Agenda

Advisory Committee on Utah Rules of Appellate Procedure

May 10, 2018

12:00 p.m. to 2:00 p.m.

Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room
Administrative Office of the Courts, Suite N31

ACTION: Welcome, and approval of January 4, 2018 and March 1, 2018 minutes	Tab 1	Paul C. Burke, Chairman
ACTION: URAP 23B and 2013 Supreme Court Order. Discuss need to amend rule 23B and adopt Supreme Court Standing Order	Tab 2	Clark Sabey Cathy Dupont
ACTION: Reducing brief word to page ratio; briefing attorney fees. Rules 24 and 24A. Survey of mid-level Appellate Courts	Tab 3	Bridget Romano
UPDATE: Rule of Professional Practice 11-401 and URAP 38b.	Tab 4	Cathy Dupont
ACTION: URAP 25, 46, 49. 50 and 51 regarding writs of certiorari	Tab 5	Clark Sabey
ACTION: Rule 22(d) Timing.	Tab 6	Alan S. Mouritsen

Committee Webpage: https://www.utcourts.gov/utc/appellate-procedure/

Meeting schedule:

June 7, 2018

September 6, 2018

October 4, 2018

November 1, 2018

December 6, 2018

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, January 4, 2018
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Troy Booher	Christopher Ballard
Paul Burke- Chair	Lori Seppi
Lisa Collins	Ann Marie Taliaferro
Cathy Dupont-Staff	
R. Shawn Gunnarson	
Alan Mouritsen	
Judge Gregory Orme	
Judge Jill Pohlman	
Adam Pace – Recording Secretary	
Rodney Parker	
Bridget Romano	
Clark Sabey	
Nancy Sylvester-Staff	
Mary Westby	

1. Welcome and approval of minutes **Paul Burke**

Mr. Burke welcomed the committee to the meeting and introduced Cathy Dupont, the new Appellate Courts Administrator, who will be serving as a staff member on the committee. Mr. Burke then asked each of the committee members to disclose a brief summary of their practice area in accordance with Rule 11-101(4) of the Supreme Court Rules of Professional Practice. Each member present did so. Mr. Burke then invited a motion to approve the minutes from the last meeting.

Ms. Romano moved to approve the minutes from the November 2017 meeting. Mr. Gunnarson seconded the motion and it passed unanimously.

2. Subcommittee on challenging the constitutionality of a statute: Civil Rule 24, Appellate Rule 25A, Criminal Rule 12(i) (pending) **Nancy Sylvester**

Ms. Sylvester explained that a new subcommittee is being formed to match the language, where appropriate, between Civil Rule 24, Appellate Rule 25A, and Criminal rule 12(i) with respect to challenging the constitutionality of a statute. Mr. Burke asked for another volunteer to serve on the subcommittee with Ms. Romano. Mr. Parker volunteered. The committee will wait to hear back from the subcommittee before taking further action on this issue.

3. Reducing brief word to page ration; briefing attorney fees. Cathy Dupont
Rules 24 and 24A and Form 8

Ms. Dupont introduced a request from the Supreme Court and Court of Appeals to amend Rules 24(g)(i) and 24(A)(g)(i) in order to: (1) adjust the words to page ratio in briefs submitted to the court; and (2) provide greater clarity in the briefs when a party is making a request for attorney fees.

Judge Orme commented that some federal courts have reduced their word limits for briefs and that, based on a conversation he had with Justice Lee, the Supreme Court thinks a reduction is warranted because briefs have gotten longer on average since the new page/word limits were introduced in Rule 24.

Ms. Romano said that when the Tenth Circuit changed to a word limit instead of pages, her appellate briefs became longer on average because she adjusted the typography to make them easier to read. She prefers a strict word limit, with no page limit.

Mr. Booher said that a word limit reduction may make sense for briefs filed to the Court of Appeals, which are generally focused on explaining what the law is in Utah, but that it could create problems for briefs submitted to the Supreme Court that sometimes require extensive briefing on policy issues, legislative history, or 50 state surveys of the law in other states. He thinks it is very strange for the Supreme Court to request a word limit reduction. Mr. Booher also expressed concern about reducing the word-limit because it is very difficult for practitioners to get permission from the court to file an over-length brief.

Ms. Romano expressed concern that reducing the word limit will lead to additional requests from the Supreme Court for supplemental briefing. She said that the number of these requests her office receives has increased dramatically, which imposes a significant burden.

Mr. Booher suggested that if the committee is going to recommend a reduction in the word limit, it should try it first in the Court of Appeals to see how it goes, and that it should also make it easier for parties to request permission to file an over-length brief when needed. He suggested creating a presumptive amount of additional words that would be allowed based on a certification of counsel that they are necessary, without having to meet the current requirements to file an over-length brief.

Judge Orme said that the request for the reduction came from the Supreme Court, and that while the Court of Appeals does not oppose it, it is not jointly making the request. In light of this, he

asked (rhetorically) how the Supreme Court would react if the committee's recommendation is to reduce the word limit only in the Court of Appeals.

Mr. Burke asked what percentage of briefs would be impacted by the proposed reduction. Ms. Collins said it would impact a very high percentage of briefs filed in the Court of Appeals Mr. Sabey and Ms. Collins offered to research the question further.

Mr. Burke asked if any other states have adopted different word limits for their intermediate and supreme courts. He said it would be helpful to know how other states have addressed this issue.

Ms. Romano commented that although Ms. Seppi and Taliaferro are not present, she is certain that they would object to the proposed word-limit reduction for death sentence issues. Mr. Booher said that reducing the word-limit for death sentence cases is a terrible idea because practitioners are required to brief every issue in their appeal of right in order to preserve the issue for a future habeas petition.

Mr. Burke asked if the court had a particular reason for proposing the reduction to the death-sentence cases. Mr. Sabey said that he was not aware of one, and that it is just a proportional reduction. Mr. Burke said that he would like input on this issue at the next meeting from the absent committee members who practice criminal defense.

Mr. Burke asked the committee to consider the proposed change to the attorney fee provision in Rule 24(a)(9). He suggested changing the language in lines 31-34 to require citations to the record, in addition to reasoned analysis supported by legal authority. Mr. Sabey said that a citation to the record may not be necessary or appropriate in all requests for attorney fees. Mr. Gunnarson suggested the following language: "A party seeking attorney fees for work performed on appeal must state the request explicitly, in a separate section of the brief, and explain, with reasoned analysis supported by legal authority <u>and applicable record citations</u>, why the party should be awarded attorney fees."

Mr. Burke suggested tabling the discussion until next month to give the absent committee members an opportunity to comment. He asked Ms. Collins to research the percentage of briefs that the proposed change will impact. Ms. Romano offered to research the briefing word limits for intermediate and supreme courts in other states.

4. Expediting adoption appeals. Rules 1, 52, 53, 54, 55, 56, 57, 58, 59 Judge Orme

Judge Orme led a continued discussion of the proposal to amend the Appellate Rules to expedite adoption appeals. Ms. Collins reported that she received feedback on the proposed rule changes from the Juvenile Rules Committee's staff person, Katie Gregory, who did not recommend any changes. Since the committee's last discussion of this issue in September, the court has implemented an internal program to set oral argument dates for child welfare cases when the briefing schedule is set, and to set expedited issuance of opinions after oral argument. The court would like to change the program to include adoption cases as well. Ms. Westby and others agreed that when these changes are made it will be very important to educate family law practitioners about them.

Mr. Booher asked if Appellate Rule 4(e) should apply for extensions for these expedited appeals. Ms. Westby suggested putting language in Rule 4 stating that adoption appeals are governed by Rule 52. Mr. Sabey agreed with this suggestion.

Judge Orme said that he will present a specific proposal of the changes at the next meeting, and will update the committee on a plan devised by Judge Harris to involve the district court in educating practitioners and parties about the changes.

5. Discussion: Rescheduling May meeting **Paul Burke**

Mr. Burke asked to reschedule the May meeting to May 10th to avoid a conflict with a judicial conference on May 3rd. There were no objections.

6. Other business

Ms. Dupont asked if the committee should do something to update the appellate forms. She said that there are different versions of the forms available in print, online on Westlaw or Lexis, and on the court's website. Ms. Sylvester said that the judicial council has a standing committee on forms that should look into it. Ms. Dupont commented that the forms committee is busy with other matters and that it may be helpful to form a subcommittee to make specific recommendations to pass on to them. Mr. Burke suggested passing on a recommendation to the forms committee to take down outdated forms and he asked Ms. Westby to look at the current forms and report to the committee at a future meeting about what specific recommendations to make. Judge Orme suggested that once the forms are updated they should be made available on the court's website and that all references to the forms in print or online should be updated to refer people to the website.

7. Adjourn

The meeting was adjourned at 1:30 p.m. The next meeting will be held on February 1, 2018.

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, March 1, 2018
12:00 p.m. to 1:30 p.m.

PRESENT	**EXCUSED**
Christopher Ballard	Lisa Collins
Troy Booher	Judge Gregory Orme
Paul Burke- Chair	Bridget Romano
Cathy Dupont-Staff	
R. Shawn Gunnarson	
Alan Mouritsen	
Judge Jill Pohlman	
Adam Pace – Recording Secretary	
Rodney Parker	
Clark Sabey	
Lori Seppi	
Ann Marie Taliaferro	
Mary Westby	

1. Welcome and approval of minutes **Paul Burke**

Mr. Burke welcomed the committee to the meeting and introduced guest Joanna Landeau. He suggested accommodating Ms. Landeau by moving her item to the top of the agenda for discussion. Review and approval of the minutes from the January meeting was deferred until the next meeting.

2. Rule of Professional Practice 11-401 and URAP 38b **Joanna Landau**

Ms. Landeau explained that she is the director of the Utah Indigent Defense Commission (IDC) which was created in 2016 to help the state ensure its indigent defense services are consistent with the United States and Utah Constitutions. The IDC recently recommended that the Utah Supreme Court act on a recommendation made by prior appellate task forces to establish an appellate roster of attorneys eligible for appointment to represent indigent defendants. The Utah Supreme Court accepted the IDC's recommendation and promulgated Rule of Professional

Practice 11-401, which was sent out for public comment and approved at the end of February 2018. Rule 11-401 describes the committee that will be established to recommend the names to be included on the appellate roster, and the criteria for appellate attorneys to be included on the roster. The Utah Supreme Court has asked the appellate rules committee to evaluate how Rule 11-401 interacts with Appellate Rule 38B (Qualifications for Appointed Appellate Counsel), and to recommend appropriate revisions to Rule 38B.

Mr. Burke moved to eliminate subsection (b) of Rule 38B entirely because Rule 11-401 has effectively supplanted it. Mr. Mouritsen seconded the motion and it passed unanimously.

Mr. Parker commented that if provisions of Rule 38B are deleted, the references to Rule 38B in Rule 11-401 will need to be updated.

The committee discussed whether the references to attorney qualifications in Rule 38B(c) should also be eliminated because they have been supplanted by Rule 11-401. This led to a discussion of whether Rule 38B should be eliminated entirety.

The committee reached a consensus that Rule 38B is no longer necessary and should be deleted entirely upon promulgation of Rule 11-401 and the issuance of an appropriate rule in the rules of judicial administration that addresses the court's appointment of appellate attorneys from the appellate roster contemplated under Rule 11-401. The committee recommended that the judicial administration rules committee consider whether the rule it issues should allow the court to appoint attorneys who do not meet the established criteria, and presently contemplated under Rule 38B(d).

Mr. Burke invited a motion. Mr. Gunnarson moved to recommend eliminating Rule 38B upon promulgation of Rule 11-401 and the issuance of an appropriate rule in the rules of judicial administration. Judge Pohlman seconded the motion. Ms. Seppi asked to amend the motion to include a recommendation that the criminal rules committee consider revisions that may need to be made to Rule 8 of the Utah Rules of Criminal Procedure, which addresses appointment of counsel in criminal cases. Mr. Gunnarson amended his motion to include Ms. Seppi's suggestion, and Judge Pohlman re-seconded the motion. The motion passed unanimously.

3. URAP 23B and 2013 Supreme Court Order. **Clark Sabey**
Cathy Dupont

Mr. Sabey introduced a proposal to amend Appellate Rule 23B to make it consistent the Utah Supreme Court's September 25, 2013 Revised Order Pertaining to Rule 23B (regarding the timing of when a Rule 23B motion must be filed and responded to). For reasons that are unclear, the Revised Order was never adopted as a standing order.

Mr. Sabey explained that under the existing rule, a Rule 23B motion has to be filed before the appellant's opening brief, which automatically triggers a 20-day response time. The amendment allows the appellant to file the Rule 23B motion with the opening brief (or earlier), and it allows the court flexibility in deciding when the response to the Rule 23B motion will be due.

Ms. Seppi asked whether it is the appellant's choice or the court's choice to have the Rule 23B motion heard before the brief on the merits. Mr. Sabey said that the appellant can choose whether to file the Rule 23B motion early, but the appellate court decides whether to address it before the merits briefing.

Ms. Seppi asked if the court will automatically stay proceedings when a Rule 23B motion is filed before the opening brief, until the court determines when the motion must be responded to. Ms. Westby commented that proceedings must be stayed in that situation until the court makes its determination. It would not be fair otherwise.

Ms. Seppi suggested having some clarity in the rule that tells appellants what happens if they chose to file a Rule 23B motion before the opening brief. Mr. Sabey said that the clarity has to come in the court's response to the motion, when it decides whether it will require a response in 20 days, or whether it will defer the issue for consideration with the briefing on the merits.

Ms. Westby suggested deleting the proposed language in subsection (b) referring to proposed orders that states: "The motion shall also be accompanied by a proposed order of remand that identifies….," and "The response shall include a proposed order of remand that identified…." The committee agreed this language should be deleted.

Ms. Westby suggested deleting the proposed language in subsection (d) and replacing it with: "If a motion is filed before appellant's principal brief, the briefing schedule is stayed pending further order of the court." Ms. Seppi said that this revision would address her concerns. The committee agreed this change should be made.

Mr. Parker asked if the automatic stay applies if the appellant files the Rule 23B motion at the same time as the opening brief. Ms. Westby said there would not be a stay in that situation, and the appellee's response to the motion will be due with its response to the brief. Judge Pohlman suggested including additional language to make that clear.

Mr. Ballard proposed including language in Rule 23B to clarify that the State can present evidence if a case is remanded, and also including language to clarify that trial courts can make conclusions of law in addition to findings of fact. Mr. Sabey commented that the first suggestion is not controversial, but the second suggestion is more of a policy question. Judge Pohlman commented that the purpose of a remand under Rule 23B is to have the district court find additional facts for the appellate court to consider—the appellate court doesn't ask the district court for a legal conclusion.

Mr. Sabey said that he would prepare a new draft of the proposed changes to Rule 23B for discussion at the next meeting. The committee agreed that there was no need for the September 25, 2013 Revised Order to be converted into a standing order, because of the proposed amendment to Rule 23B.

4. Reducing brief word to page ration; briefing attorney fees. Rules 24 and 24A. Survey of mid-level Appellate Courts. **Bridget Romano Cathy Dupont**

The committee deferred discussion of this item until the next meeting.

5. URAP 25, 46, 49, 50, and 51 regarding writs of certiorari — Clark Sabey

The committee deferred discussion of this item until the next meeting.

6. Adjourn

The meeting was adjourned at 1:30 p.m. The next meeting will be held on May 10, 2018.

Tab 2

IN THE SUPREME COURT OF THE STATE OF UTAH

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REVISED ORDER PERTAINING TO RULE 23B

Pursuant to Rule 2 of the Rules of Appellate Procedure, the provisions of Rule 23B of the Rules of Appellate Procedure are modified in the following manner. Specifically, in the interest of expediting the final disposition of criminal appeals, the requirements that a motion for remand under Rule 23B of the Utah Rules of Appellate Procedure be filed "prior to the filing of the appellant's brief" and that any response be filed within 20 days are suspended. Instead, a motion to remand pursuant to Rule 23B may be filed according to the existing provisions of that rule, or it may be filed at the same time as Appellant's opening brief. If the motion is filed prior to the submission of Appellant's brief, the appellate court will notify Appellee whether its response should be filed prior to the submission of its brief or at the same time as its brief. If a response is to be filed prior to briefing, it shall be filed within 20 days of the date of the court's notice unless another deadline is specified by court. If the motion is filed at the same time as Appellant's opening brief, Appellee's response to the motion shall be filed at the same time as Appellee's brief. The Appellate Court may elect to adjudicate the motion separately or in conjunction with its treatment of the merits of other issues presented on appeal. Until further notice, this revised order shall apply to any Rule 23B motion filed in this Court or in the Court of Appeals on or after October 1, 2013.

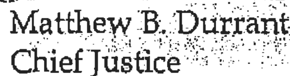
The Rule 23B motion and response, as well as any extra-record attachments thereto, shall be filed separately from the briefs. If the motion is adjudicated in conjunction with the briefing, the briefs may reference the arguments in the motion and response, and the motion and response may reference the fact statement and arguments in the briefs. Affidavits submitted in support of Rule 23B motions are not part of the record on appeal and will be considered only to determine whether the grant or deny the motion.

If a remand is granted after briefing has been completed, Appellant's supplemental brief shall be filed within 30 days after the trial court's written findings and conclusions are filed with this Court. Appellee's supplemental response shall be filed within thirty days of service of Appellant's supplemental brief. Appellant's supplemental reply, if any, shall be filed within twenty days of service of Appellee's response. The argument presented by any supplemental pleadings shall be limited to the issues addressed in the Rule 23B remand. Appellant's supplemental brief and Appellee's supplemental response shall be limited to fifteen (15) pages. Appellant's supplemental reply shall be limited to seven (7) pages. All supplemental pleadings shall comply with Supreme Court Standing Order No. 8, with rule 27 of the Rules of Appellate Procedure as to size, margins, typeface and contents of cover, and with rule 26(b) as to the number of copies filed and served. They also may include a separate table of authorities limited to the citations provided by the supplemental analysis. Compliance with other formatting and content provisions of the appellate rules, including the binding and color cover requirements described by subparts (c) and (d) of rule 27, will not be required.

FOR THE COURT:

9-25-13

Date



Matthew B. Durrant
Chief Justice

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

(a) Grounds for motion; time. A party to an appeal in a criminal case may move the court to remand the case to the trial court for entry of findings of fact, necessary for the appellate court's determination of a claim of ineffective assistance of counsel. The motion shall be available only upon a nonspeculative allegation of facts, not fully appearing in the record on appeal, which, if true, could support a determination that counsel was ineffective.

The motion shall be filed prior to or on the same date as the filing of the appellant's brief. Upon a showing of good cause, the court may permit a motion to be filed after the filing of the appellant's brief. ~~In no event shall the court permit a motion to be filed after oral argument. Nothing in this rule shall prohibit the court from remanding the case under this rule~~ After the appeal is taken under advisement, a remand pursuant to this rule is available only on the court’s own motion ~~at any time~~ and only if the claim has been raised and the motion would have been available to a party.

(b) Content of motion~~; response; reply~~. The content of the motion shall conform to the requirements of Rule 23. The motion shall include or be accompanied by affidavits alleging facts not fully appearing in the record on appeal that show the claimed deficient performance of the attorney. The affidavits shall also allege facts that show the claimed prejudice suffered by the appellant as a result of the claimed deficient performance. ~~The motion shall also be accompanied by a proposed order or remand that identifies the ineffectiveness claims and specifies the factual issues relevant to each such claim to be addressed on remand.~~

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

(c) Orders of the court; response; reply. If a motion under this rule is filed on the same date as appellant’s principal brief, any response and reply shall be filed within the time for the filing of the parties’ respective briefs on the merits, unless otherwise specified by the court. If a motion is filed prior to the date of the filing of appellant’s brief, the court may elect to defer ruling on the motion or decide

the motion prior to briefing.
(c)(1) If the court defers the motion, the time for filing any response or reply shall be the same as for a motion filed on the same date as the filing of appellant's brief, unless otherwise specified by the court.
(c)(2) If the court elects to decide the motion prior to briefing, it will issue a notice that any response shall be filed within 20 days of the notice or within such other time as the court may specify. Any reply in support of the motion shall be filed within 10 days after the response is served or within such other time as the court may specify.
(c)(3) If the requirements of parts (a) and (b) of this rule have been met, the court may order that the case be temporarily remanded to the trial court for the purpose of entry of findings of fact relevant to a claim of ineffective assistance of counsel. The order of remand shall identify the ineffectiveness claims and specify the factual issues relevant to each such claim to be addressed by the trial court. The order shall also direct the trial court to complete the proceedings on remand within 90 days of issuance of the order of remand, absent a finding by the trial court of good cause for a delay of reasonable length.
(c)(4) If it appears to the appellate court that the appellant's attorney of record on the appeal faces a conflict of interest upon remand, the court shall direct that counsel withdraw and that new counsel for the appellant be appointed or retained.

(d) Effect on appeal. ~~Oral argument and the deadlines for briefs shall be vacated upon the filing of a motion to remand under this rule.~~ If a motion is filed on the same date as appellant's brief, ~~Other procedural steps required by these rules shall~~ the briefing schedule will not be stayed ~~by a motion for remand,~~ unless ~~a stay is~~ ordered by the court ~~upon stipulation or motion of the parties or upon the court's motion~~. If a motion is filed prior to the date of the filing of appellant's brief, the briefing schedule shall be automatically stayed until the court issues notice of whether it will defer the motion or decide the motion prior to briefing.

(e) Proceedings before the trial court. Upon remand the trial court shall promptly conduct hearings and take evidence as necessary to enter the findings of fact necessary to determine the claim of ineffective assistance of counsel. Any claims of ineffectiveness not identified in the order of remand shall not be considered by the trial court on remand, unless the trial court determines that the interests of justice or judicial efficiency require consideration of issues not specifically identified in the order of remand. Evidentiary hearings shall be conducted without a jury and as soon as practicable after remand. The burden of proving a fact shall be upon the proponent of the fact. The standard of proof shall be a

preponderance of the evidence. The trial court shall enter written findings of fact concerning the claimed deficient performance by counsel and the claimed prejudice suffered by appellant as a result, in accordance with the order of remand. Proceedings on remand shall be completed within 90 days of entry of the order of remand, unless the trial court finds good cause for a delay of reasonable length.

(f) Preparation and transmittal of the record. At the conclusion of all proceedings before the trial court, the clerk of the trial court and the court reporter shall immediately prepare the record of the supplemental proceedings as required by these rules. If the record of the original proceedings before the trial court has been transmitted to the appellate court, the clerk of the trial court shall immediately transmit the record of the supplemental proceedings upon preparation of the supplemental record. If the record of the original proceedings before the trial court has not been transmitted to the appellate court, the clerk of the court shall transmit the record of the supplemental proceedings upon the preparation of the entire record.

(g) Appellate court determination. ~~Upon receipt of the record from the trial court, the clerk of the court shall notify the parties of the new schedule for briefing or oral argument under these rules.~~ Errors claimed to have been made during the trial court proceedings conducted pursuant to this rule are reviewable under the same standards as the review of errors in other appeals. The findings of fact entered pursuant to this rule are reviewable under the same standards as the review of findings of fact in other appeals.

Tab 3

Rule 24. Principal and reply briefs.

(a) Principal briefs. Principal briefs must contain under appropriate headings and in the order indicated:

(a)(1) A list of current and former parties. The list of parties must include:

(a)(1)(A) all parties to the proceeding in the appellate court and their counsel; and

(a)(1)(B) listed separately, all parties to the proceeding in the court or agency whose judgment or order is under review that are not parties in the appellate court proceeding.

(a)(2) A table of contents. The table of contents must list the sections of the brief with page numbers and the items in the addendum with the item number.

(a)(3) A table of authorities. The table of authorities must list all cases alphabetically arranged, rules, statutes, and other authorities cited, with references to the pages on which they are cited.

(a)(4) An introduction. The introduction should describe the nature and context of the dispute and explain why the party should prevail on appeal.

(a)(5) A statement of the issue. The statement of the issue must set forth the issue presented for review, including for each issue:

(a)(5)(A) the standard of appellate review with supporting authority; and

(a)(5)(B) citation to the record showing that the issue was preserved for review; or a statement of grounds for seeking review of an issue not preserved.

(a)(6) A statement of the case. The statement of the case must include, with citations to the record:

(a)(6)(A) the facts of the case, to the extent necessary to understand the issues presented for review;

(a)(6)(B) the procedural history of the case, to the extent necessary to understand the issues presented for review; and

(a)(6)(C) the disposition in the court or agency whose judgment or order is under review.

(a)(7) A summary of the argument. The summary of the argument must contain a succinct statement of the arguments made in the body of the brief.

(a)(8) An argument. The argument must explain, with reasoned analysis supported by citations to legal authority and the record, why the party should prevail on appeal.

(a)(9) A claim for attorney fees. A party seeking attorney fees for work performed on appeal must state the request explicitly, in a separate section of the brief, and ~~set forth the legal basis for an award~~ explain, with reasoned analysis supported by legal authority, why the party should be awarded attorney fees.

(a)(10) A short conclusion. The conclusion may summarize the party's position and must state the specific relief sought on appeal.

(a)(11) A certificate of compliance. The filer must certify that the brief complies with:

(a)(11)(A) paragraph (g), governing the number of pages or words (the filer may rely on the word count of the word processing system used to prepare the brief); and

(a)(11)(B) Rule 21, governing public and private records.

(a)(12) An addendum. Subject to Rule 21(g), the addendum must contain a copy of:

(a)(12)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(a)(12)(B) the order, judgment, opinion, or decision under review and any related minute entries, findings of fact, and conclusions of law; and

(a)(12)(C) materials in the record that are the subject of the dispute and that are of central importance to the determination of the issues presented for review, such as challenged jury instructions, transcript pages, insurance policies, leases, search warrants, or real estate purchase contracts.

(b) Reply brief. The appellant or petitioner may file a reply brief. A reply brief must be limited to responding to the facts and arguments raised in the appellee's or respondent's principal brief. The reply brief must include:

(b)(1) a table of contents, as required by paragraph (a)(2);

(b)(2) a table of authorities, as required by paragraph (a)(3);

(b)(3) an argument, as required by paragraph (a)(8);

(b)(4) a conclusion, as required by paragraph (a)(10); and

(b)(5) a certificate of compliance, as required by paragraph (a)(11).

(c) No further briefs; joining or adopting the brief of another party. No further briefs may be filed except with leave of the appellate court. More than one party may join in a single brief. Any party may adopt by reference any part of the brief of another.

(d) References in briefs to parties and others. Parties and other persons and entities should be referred to consistently by the term, phrase, or name most pertinent to the issues on appeal. These may include descriptive terms based on the person or entity's role in the dispute, or the designations used in the trial court or agency, or the names of parties. Unless germane to an issue on appeal, a party should not be described solely by the party's procedural role in the case. The identity of minors should be protected by use of descriptive terms, initials, or pseudonyms. In child welfare appeals, the surname of a minor must not be used nor may a surname of a minor's biological, adoptive, or foster parent be used.

(e) References to the record.

(e)(1) Statements of fact and references to proceedings in the court or agency whose judgment or order is under review must be supported by citation to the record. A citation must identify the page of the record as marked by the clerk.

(e)(2) A reference to an exhibit must set forth the exhibit number. If the reference is to evidence the admissibility of which is in controversy, the reference must set forth the pages of the record at which the evidence was identified, offered, and received or rejected.

(f) References to legal authority. A reference to an opinion of the Utah Supreme Court or the Utah Court of Appeals issued on or after January 1, 1999, must include the universal citation (e.g., 2015 UT 99, 3; or 2015 UT App 320, 6).

(g) Length of briefs.

(g)(1) Unless a brief complies with the following page limits, it must comply with the following word limits:

Type of brief	Page limit	Word limit
Legality of death sentence	60	28,000
Legality of death sentence, reply brief	30	14,000
Other cases, principal brief	30	~~14,000~~12,500

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Other cases, reply brief	15	~~7,000~~ 6,250

(g)(2) Headings, footnotes, and quotations count toward the page or word limit, but the table of contents, table of authorities, and addendum, and any certificates of counsel do not.

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(h) Permission to file over length brief. Although over length briefs are disfavored, a party may file a motion for leave to file a brief that exceeds the page, or word limitations of this rule. The motion must state with specificity the issues to be briefed, the number of additional pages, or words requested, and good cause for granting the motion. A motion filed at least 7 days before the brief is due or seeking three or fewer additional pages, or 1,400 or fewer additional words need not be accompanied by a copy of the proposed brief. Otherwise, a copy of the proposed brief must accompany the motion. If the motion is granted, the responding party is entitled to an equal number of additional pages, or words without further order of the court. Whether the motion is granted or denied, the court will destroy the proposed brief.

(i) Sanctions. The court on motion or on its own initiative may strike or disregard a brief that contains burdensome, irrelevant, immaterial, or scandalous matters, and the court may assess an appropriate sanction including attorney fees for the violation.

(j) Notice of supplemental authorities. When authority of central importance to an issue comes to the attention of a party after briefing or oral argument but before decision, that party may file a notice of supplemental authority setting forth:

(j)(1) the citation to the authority;

(j)(2) a reference either to the page of the brief or to a point argued orally to which the authority applies; and

(j)(3) relevance of the authority. The body of the notice must not exceed 350 words. Any other party may file a response no later than 7 days after service of the notice. The body of the response must not exceed 350 words.

24A. Briefs in cross-appeals.

(a) **Party designation**. The party first filing a notice of appeal is the appellant. The party filing a second or subsequent notice of appeal is the cross-appellant. The parties may change the designation of parties by stipulation filed with the court, or the court may order a different designation of parties. Each party is entitled to file two briefs.

(b) **Appellant's principal brief**. The appellant must file a principal brief that presents the issues raised in the appeal.

(c) **Cross-appellant's principal brief**. The cross-appellant must then file one brief, that first responds to the appellant's issues raised in the appeal and then, in the same brief, presents the issues raised in the cross-appeal. The brief may include a single introduction, statement of the issue, statement of the case, and conclusion.

(d) **Appellant's reply brie**f. The appellant may then file one brief that first replies to the cross-appellant's response to the issues raised in the appeal and then responds to the issues raised in the cross-appeal.

(e) **Cross-appellant's reply brie**f. The cross-appellant may file a reply brief that replies to the appellant's response to the issues raised in cross-appeal.

(f) No further briefs. No further briefs maybe filed except with leave of the appellate court.

(g) **Length of briefs**.

(g)(1) Unless a brief complies with the following page limits, it must comply with the following word limits:

Type of brief	Page Limit	Word Limit
Appellant's Principle brief	30	~~14,000~~ 12,500
Cross-appellant's principle brief	45	~~21,000~~ 18,750
Appellant's reply brief	30	~~14,000~~ 12,500
Cross-appellant's reply brief	15	~~7,000~~ 6,250

(g)(2) Headings, footnotes, and quotations count toward the page or word limit, but the table of contents, table of authorities, and addendum do not.

(h) **Applicability of Rule 24**. Except as provided in this rule, Rule 24 applies to briefs in a cross appeal.

STATE	COURT	PAGE/WORD LIMIT	RULE
Alabama	Rules apply to all three courts (court of civil appeals, court of criminal appeals, supreme court)	Non-capital Cases: 70 pgs Capital cases: 80 pgs	Rule 28(j)
Alaska	Rules apply to both court of appeals and supreme court	50 pgs	Rule 212(c)(4)
Arizona	Court of Appeals	14,000 words	Part III Rule 4(a)(1)
Arizona	Supreme Court	10,500 words	Rule 59(h)
Arkansas	Rules apply to both court of appeals and supreme court	30 pgs	Civil: Rule 4-1(b) Criminal: Rule 4-3€
California	Court of Appeals	14,000 words	Rule 8.204(c)(1)
California	Supreme Court	8,400 words	Rule 8.504(d)(1)
Colorado	Rules apply to both court of appeals and supreme court	9,500 words	Rule 28(g)(1)
Connecticut	Appellate Court	35 pgs	Rule 67-3
Connecticut	Superior Court	35 pgs	Rule 4-6
Florida	Rules apply to both court of appeals and supreme court	50 pgs	Section 9.210(5)(B)
Georgia	Civil Court of Appeals	8,400 words (30 pgs written)	Rule 24(f)(1)-(2)
Georgia	Criminal Court of Appeals	14,000 words (50 pgs written)	Rule 24(f)(1)-(2)
Georgia	Supreme Court	30 pgs (civil); 50 pgs (criminal)	Rule 20
Hawaii	Rules apply to both court of appeals and supreme court	35 pgs	Rule 28(a)
Idaho	Rules apply to both court of appeals and supreme court	50 pgs	I.A.R.- Rule 34(b)
Illinois	There are local rules for each district appellate court (1-5), but all order to comply with Supreme Court Rules 341 & 342	50 pgs; 50,000 words	Rule 341(b)(1)
Indiana	Rules apply to both court of appeals and supreme court	30 pgs; 14,000 words	Rule 44(D)-E
Iowa	Rules apply to both court of appeals and supreme court	14,000 words	Rule 6.903(1)(g)
Kansas	Rules apply to both court of appeals and supreme court	50 pgs	Rule 6.07(c)
Kentucky	Court of Appeals	25 pgs	CR 76.12(4)(b)(i)

STATE	COURT	PAGE/WORD LIMIT	RULE
Kentucky	Supreme Court	50 pgs	CR 76.12(4)(b)(ii)
Louisiana	Court of Appeals	41 pgs (letter); 31 pgs (legal)	Rule 2-12.2(D)(1)
Louisiana	Supreme Court (civil)	25 pgs (legal); 35 pgs (letter)	Rule VII Section 2
Louisiana	Supreme Court (criminal)	35 pgs (legal); 50 pgs (letter)	Rule VII Section 2
Louisiana	Supreme Court (capital)	85 pgs (legal); 115 pgs (letter)	Rule VII Section 2
Maryland	Court of Appeals (highest court)	13,000 words	Rule 8-503(d)(1)
Maryland	Court of Special Appeals	9,100 words	Rule 8-503(d)(1)
Massachusetts	Rules apply to both court of appeals and supreme court	50 pgs	Rule 16(h)
Michigan	Rules apply to both court of appeals and supreme court	50 pgs	Rule 7.212(B)
Minnesota	Rules apply to both court of appeals and supreme court	45 pgs; 14,000 words	Rule 132.01 Subd.3(a)
Mississippi	Rules apply to both court of appeals and supreme court	50 pgs	Rule 28(h)
Missouri	Rules apply to both court of appeals and supreme court	31,000 words	Rule 84.06(b)
Nebraska	Rules apply to both court of appeals and supreme court	50 pgs	§2-109(5)
Nevada	Rules apply to both court of appeals and supreme court	30 pgs; 14,000 words (non-capital) 80 pgs; 37,000 words (capital)	Rule 32(a)(7)
New Jersey	Rules apply to both court of appeals and supreme court	65 pgs	Rule 2.6-7
New Mexico	Rules apply to both court of appeals and supreme court	35 pgs; 11,000 words	Rule 12-318(F)(2)
New York	Supreme Court- Appellate Division First Judicial Department	70 pgs; 14,000 words	§600.10(d)(1)(i)
New York	Supreme Court-Appellate Division Second Judicial Department	70 pgs; 14,000 words	§670.10.3(a)(3)
North Carolina	Rules apply to both court of appeals and supreme court	8,750 words	N.C.R.App.P. 28(j)
North Dakota	Court of Appeals	35 pgs	Rule 19(A)
North Dakota	Supreme Court	32 pgs; 8,000 words	Rule 32(a)(8)(A)-(B)
Ohio	Supreme Court	50 pgs; no pg limit for death penalty	S.Ct.Prac.R. 16.02(C)(1)
Ohio	Court of Appeals	35 pgs; no limit for post conviction	Rule 19(A)

STATE	COURT	PAGE/WORD LIMIT	RULE
Oklahoma	Supreme Court	40 pgs	Rule 1.11(b)
Oklahoma	Court of Criminal Appeals	50 pgs	Rule 3.5(D)
Oregon	Court of Appeals	35 pgs; 10,000 words	Rule 5.05(1)(b)(ii)(A)
Oregon	Supreme Court	50pgs; 14,000 words	Rule 5.05(1)(b)(i)(A)
Pennsylvania	Rules govern procedure in Supreme Court, Superior Court and the Commonwealth Court	30 pgs; 14,000 words Capital cases- 38 pgs; 17,500 words	Rule 2135(a)(1)
South Carolina	Rules apply to both court of appeals and supreme court	50 pgs	Rule 208(b)(5)
Tennessee	Rules govern procedure in Supreme Court, Court of Appeals, and Court of Criminal Appeals	50 pgs	Rule 27(i)
Texas	Court of Criminal Appeals	125 pgs; 37,500 words	Rule 9.4(i)(2)(A)
Texas	Court of Appeals	50 pgs; 15,000 words	Rule 9.4(i)(2)(B)
Texas	Supreme Court	Petition- 15 pgs; 4,500 words	Rule 9.4(i)(2)(D)
Utah	Rules apply to both court of appeals and supreme court	30 pgs; 14,000 words Death Sentence- 60 pgs; 28,000 words	Rule 24(g)(1)
Virginia	Supreme Court	Petition for Appeal- 35 pgs; 6,125 words Petition for Review- 15 pgs; 2,625 Death Penalty- 100 pgs; 17,500 words	Rule 5:17(f) Rule 5:17A(c)(i) Rule 5:22(e)(1)
Virginia	Court of Appeals	12,300 words Petition for Appeal- 12,300 words	Rule 5A:19 (a)
Washington	Rules apply to both court of appeals and supreme court	50 pgs	Rule 10.4(b)
Wisconsin	Court of Appeals	40 pgs typeset; 50 pgs type written	Rule 809.19(8)(c)
Wisconsin	Supreme Court	35 pgs	Rule 809.62(4)

States Without Intermediate Appellate Courts

Delaware	South Dakota
Maine	Vermont
Montana	West Virginia
New Hampshire	Wyoming
Rhode Island	

Tab 4

1 **Supreme Court Rules of Professional Practice**
2
3 **Chapter 11: General Provisions**
4
5 **Article 4: Standing Committee on Appellate Representation**
6
7 **Rule 11-401. Standing Committee on Appellate Representation**
8
9 Intent:
10
11 To establish a standing Committee to assist the Board of Appellate Court Judges to
12 determine a roster of attorneys eligible for appointment to represent indigent parties on
13 appeal to the Utah Supreme Court and the Utah Court of Appeals.
14
15 To establish uniform terms and a uniform method for appointing committee members.
16
17 To establish a schedule for recommending the appointment of attorneys to, or the
18 removal of attorneys from, the appellate roster.
19
20 Applicability:
21
22 This rule shall apply to the internal operation of the Board of Appellate Court Judges
23 and the Committee on Appellate Representation and to district and appellate courts in
24 indigent criminal cases, juvenile delinquency, and child welfare proceedings.
25
26 Statement of the Rule:
27
28 (1) *Establishment.* The Standing Committee on Appellate Representation is hereby
29 established as a committee of the Board of Appellate Court Judges.
30 (1)(A) *Composition.* The Committee shall consist of one member of the Office of
31 General Counsel of the Administrative Office of the Courts; one member from the
32 Criminal Appeals Division of the Utah Attorney General's Office; one active or retired
33 trial court judge from either a District or Juvenile court in the state; one active or retired
34 appellate court judge; one private civil appellate attorney; two criminal defense
35 appellate attorneys: at least one of whom is currently practicing in the area of indigent
36 criminal appeals in a legal defender's office, as defined by Utah Code § 77-32-201 (11);
37 one attorney practicing in the area of juvenile delinquency defense appeals; and one
38 attorney practicing in the area of child welfare defense appeals.

39 (1)(B) *Appointment.* Committee members shall be appointed by the Supreme
40 Court and shall serve staggered four-year terms. The Supreme Court shall select a chair
41 from among the Committee's members. Judges who serve as members of the Committee
42 generally shall not be selected as chair. Committee members shall serve as officers of the
43 court and not as representatives of any client, employer, or other organization or interest
44 group. At the first meeting of the Committee in any calendar year, and at every meeting
45 at which a new member of the Committee first attends, each Committee member shall
46 briefly disclose the general nature of his or her legal practice.
47 (1)(C) *Vacancies.* In the event of a vacancy on the Committee due to death,
48 incapacity, resignation or removal, the Supreme Court, after consultation with the
49 Committee chair, shall appoint a new Committee member from the same category as the
50 prior Committee member to serve for the remainder of the unexpired term.
51 (1)(D) *Absences.* In the event that a Committee member fails to attend two
52 consecutive Committee meetings, the chair may notify the Supreme Court of those
53 absences and may request that the Supreme Court replace that Committee member.
54 (1)(E) *Administrative assistance.* The Administrative Office of the Courts shall
55 coordinate staff support to the Committee, including the assistance of the Office of
56 General Counsel in research and drafting and the coordination of secretarial support.
57 (2) *Appellate Roster.* The Board of Appellate Judges shall create and maintain an
58 appellate roster of attorneys skilled in handling criminal, juvenile delinquency, and
59 abuse, neglect and dependency appeals.
60 (2)(A) *Purpose of the Committee.* The purpose of the Committee shall be to
61 recommend to the Board of Appellate Court Judges attorneys for inclusion on an
62 appellate roster of attorneys eligible for appointment by the courts of this state to
63 represent indigent parties on appeal before the Utah Supreme Court or the Utah Court of
64 Appeals pursuant to Rule 38B of the Utah Rules of Appellate Procedure. Except as
65 specified in paragraphs (2)(G) of this rule, only attorneys on the roster shall be eligible
66 for such court appointments.
67 (2)(B) *Committee recommendations.* The Committee shall consider and recommend
68 attorneys for inclusion on the appellate roster based on the eligibility criteria listed in
69 subsection (2)(C) together with any other factor bearing on an applicant's ethics,
70 diligence, competency, and willingness to fairly, efficiently, and effectively provide
71 appellate representation to indigent parties on appeal. The Committee may also
72 recommend the removal of an attorney from the roster.
73 (2)(C) *Eligibility criteria.* To be considered for inclusion on the roster, an applicant
74 must complete an application in a form provided by the Committee and must:
75 (i) comply with the requirements of rule 38B of the Utah Rules of Appellate
76 Procedure, sections (b) through (e);
77 (ii) be a member of the Utah Bar in good standing;

78 (iii)submit at least two appellate briefs to the Committee with a certification that
79 the applicant was primarily responsible for drafting the briefs;
80 (iv)demonstrate knowledge of appellate practice as shown by experience,
81 training, or legal education;
82 (v)provide citations for all appellate decisions in which the applicant was counsel
83 of record; and
84 (vi)certify that the applicant has sufficient time and administrative support to
85 accept an appointment to represent indigent parties on appeal and to provide the
86 effective assistance of counsel in every case and a willingness to commit those resources
87 to that representation.
88 (2)(D) *Roster Selection.* The Board of Appellate Court Judges shall approve or
89 disapprove the recommendations of the Committee with respect to attorneys to be
90 included on the appellate roster. The Board may also at any time remove an attorney
91 from the appellate roster based on an attorney's qualifications, skills, experience, and
92 prior performance in the Utah appellate courts. The Board may not add to the roster an
93 attorney who was not recommended by the Committee.
94 (2)(E) *Reconsideration.* An attorney who submitted an application to the
95 Committee but was not chosen by the Board for inclusion on the appellate roster, or who
96 was removed from the roster, may file a petition for reconsideration in the form of a
97 letter submitted to the Board of Appellate Court Judges. The petitioner shall submit an
98 original letter and twelve copies.
99 (2)(F) *Retention*. To maintain eligibility, an attorney must be recommended by the
100 Committee and reappointed by the Board of Appellate Court Judges every two years.
101 An attorney desiring to maintain eligibility shall submit a renewal request to the
102 Committee by January 1 of the year in which the attorney reports his or her MCLE
103 compliance to the Utah State Bar; provided, however, that the first such request shall not
104 be due earlier than the first January 1 at least two years after the date on which the
105 attorney originally qualified to be on the roster. The renewal request shall include the
106 following:
107 (i) a certification that the attorney is a member of the Utah Bar in good standing;
108 (ii) a certification that the attorney has not, within the preceding three years, been
109 the subject of an order issued by either appellate court imposing sanctions against
110 counsel, discharging counsel, or taking other equivalent action against counsel because
111 of counsel's substandard performance before either appellate court;
112 (iii)a showing that the attorney has maintained competence in appellate practice,
113 which showing may be achieved by:
114 (a)submitting two appellate briefs filed with appellate courts during the
115 previous two years, together with a certification that the attorney was substantially
116 responsible for drafting the briefs;

117 (b)certification that the attorney has attended at least six hours of CLE
118 dealing with the area of appellate practice in which the attorney has accepted court-
119 appointments on appeal in the previous two years; or
120 (c)an equivalent demonstration of continued competence.
121 (2)(G) *Exemption.* Notwithstanding any other provision of this rule, any attorney
122 currently employed in a county or other regional "Legal defender's office" (under Utah
123 Code § 77-32-201 (12)), to provide court-appointed representation and defense resources
124 on appeal, shall be independently eligible for appointment to represent indigent parties
125 on appeal.
126 (2)(H) *Disqualification.* Nothing in this rule is intended to supplant or create an
127 exception to the disqualification provisions of Rule 38B of the Utah Rules of Appellate
128 Procedure.
129 (3) *Annual Schedule.* The Committee shall meet at least annually and shall submit
130 its recommendations to the Board of Appellate Court Judges by February 1 of each year.
131 The Board of Appellate Court Judges shall at its next meeting thereafter approve or
132 disapprove the recommendations of the Committee with respect to attorneys to be
133 included on the appellate roster.

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

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

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

Tab 5

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 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)~~(e),the motion for leave shall be filed at least 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 7 days of service of the motion. If leave is granted, an amicus curiae or guardian ad litem shall file its brief within 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.

Rule 46. Considerations governing review of certiorari.

(a) Review by a writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for special and important reasons. The primary consideration is whether a review of the questions presented by the petition will establish precedent and develop the law. The possibility of an error in the Court of Appeals' or another tribunal's decision, without more, ordinarily will not justify review. The following, while neither controlling nor wholly measuring the Supreme Court's discretion, indicate the character of reasons that typically will be considered:

~~(1) When a panel of the Court of Appeals has rendered a decision in conflict with a decision of another panel of the Court of Appeals on the same issue of law;~~

~~(2) When a panel of the Court of Appeals has decided a question of state or federal law in a way that is in conflict with a decision of the Supreme Court;~~

~~(3) When a panel of The Court of Appeals has rendered a decision that has so far departed from the accepted and usual course of judicial proceedings or has so far sanctioned such a departure by a lower court as to call for an exercise of the Supreme Court's power of supervision.~~

(1) The petition presents a question regarding the proper interpretation of a constitutional or statutory provision that is likely to affect future cases.

(2) The petition presents a common law or other legal question of first impression in Utah that is likely to recur in future cases.

(3) The petition provides an opportunity to resolve an ambiguity in a legal standard set forth in a decision of the Court of Appeals, or in a prior decision of the Supreme Court, that is likely to affect future cases.

(4) ~~When~~ The petition challenges a decision of the Court of Appeals with regard to a legal issue that has not been addressed ~~has decided an important question of municipal, state, or federal law which has not been, but should be, settled~~ by the Supreme Court and that is likely to recur in future cases.

(b) After a petition for certiorari has been filed, the panel that issued the opinion of the Court of Appeals may issue a minute entry recommending that the Supreme Court grant the petition. Parties shall not request such a recommendation by motion or otherwise.

Rule 49. Petition for writ of certiorari.

(a) Contents. The petition for a writ of certiorari shall contain, 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~~ <u>may</u> 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. The petition for a writ of certiorari shall comply with the form of a brief as specified in Rule 27.

(c) No separate ~~brief~~ pleading. 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~~ pleading 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; reply ~~brief~~; brief of amicus curiae.

(a) ~~Brief in Opposition~~ Response. Within 30 days after service of a petition, ~~the respondent shall~~ any other party may file a response to the petition ~~an opposing brief~~. If satisfaction of a petitioner's obligation to pay a required filing fee or to obtain a waiver of that fee is accomplished after service, then the time for response shall run from the date of satisfaction of that obligation. ~~Such brief~~ The response shall comply with Rule~~s~~ 27 and, as applicable, Rule 49. Seven copies of the response ~~brief in opposition~~, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court. A party opposing a petition may so indicate by letter in lieu of a formal response, but the letter shall not include any argument or analysis.

(b) Page limitation. A ~~brief in opposition~~ response 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 ~~writ of certiorari~~ petition may be included in the ~~brief in opposition~~ response.

~~(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 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 certiorari will be delayed until the filing of a brief in opposition by the cross-respondent, the expiration of the time allowed therefor, or express waiver of the right to file.~~

~~(e)~~ (d) Reply ~~brief~~. A reply ~~brief~~ addressed to arguments first raised in the ~~brief in opposition~~ response may be filed by any petitioner within fourteen days after service of the response, but distribution ~~under paragraph (d) of this rule~~ of the petition and response to the court ordinarily will not be delayed pending the filing of any such ~~brief~~ reply unless the response includes a new request for relief, such as an award of attorney fees for the response. ~~Such brief~~ The reply shall be as short as possible, but may not exceed five pages~~,~~ ~~Such brief~~ and shall comply with Rule 27. The number of copies to be filed shall be as described in Rule 50(a).

~~(f)~~ (e) Brief of amicus curiae. A brief of an amicus curiae 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. 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 days of service of the motion. 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.

Rule 51. Disposition of petition for writ of certiorari.

(a) Order after consideration. ~~After consideration of the documents distributed pursuant to Rule 50,~~ The Supreme Court will enter an order denying the petition or granting the petition in whole or in part. The order shall be decided summarily, shall be without oral argument, and shall not constitute a decision on the merits. The clerk shall not issue a formal writ unless directed by the Supreme Court.

(b) Grant of petition.

(b)(1) Whenever an order granting a petition for a writ of certiorari is entered, the Clerk of the Supreme Court forthwith shall notify the Clerk of the Court of Appeals and counsel of record.

(b)(2) If the record has not previously been filed, the Clerk of the Supreme Court shall request the clerk of the court with custody of the record to certify it and transmit it to the Supreme Court.

(b)(3) The clerk shall file the record and give notice to the parties of the date on which it was filed and the date on which petitioner's brief is due.

(b)(4) Rules 24 through 31 shall govern briefs, argument, and disposition of the petition for writ of certiorari. In applying Rules 24 through 31, the petitioner shall stand in the place of the appellant and the respondent in the place of the appellee. In lieu of providing the citation or statements required by Rules 24(a)(5)(A) and (B), the statement of the issues presented for review as required by Rule 24(a)(5) shall include, for each issue, a statement and citation showing that the issue was presented in the petition for certiorari or fairly included therein.

(c) Denial of petition. Whenever a petition for a writ of certiorari is denied, an order to that effect will be entered, and the Clerk of the Supreme Court forthwith will notify the Court of Appeals and counsel of record.

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Rule 22. Computation and enlargement of time.

(a) Computation of time. In computing any period of time prescribed by these rules, by an order of the court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period extends until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time under subsection (d), is less than 11 days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule, "legal holiday" includes days designated as holidays by the state or federal governments.

(b) Enlargement of time.

(b)(1) Motions for an enlargement of time for filing briefs beyond the time permitted by stipulation of the parties under Rule 26(a) are not favored.

(b)(2) The court for good cause shown may upon motion extend the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of time. This rule does not authorize the court to extend the jurisdictional deadlines specified by any of the rules listed in Rule 2. For the purpose of this rule, good cause includes, but is not limited to, the complexity of the case on appeal, engagement in other litigation, and extreme hardship to counsel.

(b)(3) A motion for an enlargement of time shall be filed prior to the expiration of the time for which the enlargement is sought.

(b)(4) A motion for enlargement of time shall state:

(b)(4)(A) with particularity the good cause for granting the motion;

(b)(4)(B) whether the movant has previously been granted an enlargement of time and, if so, the number and duration of such enlargements;

(b)(4)(C) when the time will expire for doing the act for which the enlargement of time is sought; and

(b)(4)(D) the date on which the act for which the enlargement of time is sought will be completed.

(b)(5)(A) If the good cause relied upon is engagement in other litigation, the motion shall:

(b)(5)(A)(i) identify such litigation by caption, number and court;

(b)(5)(A)(ii) describe the action of the court in the other litigation on a motion for continuance;

(b)(5)(A)(iii) state the reasons why the other litigation should take precedence over the subject appeal;

(b)(5)(A)(iv) state the reasons why associated counsel cannot prepare the brief for timely filing or relieve the movant in the other litigation; and

(b)(5)(A)(v) identify any other relevant circumstances.

(b)(5)(B) If the good cause relied upon is the complexity of the appeal, the movant shall state the reasons why the appeal is so complex that an adequate brief cannot reasonably be prepared by the due date.

(b)(5)(C) If the good cause relied upon is extreme hardship to counsel, the movant shall state in detail the nature of the hardship.

(b)(5)(D) All facts supporting good cause shall be stated with specificity. Generalities, such as "the motion is not for the purpose of delay" or "counsel is engaged in other litigation," are insufficient.

(c) Ex parte motion. Except as to enlargements of time for filing and service of briefs under Rule 26(a), a party may file one ex parte motion for enlargement of time not to exceed 14 days if no enlargement of time has been previously granted, if the time has not already expired for doing the act for which the enlargement is sought, and if the motion otherwise complies with the requirements and limitations of paragraph (b) of this rule.

(d) Additional time after service by mail. Whenever a party is required or permitted to do an act within a prescribed period after service of a paper and the paper is served by mail, 3 days shall be added to the prescribed period.

Effective date: November 14, 2016