

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 1, 2014
12:00 p.m. to 1:30 p.m.

12:00 p.m.	Welcome and Approval of Minutes (Tab 1)	Joan Watt
12:05 p.m.	Discussion of Supreme Court Meeting and Rule 24 (Tab 2)	Joan Watt
12:20 p.m.	Rule 23B (Tab 3)	Joan Watt
12:35 p.m.	Rule 38B (Tab 4)	Joan Watt
12:35 p.m.	Rule 4(e)	Paul Burke
12:45 p.m.	Global Review of Rules (Tab 5)	Troy Booher
1:00 p.m.	Taskforce Update	Judge Fred Voros
1:25 p.m.	Other Business	
1:30 p.m.	Adjourn	

Next Meeting: June 6, 2014 at 12:00 p.m.

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

Judicial Council Room
Thursday, April 10, 2014
12:00 p.m. to 1:30 p.m.

PRESENT

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

EXCUSED

Paul Burke
Bridget Romano
Anne Marie Taliaferro

1. Welcome and Approval of Minutes

Joan Watt

Ms. Watt welcomed the committee to the meeting. Ms. Watt asked the committee for comments on the minutes of the previous meeting. Mr. Booher stated that all references to “*Bradbury*” should be changed to “applications of *Bradbury*” or “cases citing *Bradbury*.” Mr. Booher also stated that the word “stricken” on page 10 should be changed to “deemed inadequate.” The committee made a few other minor edits to the minutes. Judge Orme stated that it would enhance readability if there were a double-space between paragraphs. Mr. Plimpton said he would insert a double-space between paragraphs in the future.

Mr. Booher moved to approve the minutes from the March 6, 2014 meeting as amended. Ms. Decker seconded the motion and it passed unanimously.

2. Rule 38B

Joan Watt

Ms. Watt explained that Rule 38B was put on the agenda by mistake. Ms. Watt and Judge Voros explained that the proposed amendment to Rule 38B cross-references to rules in the Supreme Court Rules of Professional Practice that are anticipated to be but have not yet been passed by a task force. Judge Voros stated that, accordingly, it would be premature to approve Rule 38B. He stated that the supreme court could always adopt Rule 38B on an emergency basis if it needed to. Ms. Watt stated that Rule 38B needs to be tabled for the time being, but also monitored.

Mr. Sabey moved table Rule 38B and monitor the rules it will cross-reference. Ms. Seppi seconded the motion and it passed unanimously.

3. Classification of Records Rule

Alison Adams-Perlac

Ms. Adams-Perlac presented her revised proposal addressing classification of records. She stated that the proposal does not address extraordinary writs, elections, and things of that nature, because there is more information that she needs. She stated that she added headings, she put the “public nature of filings” at the beginning of the rule, organized the rule from least protected to most protected, and from least work for the court to the most work for the court. She said she added the reference to the Code of Judicial Administration in the advisory committee note. She said she added a subsection (f), which discusses when a party needs to file a motion to change the classification of a record.

Judge Voros stated that the word “anything” is not often used in the rules, and suggested that it should be avoided in this Rule. Mr. Sabey stated that subsection (a) should be amended to read, “All filings in the appellate court are public.” The committee agreed. Mr. Parker stated that subsection (b) should be amended to read, “The contents of the record on appeal have” The committee discussed other language in the Rule in depth, but could not settle on the proper wording.

Judge Voros proposed creating a subcommittee for editing the language of the Rule and ensuring that it is consistent with other statutes and rules. Ms. Watt asked which committee members would be willing to be on the proposed subcommittee. Ms. Adams-Perlac stated that she was not sure that a subcommittee would add anything. Mr. Parker stated he was inclined to second Judge’s Voros’s proposal to create a subcommittee. Ms. Watt again asked who would be on the subcommittee. She stated that the committee has the concept of the Rule, and the purpose of the subcommittee would only be to choose the language to best communicate the concept.

Judge Voros, Mr. Shea, Ms. Adams-Perlac, and Mr. Booher agreed to be on the subcommittee. Ms. Adams-Perlac agreed to chair the subcommittee.

Judge Voros moved to create a subcommittee to edit the language of the Classifications of Records Rule. Mr. Parker seconded the motion, and it passed unanimously.

Mr. Booher flagged the word “party” in subsection (f) for the subcommittee. He stated that the word “party” would exclude news organizations. Mr. Sabey stated that “party” could be replaced with “person.”

4. Rule 1(f)

Mary Westby

Ms. Westby presented her revised proposals to subsections (b) and (f) of Rule 1. The committee amended Rule 1 to read as follows:

Rule 1. Scope of rules.

(a) Applicability of rules. These rules govern the procedure before the Supreme Court and the Court of Appeals of Utah in all cases. Applicability of these rules to the review of decisions or orders of administrative agencies is governed by Rule 18. When these rules provide for a motion or application to be made in a trial court or an administrative agency, commission, or board, the procedure for making such motion or application shall be governed by the Utah Rules of Civil Procedure, Utah Rules of Criminal Procedure, and the rules of practice of the trial court, administrative agency, commission, or board.

(b) Reference to "court." Except as provided in Rule 43, when these rules refer to a decision or action by the court, the reference shall include a panel of the court. The term "trial court" means the court or administrative agency, commission, or board from which the appeal is taken or whose ruling is under review. The term "appellate court" means the court to which the appeal is taken.

(c) Procedure established by statute. If a procedure is provided by state statute as to the appeal or review of an order of an administrative agency, commission, board, or officer of the state which is inconsistent with one or more of these rules, the statute shall govern. In other respects, these rules shall apply to such appeals or reviews.

(d) Rules not to affect jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the Supreme Court or Court of Appeals as established by law.

(e) Title. These rules shall be known as the Utah Rules of Appellate Procedure and abbreviated Utah R. App. P.

(f) Rules for appeals in child welfare proceedings. Appeals taken from juvenile court orders related to abuse, neglect, dependency, termination, and adoption proceedings are governed by ~~Title VII~~ Rules 52 through 59, except for orders related to substantiation proceedings under Section 78-3a-320. Rules 9, ~~10~~ and 23B do not apply. Due to the summary nature of child welfare appeals, Rule 10(a)(2)(A) does not apply. ~~but the o~~ Other appellate rules apply if not inconsistent with Rules 52 through 59.

Ms. Westby moved to approve Rule 1 as amended. Judge Voros seconded the motion and it passed unanimously.

5. Rule 24 and *Broderick*

Committee

Ms. Watt stated that the committee members were supposed to decide whether to codify, disavow, or to leave the rules as they are. She stated that *Broderick* is pretty clear in limiting itself to the facts of that case. She further stated that the rules are clear that the briefing requirements applicable to appellants also apply to appellees. She stated that she believes the committee should do nothing about *Broderick*. Mr. Parker agreed, and questioned whether it was appropriate for the committee to second-guess a remedy crafted by the supreme court.

Mr. Booher expressed his concern that *Broderick* seems inconsistent with Rule 26(c), which provides that the penalty for an appellee who does not file a brief is that the appellee will not be heard at oral argument. He suggested that the rules do not give adequate notice of *Broderick* consequences. Ms. Watt pointed out that Rule 26(c) is not exhaustive—it provides only that an appellant may move to preclude an appellee who fails to file a brief from presenting oral argument. Mr. Booher stated that he does not see why the rules should not alert litigants to the possibility of *Broderick* consequences.

Mr. Parker suggested that, under the rules, failing to file a brief could result in *Broderick* consequences. Mr. Sabey agreed. Ms. Watt stated that the remedy in *Broderick* is akin to a summary reversal. Ms. Westby stated that *Broderick* created no new risk for filing an inadequate brief. Ms. Watt stated that, in *Broderick*, the supreme court needed to craft a remedy for appellee's inadequate brief but did not want to set precedent because, due to the inadequacy of appellee's brief, both sides of the issue had not been adequately argued to the court.

Judge Voros stated that *Broderick* is contrary to an axiom of appellate law: an appellate court will only reverse if the trial court committed legal error.

Mr. Parker stated that addressing *Broderick* in a rule would be inappropriate because it would tie the court's hands in the future. Judge Orme suggested mentioning *Broderick* in a committee note. Ms. Watt suggested that if the possibility of *Broderick* consequences warrants a committee note, so do the possible consequences for a failure to marshal the evidence and the possible consequences for other briefing failures that are not addressed in the rules. Mr. Parker pointed out that practitioners have access to the annotations, and *Broderick* will be mentioned in the annotations. Mr. Sabey said that *Broderick* seems to fit an annotation better than a committee note.

Judge Voros asked if anyone objected to a committee note. Mr. Parker objected on the basis that a committee note would enshrine *Broderick* and tie the court's hands for addressing *Broderick* in the future or letting *Broderick* fade away. Mr. Sabey agreed with Mr. Parker. Judge Orme stated that he is persuaded that there is a problem with mentioning *Broderick* in a committee note because it either would prevent *Broderick* from fading away or the committee would need to amend the committee note every time the courts address *Broderick*.

Mr. Parker moved to do nothing about Broderick indefinitely and "without prejudice." Ms. Decker seconded the motion and it passed unanimously.

Mr. Booher stated that the proposed amendments to Rule 25 were part of the “cleanup” of the language of the rules. Mr. Shea expressed dislike for the term “movant” and suggested that it should be replaced with “moving party.” Judge Orme pointed out that “moving party” seems to exclude nonparties.

The committee amended Rule 25 to read as follows:

Rule 25. Brief of an amicus curiae or guardian ad litem.

A brief of an amicus curiae or of a guardian ad litem representing a minor who is not a party to the appeal may be filed only by leave of court granted on motion or at the request of the court. The motion for leave may be accompanied by a proposed amicus brief, provided it complies with applicable rules and the number of copies specified by Rule 26(b) are submitted to the court. A motion for leave shall identify the interest of the ~~applicant~~ movant and shall state the reasons why a brief of an amicus curiae or the guardian ad litem is desirable. Except for a motion for leave to participate in support of, or in opposition to, a petition for writ of certiorari filed pursuant to Rule 50(f), ~~the~~ motion for leave shall be filed at least ~~twenty-one~~ 21 days prior to the date on which the brief of the party whose position as to affirmance or reversal the amicus curiae or guardian ad litem will support is due, unless the court for cause shown otherwise orders. Parties to the proceeding may indicate their support for, or opposition to, the motion. Any response of a party to a motion for leave shall be filed within ~~seven~~ 7 days of service of the motion. If leave is granted, an amicus curiae or guardian ad litem shall file its brief within ~~seven~~ 7 days of the time allowed the party whose position the amicus curiae or guardian ad litem will support, unless the order granting leave otherwise indicates. The time for responsive briefs under Rule 26(a) shall run from the timely service of the amicus or guardian ad litem brief or from the timely service of the brief of the party whose position the amicus curiae or guardian ad litem supports, whichever is later. A motion of an amicus curiae or guardian ad litem to participate in the oral argument will be granted when circumstances warrant in the court's discretion.

Mr. Parker moved to approve Rule 25 as amended. Mr. Mouritsen seconded the motion, and it passed unanimously.

The committee voted unanimously to change “which” to “that” in Rule 24(k).

The committee amended Rule 27 to read as follows:

Rule 27. Form of briefs, petitions for writ of certiorari and petitions for rehearing.

(a) *Paper size; printing margins.* Briefs, petitions for writ of certiorari and petitions for rehearing shall be typewritten, printed or prepared by photocopying or other

duplicating or copying process that will produce clear, black and permanent copies equally legible to printing, on opaque, unglazed paper 8 1/2 inches wide and 11 inches long, and shall be securely bound along the left margin. Paper may be recycled paper, with or without deinking. The printing must be double spaced, except for matter customarily single spaced and indented. Margins shall be at least one inch on the top, bottom and sides of each page. Page numbers may appear in the margins.

(b) *Typeface*. Either a proportionally spaced or monospaced typeface in a plain, roman style may be used. A proportionally spaced typeface must be 13-point or larger for both text and footnotes. A monospaced typeface may not contain more than ten characters per inch for both text and footnotes.

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

(d) *Color of cover*. The cover of the opening brief of appellant shall be blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus curiae, green; that of any reply brief, or in cases involving a cross-appeal, the appellant's second brief, gray; that of any petition for rehearing, tan; that of any response to a petition for rehearing, white; that of a petition for certiorari, white; that of a response to a petition for certiorari, orange; and that of a reply to the response to a petition for certiorari, yellow. All covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover.

(e) *Contents of cover; ~~contents of cover~~*. The cover of all briefs, petitions for certiorari and petitions for rehearing shall set forth in the caption the full title given to the case in the court or agency from which the appeal was taken, as modified pursuant to Rule 3(g), as well as the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal. In addition, the covers shall contain: the name of the appellate court; the number of the case in the appellate court opposite the case title; the title of the document (e.g., Brief of Appellant); the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review); the name of the court and judge, agency or board below; and the names and addresses of counsel for the respective parties designated as attorney for appellant, petitioner, appellee, or respondent, as the case may be. The names of counsel for the party filing the document shall appear in the lower right and opposing counsel in the lower left of the cover. In criminal cases, the cover of the defendant's brief shall also indicate whether the defendant is presently incarcerated in connection with the case on appeal and if the brief is an Anders brief.

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

briefs, petitions for certiorari or petitions for rehearing. This subsection does not apply to petitions for writ of certiorari or to petitions for rehearing.

Mr. Parker moved to approve Rule 27 as amended, subject to Ms. Adams-Perlac reviewing the Rule to ensure that the language is consistent throughout. Judge Orme seconded the motion and it passed unanimously.

7. Other Business

There was no other business discussed at the meeting.

8. Adjourn

The meeting was adjourned at 1:50 p.m. The next meeting will be held Thursday, May 1, 2014.

Tab 2

1 **Rule 24. Briefs.**

2 (a) Brief of the appellant. For purposes of this rule, the term appellant includes
3 petitioners in original proceedings filed in an appellate court. Likewise, the term “appeal”
4 includes original proceedings, the term “appellee” includes respondents in such cases,
5 and the term “cross-appeal” includes cross-petitions in such cases. The brief of the
6 appellant shall contain under appropriate headings and in the order indicated:

7 (a)(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 subsection (d). The list should be set out on a separate page which appears
11 immediately inside the cover.

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

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

18 (a)(4) Statement of jurisdiction. A brief statement showing the jurisdiction of the
19 appellate court.

20 (a)(5) Nature of the case. A one-paragraph summary stating the nature of the case,
21 the crux of the dispute, and the primary theme of the issues raised before the appellate
22 court.

23 ~~(a)(5)(6)~~ Statement of the issues. A statement of the issues presented for review,
24 including for each issue: ~~the~~ the standard of appellate review with supporting authority; and

25 ~~(a)(5)(6)(A)~~ citation to the record in accordance with paragraph (e) of this rule
26 showing that the issue was preserved in the trial court or agency; or

27 ~~(a)(5)(6)(B)~~ a statement of grounds for seeking review of an issue not preserved in
28 the trial court ~~or agency~~, with supporting authority for each of the grounds identified.

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

34 ~~(a)(7) A statement of the case. Course of the proceedings. The statement shall first~~
35 ~~indicate briefly the nature of the case, To the extent relevant to the issues on appeal, a~~
36 ~~summary of the course of proceedings, and its the disposition in the court below.~~
37 ~~agency or the courts below, supported with citations to the record in accordance with~~
38 ~~paragraph (e) of this rule. A statement of the facts relevant to the issues presented for~~
39 ~~review shall follow. All statements of fact and references to the proceedings below shall~~
40 ~~be supported by citations to the record in accordance with paragraph (e) of this rule.~~

41 ~~(a)(8) Statement of the facts. A statement of the facts relevant to the issues~~
42 ~~presented for review supported with citations to the record in accordance with~~
43 ~~paragraph (e) of this rule.~~

44 ~~(a)(8)(9) Summary of arguments. The summary of arguments, suitably paragraphed,~~
45 ~~shall be a succinct condensation of the arguments actually made in the body of the~~
46 ~~brief: akin to an “executive summary.” It shall not be a mere repetition of the heading~~
47 ~~under which the argument is arranged.~~

48 ~~(a)(9)(10) An The argument. The argument shall contain the contentions and~~
49 ~~reasons of the appellant with respect to the issues presented, including the grounds for~~
50 ~~reviewing any issue not preserved in the trial court, with citations to the authorities,~~
51 ~~statutes, and parts of the record relied on. A party challenging a fact finding must first~~
52 ~~marshal all record evidence that supports the challenged finding. A party seeking to~~
53 ~~recover attorney's fees incurred on appeal shall state the request explicitly and set forth~~
54 ~~the legal basis for such an award.~~

55 ~~(a)(10)(11) Relief sought. A short conclusion stating the precise relief sought.~~

56 ~~(a)(11)(12) Addenda. An addendum, to the brief or a statement that no addendum is~~
57 ~~necessary under this paragraph. The addendum shall be bound as part of the brief~~
58 ~~unless doing so makes the brief unreasonably thick; , in which case it shall be~~

59 ~~separately bound and~~ If the addendum is bound separately, the addendum shall contain
60 a table of contents. The addendum shall contain a ~~copy of:~~ copies of the following:

61 ~~(a)(11)(B)(a)(12)(A)~~ in cases being reviewed on certiorari, a copy of the opinion of
62 the Court of Appeals under review; ~~opinion; in all cases, any court opinion of central~~
63 ~~importance to the appeal but not available to the court as part of a regularly published~~
64 ~~reporter service; and~~

65 (a)(12)(B) the text of any constitutional provision, statute, rule, or regulation of
66 central importance cited in the brief but not reproduced verbatim in the brief; whose
67 interpretation is necessary to a resolution to the issues on appeal;

68 (a)(12)(C) the order or judgment appealed from or sought to be reviewed, together
69 with any related minute entries, memorandum decisions, and findings of fact and
70 conclusions of law; and

71 (a)(12)(D) other parts of the record necessary to an understanding of the issues on
72 appeal, such as jury instructions, insurance policies, leases, search warrants, real
73 estate purchase contracts, and transcript pages.

74 ~~(a)(11)(C) those parts of the record on appeal that are of central importance to the~~
75 ~~determination of the appeal, such as the challenged instructions, findings of fact and~~
76 ~~conclusions of law, memorandum decision, the transcript of the court's oral decision, or~~
77 ~~the contract or document subject to construction.~~

78 (b) Brief of the appellee. The brief of the appellee shall conform to the requirements
79 of paragraph

80 (a) of this rule, except that the appellee need not include:

81 (b)(1) a statement of the issues or of the case unless the appellee is dissatisfied with
82 the statement of the appellant; or

83 (b)(2) an addendum, except to provide material not included in the addendum of the
84 appellant. ~~The appellee may refer to the addendum of the appellant.~~

85 (c) Reply brief. The appellant may file a brief in reply to the brief of the appellee, and
86 if the appellee has cross-appealed, the appellee may file a brief in reply to the response
87 of the appellant to the issues presented by the cross-appeal. Reply briefs shall be
88 limited to answering any new matter set forth in the opposing brief. The content of the

89 reply brief shall conform to the requirements of paragraphs (a)(2), (3), ~~(9)~~, (11) and
90 ~~(10)(12)~~ of this rule. No further briefs may be filed except with leave of the appellate
91 court.

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

105 (e) References in briefs to the record. References shall be made to the pages of the
106 original record as paginated pursuant to Rule 11(b) or to pages of any statement of the
107 evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g).
108 References to pages of published depositions or transcripts shall identify the sequential
109 number of the cover page of each volume as marked by the clerk on the bottom right
110 corner and each separately numbered page(s) referred to within the deposition or
111 transcript as marked by the transcriber. References to exhibits shall be made to the
112 exhibit numbers. If reference is made to evidence the admissibility of which is in
113 controversy, reference shall be made to the pages of the record at which the evidence
114 was identified, offered, and received or rejected.

115 (f) Length of briefs.

116 (f)(1) Type-volume limitation.

117 (f)(1)(A) In an appeal involving the legality of a death sentence, a principal brief is
118 acceptable if it contains no more than 28,000 words or it uses a monospaced face and

119 contains no more than 2,600 lines of text; and a reply brief is acceptable if it contains no
120 more than 14,000 words or it uses a monospaced face and contains no more than
121 1,300 lines of text. In all other appeals, a principal brief is acceptable if it contains no
122 more than 14,000 words or it uses a monospaced face and contains no more than
123 1,300 lines of text; and a reply brief is acceptable if it contains no more than 7,000
124 words or it uses a monospaced face and contains no more than 650 lines of text.

125 (f)(1)(B) Headings, footnotes and quotations count toward the word and line
126 limitations, but the table of contents, table of citations, and any addendum containing
127 statutes, rules, regulations or portions of the record as required by paragraph (a) of this
128 rule do not count toward the word and line limitations.

129 (f)(1)(C) Certificate of compliance. A brief submitted under Rule 24(f)(1) must include
130 a certificate by the attorney or an unrepresented party that the brief complies with the
131 type-volume limitation. The person preparing the certificate may rely on the word or line
132 count of the word processing system used to prepare the brief. The certificate must
133 state either the number of words in the brief or the number of lines of monospaced type
134 in the brief.

135 (f)(2) Page limitation. Unless a brief complies with Rule 24(f)(1), a principal briefs
136 shall not exceed 30 pages, and a reply briefs shall not exceed 15 pages, exclusive of
137 pages containing the table of contents, tables of citations and any addendum containing
138 statutes, rules, regulations, or portions of the record as required by paragraph (a) of this
139 rule. In cases involving cross-appeals, paragraph (g) of this rule sets forth the length of
140 briefs.

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

144 (g)(1) The appellant shall file a Brief of Appellant, which shall present the issues
145 raised in the appeal.

146 (g)(2) The appellee shall then file one brief, entitled Brief of Appellee and Cross-
147 Appellant, which shall respond to the issues raised in the Brief of Appellant and present
148 the issues raised in the cross-appeal.

149 (g)(3) The appellant shall then file one brief, entitled Reply Brief of Appellant and
150 Brief of Cross-Appellee, which shall reply to the Brief of Appellee and respond to the
151 Brief of Cross-Appellant.

152 (g)(4) The appellee may then file a Reply Brief of Cross-Appellant, which shall reply
153 to the Brief of Cross-Appellee.

154 (g)(5) Type-Volume Limitation.

155 (g)(5)(A) The appellant's Brief of Appellant is acceptable if it contains no more than
156 14,000 words or it uses a monospaced face and contains no more than 1,300 lines of
157 text.

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

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

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

166 (g)(6) Certificate of Compliance.

167 A brief submitted under Rule 24(g)(5) must comply with Rule 24(f)(1)(C).

168 (g)(7) Page Limitation.

169 Unless it complies with Rule 24(g)(5) and (6), the appellant's Brief of Appellant must
170 not exceed 30 pages; the appellee's Brief of Appellee and Cross-Appellant, 35 pages;
171 the appellant's Reply Brief of Appellant and Brief of Cross-Appellee, 30 pages; and the
172 appellee's Reply Brief of Cross-Appellant, 15 pages.

173 (h) Permission for over length brief. While such motions are disfavored, the court for
174 good cause shown may upon motion permit a party to file a brief that exceeds the page,
175 word, or line limitations of this rule. The motion shall state with specificity the issues to
176 be briefed, the number of additional pages, words, or lines requested, and the good
177 cause for granting the motion. A motion filed at least seven days prior to the date the
178 brief is due or seeking three or fewer additional pages, 1,400 or fewer additional words,

179 or 130 or fewer lines of text need not be accompanied by a copy of the brief. A motion
180 filed within seven days of the date the brief is due and seeking more than three
181 additional pages, 1,400 additional words, or 130 lines of text shall be accompanied by a
182 copy of the finished brief. If the motion is granted, the responding party is entitled to an
183 equal number of additional pages, words, or lines without further order of the court.
184 Whether the motion is granted or denied, the draft brief will be destroyed by the court.

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

189 (j) Citation of supplemental authorities. When pertinent and significant authorities
190 come to the attention of a party after ~~that party's brief has been filed, or after~~ briefing or
191 oral argument but before decision, at that party may promptly advise the clerk of the
192 appellate court, by letter, setting forth the citations. An original letter and nine copies
193 shall be filed in the Supreme Court. An original letter and seven copies shall be filed in
194 the Court of Appeals. There shall be a reference either to The letter shall identify the
195 authority, indicate the page of the brief or to a point argued orally to which it pertains,
196 and briefly state its relevance. the citations pertain, but the letter shall state the reasons
197 for the supplemental citations. The body of the letter must not exceed 350 words. Any
198 response shall be made within seven days of filing and shall be similarly limited. Any
199 other party may respond by letter within seven days of the filing of the original letter.
200 The body of any letter filed pursuant to this rule may not exceed 350 words. An original
201 letter and nine copies shall be filed in the Supreme Court. An original letter and seven
202 copies shall be filed in the Court of Appeals.

203 (k) Requirements and sanctions. All briefs under this rule must be concise,
204 presented with accuracy, logically arranged with proper headings and free from
205 burdensome, irrelevant, immaterial or scandalous matters. Briefs ~~which~~ that are not in
206 compliance may be disregarded or stricken, on motion or sua sponte by the court, and
207 the court may assess attorney fees against the offending lawyer.

208

209 **Advisory Committee Notes**

210 Rule 24(a)(9) now reflects what Utah appellate courts have long held. See *In re*
211 *Beesley*, 883 P.2d 1343, 1349 (Utah 1994); *Newmeyer v. Newmeyer*, 745 P.2d 1276,
212 1278 (Utah 1987). "To successfully appeal a trial court's findings of fact, appellate
213 counsel must play the devil's advocate. 'Attorneys must extricate themselves from the
214 client's shoes and fully assume the adversary's position. In order to properly discharge
215 the marshalling duty..., the challenger must present, in comprehensive and fastidious
216 order, every scrap of competent evidence introduced at trial which supports the very
217 findings the appellant resists.'" *ONEIDA/SLIC, v. ONEIDA Cold Storage and*
218 *Warehouse, Inc.*, 872 P.2d 1051, 1052-53 (Utah App. 1994)(alteration in
219 original)(quoting *West Valley City v. Majestic Inv. Co.*, 818 P.2d 1311, 1315 (Utah App.
220 1991)). See also *State ex rel. M.S. v. Salata*, 806 P.2d 1216, 1218 (Utah App. 1991);
221 *Bell v. Elder*, 782 P.2d 545, 547 (Utah App. 1989); *State v. Moore*, 802 P.2d 732, 738-
222 39 (Utah App. 1990).

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

225 The succinct statement of the nature of the case called for in Rule 24(a)(7) is
226 intended to provide a brief explanation of the nature of the case for the purpose of
227 orienting the reader as to the general context in which the appeal arises. It is not the
228 place to identify all the issues on appeal, to detail the procedural history, or to make
229 arguments. An example of what is contemplated follows.

230 Example: This case involves a dispute between two neighbors about the location of
231 the boundary dividing their backyards. Defendants prevailed on a theory of boundary by
232 acquiescence. Plaintiffs appeal, contending that the record boundary should be
233 enforced, essentially pursuant to the doctrine of permissive use.

Tab 3

1 **Rule 23B. Motion to remand for findings necessary to determination of**
2 **ineffective assistance of counsel claim.**

3 (a) ~~Grounds for motion; time.~~ A party to an appeal in a criminal case may move the
4 court to remand the case to the trial court for entry of findings of fact, ~~necessary for the~~
5 ~~appellate court's determination of~~ and conclusions of law relative to a claim of ineffective
6 assistance of counsel. ~~The motion~~ Remand shall be available only upon
7 a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if
8 true, could support a determination that counsel was ineffective. The motion must be
9 supported by affidavits alleging facts likely to be admissible or by other likely admissible
10 evidence.

11 (b) ~~Time for filing; response; reply.~~ Except as provided in paragraph (b)(2), an
12 appellant's motion for remand shall be filed contemporaneously with the Brief of
13 Appellant. The motion and supporting documents shall be separate from the brief, and
14 any facts alleged in connection with the motion shall not be argued in the brief. The
15 response to ~~the motion shall be filed prior to the filing of the appellant's brief. Upon a~~
16 ~~showing of good cause, the court may permit a motion to be filed after the filing of the~~
17 ~~appellant's brief. In no event shall the court permit a motion to be filed after oral~~
18 ~~argument. Nothing in this rule shall prohibit the court from remanding the case under~~
19 ~~this rule on its own motion at any time if the claim has been raised and the motion would~~
20 ~~have been available to a party,~~ with the Brief of Appellee and shall be separate from the
21 brief. A reply, if any, shall be filed within 30 days after the response to the motion is
22 filed. Any reply shall be limited to responding to new matter set forth in the response to
23 the motion.

24 (b)(1) An appellee's motion for remand shall be filed contemporaneously with the
25 Brief of Appellee. The motion and supporting documents shall be separate from the
26 brief, and any facts alleged in connection with the motion shall not be argued in the
27 brief. The response to the motion shall be filed within 30 days. A reply, if any, shall be
28 filed within 30 days after the response to the motion is filed. Any reply shall be limited to
29 responding to new matter set forth in the response to the motion.

30 (b)(2) An appellant may request leave to file a motion for remand before filing the
31 Brief of Appellant. The request must be accompanied by the motion for remand and
32 shall state why the motion should be considered before briefing. Absent an order
33 granting a separate motion for stay, the briefing schedule will not be stayed pending
34 action on a request for early consideration of a motion for remand.

35 (c) Contents of motion for remand; response; reply. The contents of the motion for
36 remand shall conform to the requirements of Rule 23. The memorandum in support of
37 the motion or the response, excluding supporting documents, shall not exceed 7,000
38 words. The motion shall include or be accompanied by affidavits alleging alleging facts
39 likely to be admissible or other likely admissible evidence

40 facts not fully appearing in the record on appeal that show the claimed would
41 support a finding of deficient performance of the attorney counsel. The affidavits shall
42 also allege facts that show and a finding the claimed of prejudice suffered by the
43 appellant as a result. Affidavits and other evidence submitted in support of a motion are
44 not part of the record on appeal and will be considered only to determine whether to
45 grant or deny the motion. Any reply shall be limited to 3,500 words. claimed deficient
46 performance. The motion shall also be accompanied by a proposed order or remand
47 that identifies the ineffectiveness claims and specifies the factual issues relevant to
48 each such claim to be addressed on remand.

49 A response shall be filed within 20 days after the motion is filed. The response shall
50 include a proposed order of remand that identifies the ineffectiveness claims and
51 specifies the factual issues relevant to each such claim to be addressed by the trial
52 court in the event remand is granted, unless the responding party accepts that proposed
53 by the moving party. Any reply shall be filed within 10 days after the response is served.

54 (ed) Order of the court. If the requirements of parts (a) and through (bc) of this rule
55 have been met/satisfied, the court may order that the case be temporarily remanded to
56 the trial court for the purpose of entry of findings of fact relevant to a claim of ineffective
57 assistance of counsel. The order of remand shall identify the ineffectiveness claims and
58 specify the factual issues relevant to each such claim to be addressed on remand.

59 ~~by the trial court. The order shall also direct the trial court to complete the~~
60 ~~proceedings on remand within 90 days of issuance of the order of remand, absent a~~
61 ~~finding by the trial court of good cause for a delay of reasonable length.~~

62 ~~If it appears to the appellate court that the appellant's attorney of record on the~~
63 ~~appeal faces a conflict of interest upon remand, the court shall direct that counsel~~
64 ~~withdraw and that new counsel for the appellant be appointed or retained.~~

65 ~~(de) *Effect on appeal proceedings.*~~

66 ~~(e)(1) A motion for remand will be addressed in the normal course of plenary~~
67 ~~consideration of the case on appeal unless the appellate court orders otherwise. If a~~
68 ~~motion for remand is granted, resolution of the appeal will be deferred until the~~
69 ~~completion of the proceedings on remand. After the proceedings on remand are~~
70 ~~complete and the supplemental record has been received by the appellate court, Oral~~
71 ~~argument and the deadlines for the parties shall file supplemental briefs pursuant to a~~
72 ~~scheduling order. The scope of the supplemental briefing shall be limited to the issues~~
73 ~~addressed on remand. Supplemental briefs shall be vacated upon the filing of a motion~~
74 ~~to remand under this rule. Other procedural steps required by these rules shall not be~~
75 ~~stayed by be limited to no more than 5,000 words for an initial brief and 2,500 words for~~
76 ~~a reply brief.~~

77 ~~(e)(2) An order granting a request to file a motion for remand, unless a stay is~~
78 ~~ordered by the court upon stipulation or motion of the parties or upon the court's motion.~~
79 ~~before briefing automatically vacates the briefing schedule. The court shall set a time for~~
80 ~~a response to the motion of no less than 30 days. A reply, if any, shall be filed no later~~
81 ~~than 10 days after the response and shall be limited to responding to new matter set~~
82 ~~forth in the response to the motion. The court may resolve the motion before briefing or~~
83 ~~may defer the motion pending briefing and plenary consideration of the merits of the~~
84 ~~case. If a motion for remand is granted before briefing, the appeal will be stayed~~
85 ~~pending the completion of the proceedings on remand. If the motion for remand is~~
86 ~~denied or deferred pending plenary consideration, the court may reset the briefing~~
87 ~~schedule if necessary.~~

88 (ef) *Proceedings before the trial court.* Upon remand the trial court shall promptly
89 conduct hearings and take evidence as necessary to enter the findings of fact
90 ~~necessary to determine~~relative to the claim of ineffective assistance of counsel. ~~Any~~
91 ~~claims~~Compulsory process shall be available to the parties for the purpose of the
92 hearing. The trial court may not consider any allegation of ineffectiveness not identified
93 in the order of remand, ~~shall not be considered by the trial court on remand,~~ unless the
94 trial court determines that the interests of justice or judicial efficiency require
95 ~~consideration of issues not specifically identified in the order of remand~~doing so.
96 Evidentiary hearings shall be conducted without a jury and as soon as practicable after
97 remand. The burden of proving a fact shall be upon the proponent of the fact. The
98 standard of proof shall be a preponderance of the evidence. The trial court shall enter
99 written findings of fact and conclusions of law concerning the claimed deficient
100 performance by counsel and the claimed prejudice ~~suffered by appellant as a result, in~~
101 ~~accordance with the order of remand.~~ Proceedings on remand shall be completed within
102 90 days of entry of the order of remand, unless the trial court finds good cause for a
103 delay of reasonable length.

104 (fg) *Preparation and transmittal of the record.* At the conclusion of all proceedings
105 before the trial court, the clerk of the trial court ~~and the court reporter~~ shall immediately
106 prepare the record of the supplemental proceedings as required by these rules. If the
107 record of the original proceedings before the trial court has been transmitted to the
108 appellate court, the clerk of the trial court shall immediately transmit the record of the
109 supplemental proceedings upon preparation of the supplemental record. If the record of
110 the original proceedings before the trial court has not been transmitted to the appellate
111 court, the clerk of the court shall transmit the record of the supplemental proceedings
112 upon the preparation of the entire record.

113 (gh) *Subsequent proceedings in the Appellate court-determination.* Upon receipt of
114 the record from the trial court, the clerk of the court shall notify the parties of the new
115 schedule for briefing or ~~oral argument~~supplemental briefing under ~~thesethis~~these rules.
116 Errors claimed to have been made during the trial court proceedings conducted
117 pursuant to this rule are reviewable under the same standards as the review of errors in

118 other appeals. ~~The f~~Findings of fact and conclusions of law entered pursuant to this rule
119 are reviewable under the same standards ~~as the review of findings of fact in~~ applicable
120 to other appeals.

Tab 4

Rule 38B. Qualifications for Appointed Appellate Counsel.

(a) In all appeals where a party is entitled to appointed counsel, only an attorney proficient in appellate practice may be appointed to represent such a party before either the Utah Supreme Court or the Utah Court of Appeals.

(b) The burden of establishing proficiency shall be on counsel. Acceptance of the appointment constitutes certification by counsel that counsel is eligible for appointment in accordance with this rule.

(c) Counsel is presumed proficient in appellate practice if any of the following conditions are satisfied:

(c)(1) Counsel has briefed the merits in at least three appeals within the past three years or in 12 appeals total; or

(c)(2) Counsel is directly supervised by an attorney qualified under subsection (c)(1); or

(c)(3) Counsel has completed the equivalent of 12 months of full time employment, either as an attorney or as a law student, in an appellate practice setting, which may include but is not limited to appellate judicial clerkships, appellate clerkships with the Utah Attorney General's Office, or appellate clerkships with a legal services agency that represents indigent parties on appeal; and during that employment counsel had significant personal involvement in researching legal issues, preparing appellate briefs or appellate opinions, and experience with the Utah Rules of Appellate Procedure.

(d) Counsel who do not qualify for appointment under the presumptions described above in subsection (c) may nonetheless be appointed to represent a party on appeal if the appointing court concludes there is a compelling reason to appoint counsel to represent the party and further concludes that counsel is capable of litigating the appeal. The appointing court shall make findings on the record in support of its determination to appoint counsel under this subsection.

(e) Notwithstanding counsel's apparent eligibility for appointment under subsection (c) or (d) above, counsel may not be appointed to represent a party before the Utah Supreme Court or the Utah Court of Appeals if, during the three-year period immediately preceding counsel's proposed appointment, counsel was the subject of an

31 order issued by either appellate court imposing sanctions against counsel, discharging
32 counsel, or taking other equivalent action against counsel because of counsel's
33 substandard performance before either appellate court.

34 (f) The fact that appointed counsel does not meet the requirements of this rule shall
35 not establish a claim of ineffective assistance of counsel.

36 (g) Appointed appellate counsel shall represent his or her client throughout the first
37 right of appeal, including the filing of a petition for writ of certiorari if appointed counsel
38 determines that such a petition is warranted and briefing on the merits if the Supreme
39 Court grants certiorari review.

40 **Advisory Committee Note**

41 This rule does not alter the general method by which counsel is selected for indigent
42 persons entitled to appointed counsel on appeal. In particular, it does not change the
43 expectation that such appointed counsel will ordinarily be appointed by the trial court
44 rather than the appellate court. The rule only addresses the qualifications of counsel
45 eligible for such appointment. See generally *State v. Hawke*, 2003 UT App 448 (2003).

Tab 5

Rule 4. Appeal as of right: when taken.

(a) *Appeal from final judgment and order.* In a case in which an appeal is permitted as a matter of right from the trial court to the appellate court, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from. However, when a judgment or order is entered in a statutory forcible entry or unlawful detainer action, the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 10 days after the date of entry of the judgment or order appealed from.

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

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

(b)(1)(A) a motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(b)(1)(B) a motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule 52(b) of the Utah Rules of Civil Procedure;

(b)(1)(C) a motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure;

(b)(1)(D) a motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure; or

(b)(1)(E) a motion for a new trial under Rule 24 of the Utah Rules of Criminal Procedure.

(b)(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in Rule 4(b), shall be treated as filed after entry of the order and on the day thereof, except that such a notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in Rule 4(b), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order.

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

(d) *Additional or cross-appeal.* If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal is docketed in the court in which it was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires. **4(d) Approved 11/14/2013.**

(e) *Extension of time to appeal.* The trial court, upon a showing of excusable neglect or good cause, may extend the time for filing a notice of appeal upon motion filed not later than 30 days after the expiration of the time prescribed by paragraphs (a) and (b) of this rule. The trial court may rule at any time after the filing of those motions made before the expiration of the prescribed time. ~~A motion filed before expiration of the prescribed time may be ex parte unless the trial court otherwise requires. Notice of a motion filed after expiration of the prescribed time shall be given to the other parties in accordance with the rules of practice of the trial court.~~ No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later.

Rule 35. Petition for rehearing.

(a) Petition for rehearing permitted. A petition for rehearing may be filed in cases that have received plenary review and the court has issued as an opinion, memorandum decision, or per curiam decision. No petitions for rehearing will be considered regarding the denial of a petition for permission to appeal an interlocutory order, the denial of a petition for writ of certiorari, the denial of a motion for remand pursuant to rule 23B, or the grant or denial of any motion for summary disposition pursuant to rule 10.

~~(b) Time for filing; contents; answer; oral argument not permitted.~~ A rehearing will not be granted in the absence of a petition for rehearing. A petition for rehearing may be filed with the clerk within 14 days after the entry of the decision of the court, unless the time is shortened or enlarged by order.

(c) Contents of petition. The petition shall state with particularity the points of law or fact which the petitioner claims the court has overlooked or misapprehended and shall contain such argument in support of the petition as the petitioner desires. Counsel for petitioner must certify that the petition is presented in good faith and not for delay.

(d) Oral argument. Oral argument in support of the petition will not be permitted.

(e) Response. No ~~answer~~ response to a petition for rehearing will be received unless requested by the court. ~~The Any answer response to the petition for rehearing shall be filed within 14 days after the entry of the order requesting the answer response, unless otherwise ordered by the court. A petition for rehearing will not be granted in the absence of a request for a response answer.~~

~~(f) Form of petition; length.~~ The petition shall be in a form prescribed by Rule 27 and shall include a copy of the decision to which it is directed.

(g) Number of copies to be filed and served. An original and ~~six~~ 6 copies shall be filed with the court. Two copies shall be served on counsel for each party separately represented.

(h) Length. Except by order of the court, a petition for rehearing and any response requested by the court shall not exceed 15 pages.

(i) Color of cover. The cover of a petition for rehearing shall be tan; that of any response to a petition for rehearing filed by a party, white; and that of any response filed by an amicus curiae, green. All brief covers shall be of heavy cover stock. There shall be adequate contrast between the printing and the color of the cover.

(ej) Action by court if granted. If a petition for rehearing is granted, the court may make a final disposition of the cause without reargument, or may restore it to the calendar for reargument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the particular case.

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

(el) Amicus curiae. An amicus curiae may not file a petition for rehearing but may file an ~~answer response~~ to a petition if the court has requested an ~~answer response~~ under subparagraph (ae) of this rule.

Rule 47. Certification and Transmission of record; joint and separate petitions; cross-petitions; parties.

(a) Joint and separate petitions; cross-petitions. Parties interested jointly, severally, or otherwise in a decision may join in a petition for a writ of certiorari; any one or more of them

may petition separately; or any two or more of them may join in a petition. When two or more cases are sought to be reviewed on certiorari and involve identical or closely related questions, it will suffice to file a single petition for a writ of certiorari covering all the cases. A cross-petition for writ of certiorari shall not be joined with any other filing.

(b) *Parties.* All parties to the proceeding in the Court of Appeals shall be deemed parties in the Supreme Court, unless the petitioner notifies the Clerk of the Supreme Court in writing of the petitioner's belief that one or more of the parties below have no interest in the outcome of the petition. A copy of such notice shall be served on all parties to the proceeding below, and a party noted as no longer interested may remain a party by notifying the clerk, with service on the other parties, that the party has an interest in the petition.

~~(c) *Motion for certification and Transmission of record.* A party intending to file a petition for certiorari, prior to filing the petition or at any time prior to action by the Supreme Court on the petition, may file a motion for an order to have the Clerk of the Court of Appeals or the clerk of the trial court certify the record, or any part of it, and provide for its transmission to the Supreme Court. Motions to certify the record prior to action on the petition by the Supreme Court should rarely be made, only when the record is essential to the Supreme Court's proper understanding of the petition or the brief in opposition and such understanding cannot be derived from the contents of the petition or the brief in opposition, including the appendix. If a motion is appropriate, it shall be made to the Supreme Court after the filing of a petition but prior to action by the Supreme Court on the petition. In the case of a stay of execution of a judgment of the Court of Appeals, such a motion may be made before the filing of the petition. Thereafter, the Clerk of the Supreme Court or any party to the case may request that additional parts of the record be certified and transmitted to the Supreme Court. When a petition for writ of certiorari is granted, the Clerk of the Supreme Court shall notify the Clerk of the Court of Appeals to transmit the record on appeal to the Supreme Court.~~

Rule 48. Time for petitioning.

(a) *Timeliness of petition.* A petition for a writ of certiorari must be filed with the Clerk of the Supreme Court within 30 days after the entry of the final decision by the Court of Appeals. The docket fee shall be paid at the time of filing the petition.

(b) *Refusal of petition.* The clerk will refuse to receive any petition for a writ of certiorari which is beyond the time indicated in paragraph (a) of this rule or which is not accompanied by the docket fee.

(c) *Effect of petition for rehearing.* The time for filing a petition for a writ of certiorari runs from the date the decision is entered by the Court of Appeals, not from the date of the issuance of the remittitur. If a petition for rehearing is timely filed by any party, the time for filing the petition for a writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or of the entry of a subsequent decision entered upon the rehearing.

(d) *Time for cross-petition.*

(d)(1) A cross-petition for a writ of certiorari must be filed:

(d)(1)(A) within the time provided in Subdivisions (a) and (c) of this rule; or

(d)(1)(B) within 30 days of the filing of the petition for a writ of certiorari.

(d)(2) Any cross-petition timely only pursuant to paragraph (d)(1)(B) of this rule will not be granted unless a timely petition for a writ of certiorari of another party to the case is granted.

(d)(3) The docket fee shall be paid at the time of filing the cross-petition. The clerk shall

refuse any cross-petition not accompanied by the docket fee.

(d)(4) A cross-petition for a writ of certiorari may not be joined with any other filing. The clerk of the court shall refuse any filing so joined.

(e) *Extension of time.* The Supreme Court, upon a showing of excusable neglect or good cause, may extend the time for filing a petition or a cross-petition for a writ of certiorari upon motion filed not later than 30 days after the expiration of the time prescribed by paragraph (a) or (c) of this rule, whichever is applicable. The court may rule at any time after the filing of those motions made before the expiration of the prescribed time. ~~Any such motion which is filed before expiration of the prescribed time may be ex parte, unless the Supreme Court otherwise requires. Notice of any such motion which is filed after expiration of the prescribed time shall be given to the other parties.~~ No extension shall exceed 30 days past the prescribed time or 10 days from the date of entry of the order granting the motion, whichever occurs later, and only one extension may be granted.

~~(f) Seven copies of the petition for a writ of certiorari, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court.~~

Rule 49. Petition for writ of certiorari.

(a) *Contents.* The petition for a writ of certiorari shall contain, under appropriate headings and in the order indicated:

(a)(1) A list of all parties to the proceeding in the court whose judgment is sought to be reviewed, except where the caption of the case in the Supreme Court contains the names of all parties.

(a)(2) A table of contents with page references.

(a)(3) A table of authorities with cases alphabetically arranged and with parallel citations, agency rules, court rules, statutes, and authorities cited, with references to the pages of the petition where they are cited.

(a)(4) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious. General conclusions, such as "the decision of the Court of Appeals is not supported by the law or facts," are not acceptable. The statement of a question presented will be deemed to comprise every subsidiary question fairly included therein. Only the questions set forth in the petition or fairly included therein will be considered by the Supreme Court.

(a)(5) A reference to the official and unofficial reports of any opinions issued by the Court of Appeals.

(a)(6) A concise statement of the grounds on which the jurisdiction of the Supreme Court is invoked, showing:

(a)(6)(A) the date of the entry of the decision sought to be reviewed;

(a)(6)(B) the date of the entry of any order respecting a rehearing and the date of the entry and terms of any order granting an extension of time within which to petition for certiorari;

(a)(6)(C) reliance upon Rule 47(c), where a cross-petition for a writ of certiorari is filed, stating the filing date of the petition for a writ of certiorari in connection with which the cross-petition is filed; and

(a)(6)(D) the statutory provision believed to confer jurisdiction on the Supreme Court.

(a)(7) Controlling provisions of constitutions, statutes, ordinances, and regulations set forth verbatim with the appropriate citation. If the controlling provisions involved are lengthy, their citation alone will suffice and their pertinent text shall be set forth in the appendix referred to in subparagraph (10) of this paragraph.

(a)(8) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and its disposition in the lower courts. There shall follow a statement of the facts relevant to the issues presented for review. All statements of fact and references to the proceedings below shall be supported by citations to the record on appeal or to the opinion of the Court of Appeals.

(a)(9) With respect to each question presented, a direct and concise argument explaining the special and important reasons as provided in Rule 46 for the issuance of the writ.

(a)(10) An appendix containing, in the following order:

(a)(10)(A) copies of all opinions, including concurring and dissenting opinions, and all orders, including any order on rehearing, delivered by the Court of Appeals in rendering the decision sought to be reviewed;

(a)(10)(B) copies of any other opinions, findings of fact, conclusions of law, orders, judgments, or decrees that were rendered in the case or in companion cases by the Court of Appeals and by other courts or by administrative agencies and that are relevant to the questions presented. Each document shall include the caption showing the name of the issuing court or agency, the title and number of the case, and the date of its entry; and

(a)(10)(C) any other judicial or administrative opinions or orders that are relevant to the questions presented but were not entered in the case that is the subject of the petition.

If the material that is required by subparagraphs (7) and (10) of this paragraph is voluminous, they may be separately presented.

(b) *Form of petition; number of copies.* The cover of the petition for a writ of certiorari shall be white and shall otherwise comply with the form of a brief as specified in Rule 27. Seven copies of the petition, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court.

(c) *No separate brief.* All contentions in support of a petition for a writ of certiorari shall be set forth in the body of the petition, as provided in subparagraph (a)(9) of this rule. The petitioner shall not file a separate brief in support of a petition for a writ of certiorari. If the petition is granted, the petitioner will be notified of the date on which the brief in support of the merits of the case is due.

(d) *Page limitation.* The petition for a writ of certiorari shall be as short as possible, but may not exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by subparagraph (a)(7) of this rule, and the appendix.

(e) *Absence of accuracy, brevity, and clarity.* The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.

Rule 50. ~~Brief in opposition~~ Response to the petition; reply brief; brief of amicus curiae.

(a) ~~*Brief in opposition*~~ *Response to petition.* Within 30 days after service of a petition the respondent ~~shall~~ may file a response to the petition ~~in opposition~~ brief, disclosing any matter or ground ~~why concerning whether~~ the case should ~~not~~ be reviewed by the Supreme Court. The cover of the response shall be orange and Such brief shall otherwise comply with Rules 27 and, as applicable, 49. The number of copies to be filed shall be as described in Rule 49(b). Seven copies of the brief in opposition, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court.

(b) *Page limitation.* A ~~brief in opposition~~ response to the petition shall be as short as possible and may not, in any single case, exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by Rule 49(a)(7), and the appendix.

(c) *Objections to jurisdiction.* No motion by a respondent to dismiss a petition for a writ of certiorari will be received. Objections to the jurisdiction of the Supreme Court to grant the petition for writ of certiorari may be included in the response ~~brief in opposition~~.

(d) *Distribution of filings.* Upon the filing of a ~~brief in opposition~~ response, the expiration of the time allowed therefor, or express waiver of the right to file, the petition and the response ~~brief in opposition~~, if any, will be distributed by the clerk for consideration. However, if a cross-petition for a writ of certiorari has been filed, distribution of both it and the petition for a writ of certiorari will be delayed until the filing of a ~~brief in opposition~~ by response to the cross-

respondent petition, the expiration of the time allowed therefor, or express waiver of the right to file.

(e) *Reply-brief*. A reply ~~brief~~-addressed to arguments first raised in the response brief in opposition may be filed by any petitioner no later than 5 days after service of the response, but distribution under paragraph (d) of this rule will not be delayed pending the filing of any such ~~brief~~reply. ~~Such brief~~A reply shall be as short as possible, but may not exceed five pages. ~~Such brief~~The cover of the reply shall be yellow and shall otherwise comply with Rule 27. The number of copies to be filed shall be as described in Rule ~~49~~50(ba).

(f) ~~Brief~~Motion of amicus curiae relating to petition. A motion for leave to participate as brief of an amicus curiae in support of, or in opposition to, a petition for writ of certiorari shall be filed within 5 days concerning a petition for certiorari may be filed only by leave of the Supreme Court granted on motion or at the request of the Supreme Court. The motion for leave shall be accompanied by a proposed amicus brief, not to exceed 20 pages, excluding the subject index, the table of authorities, any verbatim quotations required by Rule 49(a)(7), and the appendix. The proposed amicus brief shall comply with Rule 27, and, as applicable, Rule 49. The number of copies of the proposed amicus brief submitted to the Supreme Court shall be the same as dictated by Rule 48(f). A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The motion for leave shall be filed ~~on or before the date of the filing of the timely petition or response of the party whose position the amicus curiae will support, unless the Supreme Court for cause shown otherwise orders~~. A motion for leave shall identify the interest of the movant, shall explain why the petition for writ of certiorari should or should not be granted, and shall explain the benefit that would be provided to the Supreme Court by a brief of amicus curiae on the merits if the petition is granted. Parties to the proceeding in the Court of Appeals may indicate their support for, or opposition to, the motion. Any response of a party to a motion for leave shall be filed within ~~seven~~7 days of service of the motion. The Supreme Court may elect to consider the motion in conjunction with its review of the petition for writ of certiorari. If the petition is granted and leave to participate as amicus curiae on the merits is granted, the timing for the filing of the brief of amicus curiae on the merits and for any responsive brief of a party is governed by Rule 25. ~~If leave is granted, the proposed amicus brief will be accepted as filed and, unless the order granting leave otherwise indicates, amicus curiae also will be permitted to submit a brief on the merits, provided it is submitted in compliance with the briefing schedule of the party the amicus curiae supports. Denial of a motion for leave to file brief of an amicus curiae concerning a petition for certiorari shall not preclude a subsequent amicus motion relating to the merits after a grant of certiorari. All motions for leave to file brief of an amicus curiae on the merits after a grant of certiorari are governed by Rule 25.~~

(g) Motion of amicus curiae filed after grant of petition. All motions for leave to participate as an amicus curiae on the merits filed after a grant of a petition for writ of certiorari are governed by Rule 25.