

IN THE SUPREME COURT OF THE STATE OF UTAH

---oo0oo---

FILED  
UTAH APPELLATE COURTS

JAN 11 2016

Proposed Amendments to  
Rules 21, 38A, and 40 of  
the UTAH RULES OF APPELLATE PROCEDURE


---

**ORDER**

IT IS HEREBY ORDERED that the proposed amendments to Rules 21, 38A, and 40 of the Utah Rules of Appellate Procedure are adopted as submitted and promulgated effective May 1, 2016.

FOR THE COURT:

1-8-16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Matthew B. Durrant  
Chief Justice

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

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

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

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

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

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

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

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

32       **Advisory Committee Notes**

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

35       Records are classified as public, private, controlled, protected, safeguarded, sealed, juvenile court  
36 legal, or juvenile court social by Code of Judicial Administration Rule 4-202.02. The right of public access  
37 might also be restricted by Title 63G, Chapter 2, Government Records Access and Management Act, by

38 other statutes, rules, or case law, or by court order. If a filing contains information or records that are not  
39 public, Rule 21(g) requires the filer to file an unredacted version for the court and a version for the public  
40 that does not contain the confidential information.

1       **Rule 38A. Withdrawal of counsel.**

2       (a)(1) Withdrawal in criminal cases and certain civil cases. An attorney may not withdraw from a  
3 criminal case or from a civil case in which ~~appellant~~that attorney's client has the right to effective  
4 assistance of counsel except upon motion and order of the court. Absent good cause shown, leave to  
5 withdraw will not be granted unless the motion to withdraw is accompanied by an entry of proposed  
6 appearance by new counsel or a representation by the withdrawing attorney that the ~~defendant~~client is  
7 entitled to the appointment of new counsel.

8       (a)(2) Duration of representation by court-appointed counsel. Absent good cause shown for  
9 withdrawal, if a party has a right to effective assistance of counsel through the first appeal as of right, an  
10 attorney appointed to represent that party on appeal shall represent that party throughout the first appeal  
11 as of right, respond to a petition for writ of certiorari, file a petition for writ of certiorari if appointed counsel  
12 determines that such a petition is warranted, and brief and argue the merits if the Supreme Court grants  
13 certiorari review.

14       (b) Withdrawal in other civil cases.

15       (b)(1) When oral argument not scheduled. An attorney may withdraw without leave of court in any  
16 other civil case that has not been scheduled for oral argument. The withdrawing attorney shall serve  
17 notice of the withdrawal with the court and upon all parties, including his or her client.

18       (b)(2) When oral argument scheduled. An attorney may not withdraw from any other civil case that  
19 has been scheduled for oral argument except upon motion and order of the court. Absent good cause  
20 shown, leave to withdraw will not be granted unless the motion to withdraw is accompanied by an entry of  
21 proposed appearance of new counsel and new counsel's representation that oral argument may proceed  
22 as scheduled.

23       (b)(3) Notice to appoint or appear in person. If an attorney withdraws under subdivision (b)(1), dies, is  
24 suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing  
25 party shall, and the court may, serve a notice on the unrepresented party, informing the party of the  
26 responsibility to appoint new counsel or, if the unrepresented party is a natural person, the responsibility  
27 to appear personally or appoint new counsel. A copy of the notice served by the opposing party shall be  
28 filed with the court. No further proceedings shall be held in the case until 20 days after such a notice is  
29 served, unless the unrepresented party waives the time requirement or unless the court otherwise orders.

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

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

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

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

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

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

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

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

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

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

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

45 **Advisory Committee Notes**

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

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