

Rule 24. Principal and reply briefs.

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Effective:
11/1/2017

- (a) **Principal briefs.** Principal briefs must contain under appropriate headings and in the order indicated:
- (1) **A list of current and former parties.** The list of parties must include:
 - (A) all parties to the proceeding in the appellate court and their counsel; and
 - (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.
 - (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.
 - (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.
 - (4) **An introduction.** The introduction should describe the nature and context of the dispute and explain why the party should prevail on appeal.
 - (5) **A statement of the issue.** The statement of the issue must set forth the issue presented for review, including for each issue:
 - (A) the standard of appellate review with supporting authority; and
 - (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.
 - (6) **A statement of the case.** The statement of the case must include, with citations to the record:
 - (A) the facts of the case, to the extent necessary to understand the issues presented for review;
 - (B) the procedural history of the case, to the extent necessary to understand the issues presented for review; and
 - (C) the disposition in the court or agency whose judgment or order is under review.
 - (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.
 - (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.
 - (9) **A claim for attorney fees.** A party seeking attorney fees for work performed on appeal must state the request explicitly and set forth the legal basis for an award.
 - (10) **A short conclusion.** The conclusion may summarize the party's position and must state the specific relief sought on appeal.
 - (11) **A certificate of compliance.** The filer must certify that the brief complies with:
 - (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
 - (B) Rule 21, governing public and private records.
 - (12) **An addendum.** Subject to Rule 21(h), the addendum must contain a copy of:

- (A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;
- (B) the order, judgment, opinion, or decision under review and any related minute entries, findings of fact, and conclusions of law; and
- (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:

- (1) a table of contents, as required by paragraph (a)(2);
- (2) a table of authorities, as required by paragraph (a)(3);
- (3) an argument, as required by paragraph (a)(8);
- (4) a conclusion, as required by paragraph (a)(10); and
- (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.**

- (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.
- (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.**

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

Type of brief	Page limit
Legality of death sentence, principal brief	25,000
Legality of death sentence, reply brief	30,000
Other cases, principal brief	30,000
Other cases, reply brief	7,500

(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.

(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:

(1) the citation to the authority;

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

(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.

Effective November 1, 2017

Advisory Committee Notes

The 2017 amendments substantially change the organization and content of briefs. An important objective of the amendments is to present the party's case in logical order, in measured increments, and without unnecessary repetition. The principal brief of each party must meet the same requirements.

Paragraph (a)(4). A party's principal brief should include an introduction. The author should focus the introduction on the important features of the case. The introduction to one case may be only a few sentences, while a more complex case may require a few paragraphs or perhaps a few pages. The objective of the introduction is to give the reader a sense of the forest before detailing the trees.

Paragraph (a)(6). The statement of the case should describe the facts surrounding the dispute and procedural history of the litigation, but only to the extent that these are necessary to understand the issues. Describing a fact or circumstance or proceeding that has no bearing on the issues adds words of no value and distracts the reader. When stating a fact or describing a proceeding, a concise narrative is sometimes a better presentation than a numbered, itemized list. The party must cite to the places in the record that support the statement.

Paragraph (a)(8). The 2017 amendments remove the reference to marshaling. *State v. Nielsen*, 2014 UT 10, 326 P.3d 645, holds that the failure to marshal is not a technical deficiency resulting in default, but is a manner in which an appellant may carry its burden of persuasion when challenging a finding or verdict.

Paragraph (a)(11). The certificate of compliance is expanded to include not only compliance with the limit on the length of the brief, but also compliance with the public/private record requirements of Rule 21. Briefs, including the addendum containing trial court records, are public documents, increasingly available on the Internet. However, many trial court records are not public. If the author needs to include a non-public document in an addendum or non-public information in the body of the brief, Rule 21 requires that an identical, public brief be filed, but with the non-public information removed.

Paragraph (b). The purpose of a reply brief is to respond to the facts and arguments presented in an appellee's principal brief, not to reiterate points already made in the appellant's principal brief, nor to introduce new matters that should have been raised in that brief. Although not required, it is good practice to identify the point that is being responded to.

Paragraph (d). Describing the actors in a dispute and litigation presents a challenge to the author of a brief. Consistency promotes clarity; having chosen a term, phrase, name, or initials to define a party, person, or entity, the author should use it throughout a brief.

The name of a minor is often a private record and caution should be used to avoid including other names or information from which a minor might be identified. A minor's surname should be used only with the informed consent of a mature minor. The author may file a private brief for the parties and the court using the minor's name while simultaneously filing an otherwise identical public brief with the minor's name omitted, redacted, reduced to initials, or substituted with a placeholder name. A minor may be referred to by a descriptive term such as "the child," "the 11-year old," or "the sister." The biological, adoptive, or foster parents of minors may be referred to by their relation to the minor, such as "mother," "adoptive parent," or "foster father."

While the name of an adult is usually a public record, the author should recognize the intrusion into the lives of victims, witnesses, and others who are not principals in the dispute caused by a brief published on the Internet. Also, the use of names is disfavored when clarity and discretion can be promoted by use of a reference based on the person's role in the dispute or the case. Parties and other persons and entities should generally be referred to by their role in the dispute, such as "employee," "Defendant Employer," or "the Taxpayer." Descriptions such as "witness" or "neighbor" can also be useful while respecting the interests of non-parties. The reference chosen should be the one most relevant to the matters on appeal.

Paragraph (g). Because of the increasing rarity of monospaced font, the 2017 amendments eliminated the number of lines as a measure of a brief's length. And to improve the clarity of Rule24, the 2017 amendments moved the requirements for briefs in a cross-appeal to Rule24A.

Adopted 2017
