens of the applicable standard of review. *See State v. Thomas*, 961 P.2d 299, 305 (Utah 1998) (“While failure to cite to pertinent authority may not always render an issue inadequately briefed, it does so when the overall analysis of the issue is so lacking as to shift the burden of research and argument to the reviewing court.”); *Salt Lake Cnty. v. Butler, Crockett & Walsh Dev. Corp.*, 2013 UT App 30, ¶ 37 n.5, 297 P.3d 38 (holding that the appellant “has not met its burden of persuasion on appeal by adequately briefing a plausible claim”).

¶35 Historically, our marshaling requirement was understood to fall into the latter category. For many years, we conceived of the responsibility to marshal the evidence supporting a challenged factual finding as a mere component of an appellant’s broader burden of overcoming the weighty deference granted to factual determinations in the trial court. Thus, when a party failed to marshal and distinguish evidence supportive of a challenged verdict or finding of fact, our response was not to decline to reach the merits as a matter of default, but simply to affirm on the ground that the appellant had failed to carry its heavy burden of persuasion.

¶36 This version of the marshaling principle was announced in our cases as early as 1961. *See Charlton v. Hackett*, 360 P.2d 176, 176 (Utah 1961). We followed this approach consistently for several decades thereafter. *See, e.g., Nyman v. Cedar City*, 361 P.2d 1114, 1115 (Utah 1961); *Egbert & Jaynes v. R.C. Tolman Constr. Co.*, 680 P.2d 746, 747 (Utah 1984). We coined the term “marshal[ing]” in 1985, *see Scharf v. BMG Corp.*, 700 P.2d 1068, 1070 (Utah 1985), but still continued to view marshaling as part of the overall burden necessary to meet the clear error standard of review on appeal. *See, e.g., IFG Leasing Co. v. Gordon*, 776 P.2d 607, 616–17 (Utah 1989).

¶37 Over time our caselaw occasionally has migrated in the other direction—toward the hard-and-fast *default* notion of a procedural rule. Instead of noting an appellant’s failure to marshal as a step toward concluding that it had failed to establish clear error, we sometimes have identified a marshaling deficiency as a ground for an appellant’s procedural default—citing a lack of marshaling as a basis for not reaching the merits. *See, e.g., United Park City Mines Co. v. Stichting Mayflower Mountain Fonds*, 2006 UT 35, ¶¶ 38, 41, 140 P.3d 1200.

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¶38 Over a similar span of time, we also added some additional teeth to the rule. Thus, while rule 24(a)(9) itself (adopted in 1999) speaks only of “marshal[ing] all record evidence that supports the challenged finding,” our caselaw has sometimes extended this principle to require an appellant to “present, in comprehensive and fastidious order, every scrap of competent evidence introduced at trial which supports the very findings the appellant resists,” and to do so in a manner in which he “temporarily remove[s] [his] own prejudices and fully embrace[s] the adversary’s position” by assuming the role of “devil’s advocate.” *Chen*, 2004 UT 82, ¶¶ 77-78 (internal quotation marks omitted).

¶39 Our commitment to the hard-and-fast default notion of the marshaling rule has been less than complete. Sometimes we have openly overlooked a failure to marshal and proceeded to the merits. *See, e.g., State v. Green*, 2005 UT 9, ¶¶ 12-13, 108 P.3d 710. In many other cases, moreover, we have reverted to our earlier conception of marshaling, and disposed of the case on its merits despite an alleged failure to marshal “every scrap” of contrary evidence. And in all events we have declined to state a limiting principle, leaving the question of whether to treat marshaling as a basis for a default or instead as a component of the burden of persuasion purely a matter of our discretion. *See Martinez v. Media-Paymaster Plus/Church of Jesus Christ of Latter-day Saints*, 2007 UT 42, ¶¶ 19-20, 164 P.3d 384 (noting that parties risk forfeiting their challenges to factual questions when they fail to marshal but sustaining the court of appeals’ choice to resolve the case on its merits because “[t]he reviewing court . . . retains discretion to consider independently the whole record and determine if the decision below has adequate factual support”).

¶40 The time has come to reconcile and regularize our cases in this field. In so doing, we recognize and reiterate the importance of the requirement of marshaling. It is a boon to both judicial economy and fairness to the parties. *See Chen*, 2004 UT 82, ¶ 79. Thus, an appellant who seeks to prevail in challenging the sufficiency of the evidence to support a factual finding or a verdict on appeal should follow the dictates of rule 24(a)(9), as a party who fails to identify and deal with supportive evidence will never persuade an appellate court to reverse under the deferential standard of review that applies to such issues. That said, we now conclude that the hard-and-fast default notion of marshaling is more problematic than helpful—particularly when compounded by the heightened requirements of our caselaw (to present “every scrap” of evidence and to play “devil’s advocate”) and our retention of

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discretion to disregard a marshaling defect where we deem it appropriate.

¶41 We therefore repudiate the default notion of marshaling sometimes put forward in our cases and reaffirm the traditional principle of marshaling as a natural extension of an appellant's burden of persuasion. Accordingly, from here on our analysis will be focused on the ultimate question of whether the appellant has established a basis for overcoming the healthy dose of deference owed to factual findings and jury verdicts – and not on whether there is a technical deficiency in marshaling meriting a default.

¶42 In so holding, we do not mean to minimize the significance of our longstanding requirement of marshaling. Instead we aim only to clarify it and put it in proper perspective. Thus, we reiterate that a party challenging a factual finding or sufficiency of the evidence to support a verdict will almost certainly fail to carry its burden of persuasion on appeal if it fails to marshal. Our point is only that that will be the question on appeal going forward. The focus should be on the merits, not on some arguable deficiency in the appellant's duty of marshaling.

¶43 Too often, the appellee's brief is focused on this latter point, and not enough on the ultimate merits of the case. To encourage the latter and discourage the former, we also hereby repudiate the requirements of playing "devil's advocate" and of presenting "every scrap of competent evidence" in a "comprehensive and fastidious order." *Supra* ¶ 38. That formulation is nowhere required in the rule. And its principal impact on briefing has been to incentivize appellees to conduct a fastidious review of the record in the hope of identifying a scrap of evidence the appellant may have overlooked. That is not the point of the marshaling rule, and will no longer be an element of our consideration of it.

¶44 Under this standard as now clarified, we reject the State's request that we treat Nielsen's failure to marshal every scrap of evidence supporting the jury's verdict as a stand-alone basis for rejecting his challenge to his kidnapping conviction. We proceed instead to the merits of Nielsen's argument, while emphasizing that our assessment of his claim on appeal is certainly affected (and greatly undermined) by the overbroad assertions in his brief regarding the absence of evidence in the record and by his general failure to identify and deal with that evidence.

# Tab 6

1       **Rule 27. Form of briefs.**

2       (a) Paper size; printing margins. Briefs shall be typewritten, printed or  
3 prepared by photocopying or other duplicating or copying process that will  
4 produce clear, black and permanent copies equally legible to printing, on  
5 opaque, unglazed paper 8 1/2 inches wide and 11 inches long, and shall be  
6 securely bound along the left margin. Paper may be recycled paper, with or  
7 without deinking. The printing must be double spaced, except for matter  
8 customarily single spaced and indented. Margins shall be at least one inch on  
9 the top, bottom and sides of each page. Page numbers may appear in the  
10 margins.

11       (b) ~~Typeface~~Font. All briefs shall use one of the following fonts: Book  
12 Antiqua or Garamond. ~~Either a proportionally spaced or monospaced typeface~~  
13 ~~in a plain, roman style may be used. A proportionally spaced typeface~~All text  
14 ~~must be 13-point or larger for both text and footnotes. A monospaced typeface~~  
15 ~~may not contain more than ten characters per inch for both text and footnotes.~~

16       (c) Binding. Briefs shall be printed on both sides of the page, and bound  
17 with a compact-type binding so as not unduly to increase the thickness of the  
18 brief along the bound side. Coiled plastic and spiral-type bindings are not  
19 acceptable.

20       (d) Color of cover; contents of cover. The cover of the opening brief of  
21 appellant shall be blue; that of appellee, red; that of intervenor, guardian  
22 ad litem, or amicus curiae, green; that of any reply brief, or in cases involving  
23 a cross-appeal, the appellant's second brief, gray; that of any petition for  
24 rehearing, tan; that of any response to a petition for rehearing, white; that of a  
25 petition for certiorari, white; that of a response to a petition for certiorari,  
26 orange; and that of a reply to the response to a petition for certiorari, yellow.  
27 The cover of an addendum shall be the same color as the brief with which it is

28 filed. All brief covers shall be of heavy cover stock. There shall be adequate  
29 contrast between the printing and the color of the cover. The cover of all briefs  
30 shall set forth in the caption the full title given to the case in the court or  
31 agency from which the appeal was taken, as modified pursuant to Rule 3(g),  
32 as well as the designation of the parties both as they appeared in the lower  
33 court or agency and as they appear in the appeal. In addition, the covers shall  
34 contain: the name of the appellate court; the number of the case in the  
35 appellate court opposite the case title; the title of the document (e.g., Brief of  
36 Appellant); the nature of the proceeding in the appellate court (e.g., Appeal,  
37 Petition for Review); the name of the court and judge, agency or board below;  
38 and the names and addresses of counsel for the respective parties  
39 designated as attorney for appellant, petitioner, appellee, or respondent, as  
40 the case may be. The names of counsel for the party filing the document shall  
41 appear in the lower right and opposing counsel in the lower left of the cover. In  
42 criminal cases, the cover of the defendant's brief shall also indicate whether  
43 the defendant is presently incarcerated in connection with the case on appeal  
44 and if the brief is an Anders brief.

45 (e) Effect of non-compliance with rules. The clerk shall examine all briefs  
46 before filing. If they are not prepared in accordance with these rules, they will  
47 not be filed but shall be returned to be properly prepared. The clerk shall  
48 retain one copy of the non-complying brief and the party shall file a brief  
49 prepared in compliance with these rules within 5 days. The party whose brief  
50 has been rejected under this provision shall immediately notify the opposing  
51 party in writing of the lodging. The clerk may grant additional time for bringing  
52 a brief into compliance only under extraordinary circumstances. This rule is  
53 not intended to permit significant substantive changes in briefs.

54 **Advisory Committee Note**

55 ~~The change from the term "pica size" to "ten characters per inch" is~~  
56 ~~intended to accommodate the widespread use of word processors. The~~  
57 ~~definition of pica is print of approximately ten characters per inch. The~~  
58 ~~amendment is not intended to prohibit proportionally spaced printing.~~

59 An Anders brief is a brief filed pursuant to *Anders v. California*, 386 U.S.  
60 793, 97 S.Ct. 1396 (1967), in cases where counsel believes  
61 no nonfrivolous appellate issues exist. In order for an Anders-type brief to be  
62 accepted by either the Utah Court of Appeals or the Utah Supreme Court,  
63 counsel must comply with specific requirements that are more rigorous than  
64 those set forth in *Anders*. See, e.g. *State v. Wells*, 2000 UT App 304, 13 P.3d  
65 1056 (per curiam); *In re D.C.*, 963 P.2d 761 (Utah App. 1998); *State v. Flores*,  
66 855 P.2d 258 (Utah App. 1993) (per curiam); *Dunn v. Cook*, 791 P.2d 873  
67 (Utah 1990); and *State v. Clayton*, 639 P.2d 168 (Utah 1981).