IN THE SUPREME COURT OF THE STATE OF UTAH

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In re: Proposed Amendments to Rule 29 of the Utah Rules of Appellate Procedure

Case No. 20130604-SC

ORDER

IT IS HEREBY ORDERED that the attached amendments to Rule 29 of the Utah Rules of Appellate Procedure are adopted and promulgated effective as of the date of this order pursuant to the expedited rulemaking provisions contained in Rule 11-105(5) of the Supreme Court Rules of Professional Practice.

FOR THE COURT:

7-16-13
Date

Matthew B. Durrant
Chief Justice

Rule 29. Oral argument.

(a)(1) ~~*In General*~~ *In cases before the Supreme Court.* Oral argument will be held unless the Supreme Court determines that it will not aid the decisional process.

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

(b)(1) *Notice by Supreme Court; request for cancellation or continuance.* Not later than 30 days prior to the date on which a case is calendared, the clerk shall give notice of the time and place of oral argument, and the time to be allowed each side. If the parties to a case believe oral argument will not benefit the court, they may file a stipulated motion to cancel oral argument not later than 15 days from the date of the clerk's notice. The court will grant the motion only if it determines that oral argument will not aid the decisional process. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit of counsel specifying the grounds for the motion. A motion to continue filed not later than 15 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances.

(b)(2) *Notice by* ~~*clerk and request by a party for argument*~~ *Court of Appeals; waiver of argument; continuance.* Not later than 30 days prior to the ~~term of court in which a case is to be submitted~~ date on which a case is calendared, the clerk shall give notice to all parties that oral argument is to be permitted, the time and place of oral argument, and the time to be allowed each side. Any party may waive oral argument by filing a written waiver with the clerk not later than 15 days from the date of the clerk's notice. If one party waives oral argument and any other party does not, the party waiving oral argument may nevertheless present oral argument. A request to continue oral argument or for additional argument time must be made by motion. A motion to continue oral argument must be supported by (1) a stipulation of all parties or a statement that the movant was unable to obtain such a stipulation, and (2) an affidavit of counsel specifying the grounds for the motion. A motion to continue filed not later than 15 days from the date of the clerk's notice may be granted on a showing of good cause. A motion to continue filed thereafter will be granted only on a showing of exceptional circumstances.

(c) *Order of argument.* The appellant shall argue first and the appellee shall respond. The appellant may reply to the appellee's argument if appellant reserved part of appellant's time for this purpose. Such argument in reply shall be limited to ~~answering~~ responding to points made by appellee in appellee's oral argument and answering any questions from the court.

(d) Cross and separate appeals. A cross or separate appeal shall be argued with the initial appeal at a single argument, unless the court otherwise directs. If a case involves a separate appeal, the plaintiff in the action below shall be deemed the appellant for the purpose of this rule unless the parties otherwise agree or the court otherwise directs. If separate appellants support the same argument, care shall be taken to avoid duplication of argument. Unless otherwise agreed by the parties, in cases involving a cross-appeal the appellant, as determined pursuant to Rule 24(g), shall open the argument and present only the issues raised in the appellant's opening brief. The

appellee/cross-appellant shall then present an argument which answers the appellant's issues and addresses original issues raised by the cross-appeal. The appellant shall then present an argument which replies to the appellee/cross-appellant's answer to the appellant's issues and answers the issues raised on the cross-appeal. The appellee/cross-appellant may then present an argument which is confined to a reply to the appellant's answer to the issues raised by the cross-appeal. The court shall grant reasonable requests, for good cause shown, for extended argument time.

(e) Non-appearance of parties. If the appellee fails to appear to present argument, the court will hear argument on behalf of the appellant, if present. If the appellant fails to appear, the court may hear argument on behalf of the appellee, if present. If neither party appears, the case may be decided on the briefs, or the court may direct that the case be rescheduled for argument.

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

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

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Advisory Committee Notes

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~~The former practice was to presume that argument was waived unless requested. The amendments change the practice to presume that argument is requested unless expressly waived. The rule incorporates the oral argument priority classification formerly found in the administrative orders of the Supreme Court. The 2012 amendment to rule 29(a) was intended to reflect current court practice.~~

The 2013 amendments to rules 29(a) and (b) reflect current practices. The amendment to Rule 29(c) clarifies that this provision is not intended to place any limitation on the scope or timing of the questions posed by an appellate court during argument.