

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

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

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

19       (c) If appellant has the right to effective assistance of counsel, a motion to dismiss  
20 for reasons other than mootness shall be accompanied by appellant's personal affidavit  
21 demonstrating that appellant's decision to dismiss the appeal is voluntary and made  
22 with knowledge of the right to an appeal and an understanding of the consequences of  
23 voluntary dismissal.

24       ~~(e)~~(d) A suggestion of mootness or motion for voluntary dismissal shall be subject to  
25 the appellate court's approval.

26       **Advisory Committee Note.** Criminal defendants have a constitutional right to the  
27 effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *State v.*  
28 *Arguelles*, 921 P.2d 439, 441 (Utah 1996). Parties in juvenile court proceedings have a  
29 statutory right to effective assistance of counsel. *State ex rel. E.H. v. A.H.*, 880 P.2d 11,  
30 13 (Utah App. 1994); see Utah Code Ann. § 78-3a-913(1)(a)(Supp. 1998). To protect

31 these rights and the right to appeal, Utah Code Ann. § 77-18a-1(1)(Supp. 1998); id. §  
32 78-3a-909(1)(1996), the last sentence was added to rule 37(b) to assure that the  
33 decision to abandon an appeal is an informed choice made by the appellant, not  
34 unilaterally by appellant's attorney.