



Guide to Filing a Petition for Review

Appealing a Government Agency Decision to the Utah Supreme Court or Utah Court of Appeals

Utah Supreme Court

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PO Box 140210
Salt Lake City, UT 84114-0210
801-578-3900
supremecourt@utcourts.gov

Utah Court of Appeals

450 S State Street, 5th Floor
PO Box 140230
Salt Lake City, UT 84114-0230
801-578-3900
courtofappeals@utcourts.gov

The Appellate Clerks' Office is open Monday – Friday, 8:00 a.m. to 5:00 p.m. The office is closed all state and federal holidays.

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The purpose of this guide

This guide is for cases that are being appealed from a government agency decision to the Utah Court of Appeals or the Utah Supreme Court.

There are separate guides for:

- Appealing a decision from the district or juvenile court to the Court of Appeals or Supreme Court
- Appealing a child welfare case from juvenile court
- Petition for Writ of Certiorari to the Utah Supreme Court

Not all cases are appealed to the Supreme Court or Court of Appeals. Decisions from the justice court (misdemeanor criminal, traffic and small claims cases), for example, are appealed to the district court. Some administrative agency decisions are appealed to the district court. See our [Appeals web page](#) for more information about these kinds of appeals.

Overview

What is a Petition for Review?

A petition for review is the review of a final decision or order of a governmental agency. “Agency” includes agencies, boards, commissions, committees or officers. If you think the agency made a legal mistake in its decision, in appropriate cases you can file an appeal in the form of a petition for review.

An appeal is a review by the supreme court or court of appeals to determine if the administrative agency made a legal mistake.

This guide describes the process for appealing an agency decision to one of Utah’s two appellate courts: the **Utah Supreme Court** or the **Utah Court of Appeals**.

An appellate court does not retry the case, take evidence, or weigh the credibility of witnesses. The appeal must be based on the record created in the agency hearing, and the person who is appealing must show that the agency made a mistake. If there was a mistake, it must have been important enough that it could have made a difference in the outcome of the case.

Jurisdiction

The Utah Supreme Court and the Utah Court of Appeals have different jurisdiction – or authority – to hear appeals in different types of cases from different agencies.

Figuring out which court can hear the appeal from an administrative agency proceeding is often difficult and confusing. The best source of information is the letter you receive from the agency that comes with its decision. Many agencies will tell you which court can hear your appeal and how much time you have to file the appeal. Sometimes you can find that information on an agency's website.

An appeal of an agency decision from a **formal** proceeding goes to either the Utah Court of Appeals or the Utah Supreme Court.

Court of Appeals

Utah Code [Section 63G-4-403](#) and [Section 78A-4-103](#)

Appeal from **formal** proceedings of

- [Career Service Review Board](#)
- Department of Employment Security
- Industrial Commission
- [Labor Commission](#)
- [Workforce Services](#)
- Other state agencies not already reserved for the Supreme Court or the Juvenile Court

Supreme Court

Utah Code [Section 63G-4-403](#) and [Section 78A-3-102](#)

Appeal from **formal** proceedings of

- [Board of Oil, Gas, and Mining](#)
- Executive Director of the [Department of Natural Resources](#) reviewing actions of the [Division of Forestry, Fire, and State Lands](#)
- [Public Service Commission](#)
- [School and Institutional Trust Lands Board of Trustees](#)
- State Engineer
- [State Tax Commission](#)

An appeal of an agency decision from an **informal** proceeding is a new hearing (called a de novo review) in the district or juvenile court. Utah Code [Section 63G-4-402\(2\)](#) governs the content of complaint. See our web page [Appealing an Administrative Agency Decision](#) for information about appeals to the district or juvenile court.

The Utah Supreme Court has the right to transfer many of its cases to the Utah Court of Appeals for decision. The petitioner might file a case with the Supreme Court, which could then be transferred to the Court of Appeals. The processing is sometimes called

“pouring” a case. If a case is transferred, the Court of Appeals will be the court that reviews the appeal.

Fees

Appellate Rule 3

The filing fee for a Petition for Review is \$360, and is paid to the appellate court. If the petitioner is seeking review of a decisions by Workforce Services regarding unemployment benefits, there is no filing fee.

If the petitioner can't pay the required fees, they can ask the court to waive the filing fee if they can show they meet certain financial/income guidelines. The petitioner must fill out and file a [Motion and Affidavit to Waive Fees](#).

Even if a waiver of the filing fee is approved, the petitioner will still have to pay other costs associated with the appeal. For example, if the petitioner requests a transcript of the agency proceedings, then they must pay to have the transcript prepared. The appellate courts also charge for copies of documents.

Filing

Appellate Rule 21

To *file* a document means to give it to the Appellate Clerk's Office in Salt Lake City. Parties can file papers with the court in person or by mail. Parties may also file some documents by email, subject to the following rules:

- Some documents cannot be filed by email. Check with the Appellate Clerk's Office if you are not sure if a document can be emailed.
- An email filing is considered received when it is sent by the party.
- After a party emails a document, they must also file the original document and any required copies with the court within 5 business days of sending the email. If the original and any required copies are not received by the appellate court within that time the court may not accept the documents.
- The time for filing a response to a document filed by email runs from the date the document was emailed to the court.
- If a party emails a document to the court, the party assumes the risk for any problems that may occur. The party filing the document may want to contact the court to make sure the email was received safely.

Email Addresses:

supremecourt@utcourts.gov
courtofappeals@utcourts.gov

* The drop box outside the Matheson Courthouse is for the district court only. Do not put appellate court documents in that box.

Non-Public Information

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

If a filing, including an addendum, contains non-public information, the filer must also file a public version with all such information removed. Utah Rule of Appellate Procedure 21(g) requires the filer to file an unredacted version for the court and a version for the public that does not contain the confidential information.

See the court's [Non-Public Records page](#) for more information about classification of court records.

Service

Appellate Rule 21

To *serve* a document means to give a copy of it to all other parties. Any document you file with the appellate court must also be served on all of the other parties in the appeal. If the other side has an attorney, the attorney must be served. If the other side does not have an attorney, the other party must be served at their last known address.

Documents may be served by mail, hand delivery or email (as allowed by the policy described in the **Filing** section).

In an appeal of a criminal case, the prosecuting attorney must also be served. Misdemeanor appeals must be served on the city or county attorney. Felony appeals must be served on the attorney general:

Attorney General
Appeals Division
160 East 300 South
PO Box 140854
Salt Lake City, UT 84114-0854

A Certificate of Service must be attached to all documents filed with the appellate court. The Certificate of Service tells the court when and how service was made, who was

served, and where they were served. The court will not act on any document unless a Certificate of Service is attached to it.

There are special requirements for serving briefs. More information is provided in the **Briefs** section.

Asking for More Time (Motion for Extension of Time) Appellate Rule 22(b)

In some situations, a party may ask the court for more time to meet a deadline by filing a Motion for Extension of Time. The Motion for Extension of Time is subject to the following requirements:

- The motion must be filed before the deadline.
- The motion must include:
 - a good reason for extending the deadline
 - whether extensions have been requested before, and if so, how many times and how long those extensions were
 - when the deadline is
 - what the party would like the new deadline to be

The appellate courts do not favor requests to extend a deadline by more than 30 days.

Parties can agree to extend the deadline to file briefs. This agreement is called a “stipulation,” and must be filed with the appellate court. A stipulation cannot extend the time by more than 30 days and will only be allowed if it is filed before the deadline expires.

Appellate Mediation Appellate Rule 28A

Some cases filed with the Court of Appeals will be referred to the Appellate Mediation Office to see if it is possible to resolve the disputed issues through mediation. Resolving disputes using mediation is always less expensive than going to court, and parties are able to participate in the resolution process rather than have a resolution imposed on them. This is a free service of the court.

The appellate court mediator schedules parties to a mediation conference either in person or by phone. The mediator will explain the process and identify the issue and the interests and needs to each party.

The mediator will then meet privately with each party to discuss the strengths and weaknesses of the case, the risks of proceeding with the appeal, and options for settlement. Following these discussions, the participants will review options for

resolution and begin negotiating settlement. If an agreement is reached, the mediator will meet with the participants to discuss the details of settlement.

More information about appellate mediation is available on the court's website:
<http://www.utcourts.gov/mediation/med-coa.html>

Procedures

Petition for Review Timeline

Petition for Review	Due 30 days after final order of agency. (Or within the time prescribed by statute.)
Transcript Request	Due 10 days after filing of Petition for Review.
Docketing Statement	Due 21 days after filing of Petition for Review.
Record/Record Index	Prepared by agency and filed with the appellate court.
Petitioner's Brief	Not always required. Due 40 days after court notifies petitioner that briefs are required.
Respondent's Brief	Due 30 days after filing of petitioner's brief.
Petitioner's Reply Brief	Optional, due 30 days after filing of respondent's brief.
Case at Issue, Ready to Calendar	
Oral Argument	Court will notify parties if it decides to schedule oral argument.
Under Advisement	Court is preparing its decision.
Opinion/Decision Filed	Court issues written opinion or decision.
Petition for Rehearing	Optional, due 14 days after the decision is issued. (URAP 35)
Remittitur	Generally issued 15 days after the opinion is filed in the Supreme Court and 35 days after opinion is filed in the Court of Appeals

Petition for Review

Appellate Rule 14

The process for appealing an administrative agency decision starts when someone files a Petition for Review with the Utah Supreme Court or Utah Court of Appeals within the time allowed to appeal. The party filing the Petition for Review is called the **petitioner**, and the party the appeal is against is called the **respondent**.

The petitioner must file the Petition for Review within the time prescribed by statute. If there is no statute, the appeal must be filed within 30 days after the date of entry of the final judgment or order being appealed.

If a party wants to ask for more time to file the petition, they must file a Motion for Extension of Time before the deadline to appeal has passed. URAP 48(e).

The petitioner must also pay a filing fee, or ask to have those costs waived as described in the **Fees** section above.

Transcripts

Appellate Rule 11(e)(1)

A transcript is a word-for-word typing of everything that was said on the record during an administrative hearing. It is **not** the audio recording of a hearing or trial. A transcript is important because it is what the appellate court uses to review the agency proceedings.

Within 10 days of filing the Petition for Writ of Review, the petitioner must request a transcript from the agency. A copy of the request must also be mailed to the clerk of the appellate court. Each agency sets its own pricing for transcripts. Note: Workforce Services prepares their transcripts automatically, so it is not necessary to request a transcript if the appeal involves that agency.

The appellant must serve a copy of the transcript request on the other party by mail, email, or hand delivery. The appellant must also fill out a Certificate of Service form and file it with the court. The certificate of service tells the court when and how the other party was served with the document, and the name(s) and address(es) of whoever was served.

In very rare cases the petitioner **does not need a transcript** for the appeal. For example, maybe there was no hearing in the case. If the petitioner believes that a transcript is not necessary for the appeal, they must file a Certificate that Transcript is Not Requested with the appellate court. Remember, the transcript is what the appellate court uses to review the agency's decision. If it is not provided to the appellate court, the chances of winning on appeal drop dramatically.

Docketing Statement

Appellate Rule 9

The Docketing Statement is the document the petitioner uses to show the appellate court that it has jurisdiction to consider the appeal. It is also how the petitioner identifies at least one substantial issue for review.

A “substantial issue” is a legal mistake the petitioner believes the agency made. The petitioner is focusing the appellate court’s attention on a specific and significant error that the agency made.

The Docketing Statement is not the place for an explanation of *why* something was a mistake. That should be saved for the briefing stage, which is described later in this guide. Instead, this is where the petitioner identifies *what* the mistake was that the appellate court should review.

The petitioner must file a Docketing Statement (original and two copies) with the appellate court within 21 days from the filing of the Petition for Review.

The petitioner must also serve a copy of the Docketing Statement on the respondent(s). Failure to serve the docketing statement may result in dismissal of the appeal.

After the Docketing Statement is filed

The appellate court will review the Docketing Statement. If the court determines it has jurisdiction and that there are appealable issues, then the case will proceed to the briefing stage.

Motion for Summary Disposition

Appellate Rule 10

The appellate court may send to the parties a Motion for Summary Disposition which says that the court is considering dismissing or denying the appeal for one or both of these reasons:

- It appears that the appellate court does not have jurisdiction
- It needs clarification about the issue(s) on appeal. URAP 10(e) says the court may dismiss an appeal if there is no “substantial” issue presented.

The parties may each file a response (sometimes called a “memorandum”) explaining why they think the court should – or should not – dismiss or deny the appeal. The court will tell the parties when the response is due and how many copies must be filed with the court.

The court will review the response(s). If the court determines that it does not have jurisdiction or that the appeal is without merit, it will issue a written decision without further proceedings.

Briefing Process

Appellate Rules 24, 26 & 27

The briefs are the single most important part of the appellate process. Briefs are the written arguments of parties stating the reasons why the appellate court should rule in their favor. This may be the only time the parties will make their argument to the court, so it's important that the parties make their briefs clear and persuasive.

Petitioner's Brief

The petitioner's brief is what the petitioner uses to persuade the appellate court that the agency made a specific error or errors in law, fact, or procedure that affected the outcome of the case. The brief should focus on the law and the facts, and should explain how the law should apply to the facts.

The petitioner may also provide an addendum which includes materials the petitioner believes are of central importance to the appeal.

Respondent's Brief

The respondent's brief is due 30 days after the petitioner's brief is filed. The respondent can respond to the arguments made by the petitioner and explain why the decision in the agency was correct.

The respondent's brief must comply with most of the same rules as the petitioner's brief, except that it does not have to include a statement of the issues unless the respondent does not feel the petitioner's statement is complete or correct.

Reply Brief

The petitioner may file a reply brief in answer to the respondent's brief. This optional brief must be filed within 30 days after the respondent's brief is served. See Appellate Rule 24(c) for the requirements of this brief. The reply should be limited to answering any new matters set forth in the respondent's brief.

Example Briefs

Parties can review Utah appellate court briefs to see how they are constructed. Briefs are available in print at the Utah State Law Library, the BYU Howard W. Hunter Law Library and the University of Utah James E. Faust Law Library.

Number of copies and service

Multiple briefs must be filed with the court and served on the other party:

Court of Appeals: One brief with original signature and 7 copies.

Supreme Court: One brief with original signature and 9 copies.

Briefs are considered **filed** on the date of the postmark if first-class mail is used.

Two copies of the brief must be served on the other party. The briefs must include a Certificate of Service showing how copies were served on the other party. See the Checklist for Briefs for more information about briefing requirements.

Oral Argument

Appellate Rule 29

After the briefs are filed, the appellate court will set the case on the next available calendar for consideration and decision. The court will either make its decision based on the briefs, or will schedule oral argument.

- Most **Court of Appeals** cases are decided solely on the briefs. Oral argument is held only if the court determines that oral argument will significantly help the decision process.
- In cases before the **Supreme Court**, oral argument will be held unless the court decides it will not help the decision process.

The parties use oral argument to present their arguments in person to the judges and to respond to any questions the judges may have.

The appellate judges have read the briefs filed in the case and will be familiar with the facts, issues and law on the case. Parties should not use their argument time to simply recount what they have written in the briefs. Instead, parties should focus on the legal question(s) that the appellate court has agreed to review.

- In the **Court of Appeals**, the total time for all arguments is 30 minutes. The petitioner and the respondent each get 15 minutes.
- In the **Supreme Court**, the total time for all arguments is 40 minutes. The petitioner and the respondent each get 20 minutes.

To prepare for oral argument, parties may want to review the [Supreme Court Practitioner's Guide to Oral Argument](#).

Oral arguments are public. Anyone may observe them in person or listen to archived recordings of previous arguments on the courts' website to get an idea of the procedure.

- [Oral argument calendars](#)

- [Oral argument recordings](#)

Appellate Court Decision

Appellate Rule 30

The appellate court will issue a written decision in every case, regardless of whether oral argument was held. The decision may be an opinion, a memorandum opinion, a *per curiam* (by the court as a whole) decision, or an order.

The decision of the court does not have to be unanimous, but a majority must agree on the outcome. Sometimes judges will write opinions separate from the majority opinion:

- Dissenting opinion – the authoring judge disagrees with the majority opinion.
- Concurring opinion – the authoring judge agrees with the majority opinion, but for different reasons.

Court staff have no way of knowing when a decision will be issued. Depending on the complexity of the case, the decision process takes some time, which means it could be months before a decision is issued. The judges need time to research and debate the issues and write the opinion. The written opinion affects the individuals involved in the case, but it may also have a broader impact on the law in Utah.

The appellate court could make one of the following decisions in a case, or a combination of these decisions (such as reversed in part and affirmed in part):

- Affirm – the court has concluded that the agency was correct, and its decision stands.
- Remand – the court is returning the case to the agency to make a finding of fact in one or more aspects of the case.
- Reverse – the court has decided that the agency's decision was in error, and has undone the decision of the agency.

[Appellate court opinions](#) are available on the court's website.

Options After the Written Decision is Issued

Once the Court of Appeals has issued its decision, the parties have several options:

- Accept the decision of the Court of Appeals
- File a Petition for Rehearing
- File a Petition for Writ of Certiorari with Utah Supreme Court

Once the Supreme Court has issued its decision, the parties have two options:

- Accept the decision of the Supreme Court

- File a Petition for Rehearing

Petition for Rehearing

Appellate Rule 35

If one of the parties believes the appellate court made an error in its written decision, they can ask the court to reconsider its decision by filing a Petition for Rehearing.

The petition should not simply repeat the arguments already made. It must include the points of law or fact the party thinks the court has overlooked or misunderstood. A Petition for Rehearing must be made in good faith; it cannot be made for delay. See URAP 27 for format requirements.

The petition must be filed with the clerk within 14 days after the court's decision is entered. The court will not accept the Petition for Rehearing if it is not filed by the deadline. The court will not accept more than one Petition for Rehearing. Most petitions for rehearing are not granted.

Petition for Writ of Certiorari in the Utah Supreme Court

Appellate Rule 49

If a party's Petition for Rehearing is denied by the Court of Appeals the party may file a Petition for Writ of Certiorari in the Utah Supreme Court.

A party may also file the Petition for Writ of Certiorari directly after the Court of Appeals decision is entered— they do not have to first file a Petition for Rehearing in the Court of Appeals.

The Petition for Writ of Certiorari must be filed in the Supreme Court within 30 days of the final decision of the Court of Appeals. See our separate [Petition for Writ of Certiorari guide](#) on the courts' website for more information.

The Supreme Court is the court of last resort in Utah. If a party's Writ of Certiorari is denied by the Utah Supreme Court, there are no more appeals available in the Utah State Courts.

Remittitur

Appellate Rule 36

Once the case is completely finished in the appellate court, the appellate court returns the record to the agency and gives up its jurisdiction. This process is called remittitur.

The Supreme Court generally issues the remittitur 15 days after the decision is filed.
The Court of Appeals generally issues the remittitur 35 days after the decision is filed.

Appellate Rules

The Utah Rules of Appellate Procedure (also called Appellate Rules or URAP) govern appeals cases. The Appellate Rules specify the documents which are required, deadlines for filing documents, document format, etc. This guide explains some of the basic rules that you must follow in an appeal, but it does not explain all of them. You are responsible for familiarizing yourself with the Appellate Rules and following them.

The current [Utah Rules of Appellate Procedure](#) are available on the courts' website. The Appellate Rules are also available in print at the law libraries listed below, and at some public libraries.

Utah State Law Library
450 S. State Street, Rm. W-13
Salt Lake City
801-238-7990
www.utcourts.gov/lawlibrary/

Brigham Young University
Howard W. Hunter Law Library
801-422-3593
<http://lawlib.byu.edu/>

University of Utah
James E. Faust Law Library
383 S. University Street
801-581-6184
www.law.utah.edu/library/

Other Resources

General information about Appeals is available on the court's [Appeals web page](#).

Representing Yourself in an Appeal

People who represent themselves in court without the help of an attorney are called *pro se* or self-represented parties. Self-represented parties are responsible for learning about and following the rules and procedures that govern the court process.

The appellate process is very detailed and can be confusing. The appellate courts highly recommend that parties get the help of an attorney.

Appellate clerks' staff can provide general information about court rules and procedures, but they cannot draft documents or participate directly or indirectly in any court action. Court staff cannot provide advice about what the law is or how it applies to someone's situation.

A self-represented party can only represent himself or herself. They may not represent another person, company, or entity such as a club or association that includes other individuals.

See the court's [Finding Legal Help web page](#) for information about ways to get the help of an attorney.