



# UTAH STATE COURTS

## **Guide to Appealing a Child Welfare Case**

### **Appealing a Juvenile Court Child Welfare Case to the Utah Court of Appeals**

#### **Utah Supreme Court**

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#### **Utah Court of Appeals**

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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**

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This guide is for child welfare cases that are being appealed from the juvenile court to the Utah Court of Appeals. Child welfare cases are defined by Utah Rule of Appellate Procedure 1(f) as those cases related to abuse, neglect, dependency, termination of parental rights, and adoption.

There are separate guides for:

- Appealing a decision from the district court or non child welfare decisions of the juvenile court to the Court of Appeals or Supreme Court
- Appealing a decision from an administrative agency (Writ of Review)
- 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 an appeal?**

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An appeal is a review by the Court of Appeals to determine if the juvenile court made a legal mistake. A child welfare appeal is started by filing a notice of appeal in the juvenile court within 15 days of the juvenile court's order.

The Court of Appeals does not retry the case, take evidence, or weigh the credibility of witnesses. The appeal must be based on the record created in the trial court, and the person who is appealing must show that the trial court 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.

### **Who can appeal?**

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Only a party in the original case can appeal the decision of the juvenile court. A party can represent himself or herself, but cannot represent anyone else, such as another person or business. Only an attorney who is licensed to practice in Utah can represent someone in an appeal.

### **Final judgment or order**

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The final **judgment** or **order** is the final result in a stage of a child welfare case. Usually, adjudication orders, orders terminating parental rights, or other orders ending the juvenile court's jurisdiction are the final orders in a child welfare proceeding. The judgment or order must be in writing. Sometimes the judge makes an order on the record but there is no written order signed by the judge. A party must then prepare and submit to the trial court a written order for the judge to sign before the appeal can proceed.

## **Fees**

### Appellate Rule 3

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When the Notice of Appeal is filed, the appellant must pay a filing fee of \$240.00 and a cost bond of \$300.00 to the juvenile court. There is no fee for Child Welfare cases if the appellant has appointed counsel.

The cost bond is like an insurance policy the appellant is buying to cover expenses the appellee might have to defend against the appeal. The appellant may ask the trial court to return the bond once the appeal is complete.

If the appellant can't pay the required fees, they can ask the juvenile court to waive the filing fee if they can show that they meet certain financial/income guidelines. The appellant must fill out and file a [Motion to Waive Fees](#) with the juvenile court. If the appellant also wants to waive the cost bond, they must specifically ask for that in their motion.

Even if a waiver of the filing fee and cost bond is approved by the juvenile court, the appellant will still have to pay other costs associated with the appeal. For example, if the appellant requests a transcript of the juvenile court proceedings, then they must pay the court reporter to prepare it. The appellate courts also charge for copies of documents.

## **Filing**

### Appellate Rule 21

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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:

- If a document other than a brief is delivered by email, a paper copy does not need to be delivered.
- If a brief is delivered by email, paper copies of the brief must be delivered to the court no more than 7 days after filing by email.

- Documents filed by email will be considered timely filed if the email is received before midnight on the last day for filing.
- If a party emails a document to the court as an attachment, an automatic response will be emailed as confirmation of receipt of the document.
- If a party emails a document to the court, the party assumes the risk for any problems that may occur.

Email Addresses:

supremecourt@utcourts.gov

courtappeals@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 from child welfare cases on appeal are classified as private by Code of Judicial Administration Rule 4-202.02. These classifications restrict access to the records. 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.

In a child welfare appeal, the briefs may be public documents. If a brief, 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 un-redacted (complete) 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

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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. The time for filing a response to a document filed by email runs from the date the document was received by the court.

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.

- Copies of all documents filed with the appellate court must, at or before the time of filing, be served on all other parties to the appeal or review.
- A copy of any document required by the rules to be served on a party must be accompanied by a certificate of service when filed with the court.
- The time for filing a response to a document served by email runs from the date the document was emailed to the court.
- The time for filing a response to a document served by mail runs from the date of mailing listed on the certificate of service, and three days will be added to the time. Most often the total time for response to any motion served by mail will be 17 calendar days from the date of mailing.

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 Rules 22(b) and 59

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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

If the appellant wants to ask for more time to file the Notice of Appeal, they must file the request in the trial court. Only the trial court can extend the time to file the Notice of Appeal. To ask the trial court for more time, see the forms on the [Motions page](#) on the court's website.

## Procedures

### Child Welfare Appeal Timeline

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Notice of Appeal	Due 15 days after final order of Juvenile Court. Filed with Juvenile Court. (must be signed by appellant <b>and</b> their attorney (if they are represented by an attorney))
<a href="#">Transcript Request</a>	Due 4 days after filing of Notice of Appeal. Filed with the appellate court.
Appellant's Petition on Appeal	Due 15 days after filing of Notice of Appeal. Filed with the appellate court.
Appellee's Response to Petition	Due 15 days after filing of Appellant's Petition on Appeal.
Record Filed	Prepared by Juvenile Court as soon as transcript is complete (if requested)
Review	Court of Appeals reviews the documents to determine if a decision can be issued.



If the court **does** issue an opinion:

Petition for Rehearing  
Optional, due 14 days after the decision is issued. (URAP 35)

Petition for Writ of Certiorari  
Optional, due 30 days after the decision is issued. (URAP 45)  
(To the Utah Supreme Court from a decision of the Utah Court of Appeals)

Remittitur  
Generally issued 35 days after opinion is filed

If the court **does not** issue an opinion:

Appellant's Brief

Appellee's Brief

Appellant's Reply Brief  
Optional.

Calendared  
Court will notify parties if it schedules 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)

Petition for Writ of Certiorari  
Optional, due 30 days after the decision is issued. (URAP 45)  
(To the Utah Supreme Court from a decision of the Utah Court of Appeals)

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

## Notice of Appeal

Appellate Rule 52 and 53

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The appeal process starts when someone files a Notice of Appeal within the time allowed to appeal. The party filing the Notice of Appeal is called the **appellant**, and the party the appeal is against is called the **appellee**.

The Notice of Appeal is filed with the juvenile court. The appellant must file the Notice of Appeal with the clerk of the juvenile court within 15 days after the date of entry of the final judgment or order being appealed.

If the appellant wants to ask for more time to file the Notice of Appeal, they must file the request in the juvenile court. Only the juvenile court can extend the time to file the Notice of Appeal. To ask the juvenile court for more time, see the forms on the [Motions page](#) on the court's website. URAP 59(a).

The appellant must also pay a filing fee and a cost bond to the trial court, or ask to have those costs waived as described in the **Fees** section above.

## After the Notice of Appeal is filed

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After the Notice of Appeal is filed and the filing fee and cost bond have been paid to the trial court, the juvenile court will certify a copy of the Notice of Appeal to the appellate court.

Once the Appellate Clerks' Office receives the Notice of Appeal, it will send a notice to the appellant that will include the appellate case number and the filing deadlines for the required documents. The appellee(s) will also receive a copy of the notice.

## Transcripts

### Appellate Rule 11(e)(1)

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The appellant must request the transcript to be prepared within 4 days of filing the Notice of Appeal.

A transcript is a word-for-word typing of everything that was said on the record during a hearing or the trial held in the juvenile court. 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 juvenile court proceedings.

The appellant must request a transcript using the [online request form](#), unless they are incarcerated or otherwise unable to use the online form, in which case they may use a print form to make the request.

The appellant must serve a copy of the automated response from the online transcript request (or a copy of the transcript request form, if using the print form) 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.

### Cost of Transcripts

Unless the juvenile court determines that the appellant is indigent, the appellant must pay a certified court transcriber the estimated cost of the transcript, and must serve a copy of the transcript on the appellee(s). The cost of transcripts is set by Utah Code Section 78A-2-408 at the following rates:

- \$4.50/page for regular service (within 30 days) Approximately \$250.00/court hour
- \$6.75/page for 1-3 day service
- \$9.00/page for 24 hour service

If the appellant **can't afford the cost of preparing** a transcript, or if a transcript is unavailable, it is possible for the appellant to prepare their own transcript of a court proceeding. The appellant must follow the procedures described in URAP 11(g):

- Appellant prepares a statement of evidence or proceedings. If an audio recording is available, they can use it to put the statement together.
- Appellant must serve the statement on the appellee, who may object or propose amendments within 10 days.
- The statement and any objections or proposed amendments must be submitted to the trial court for approval. If the judge approves, the statement will be sent to the appellate court as a record of the proceedings.

If the appellant is an **indigent parent**, the county in which the trial was held is usually responsible for the cost of transcripts in any first appeal of right in a child welfare case. See Utah Code Section 77-32-305.

In very rare cases the appellant **does not need a transcript** for the appeal. For example, maybe there was no hearing or trial in the case. If the appellant 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 lower court's decision. If it is not provided to the appellate court, the chances of winning on appeal drop dramatically.

## **Petition on Appeal**

Appellate Rule 55

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The Petition on Appeal is the document the appellant uses to identify the legal issues presented for appeal.

The appellant must file Petition on Appeal (original and four copies) with the appellate court within 15 days of the filing of the Notice of Appeal. Failure to file may result in dismissal of the appeal.

The appellant must also serve a copy of the Petition on Appeal on the appellee(s).

## **Response to Petition on Appeal**

Appellate Rule 56

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The appellee has 15 days after being served with the Petition of Appeal to file a Response (original and four copies).

## **After the Petition on Appeal and Response have been Filed**

Appellate Rule 58

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The appellate court will review the Petition on Appeal, response, and the record. The court will decide whether it will issue a written decision based on that review, or ask the parties to file briefs.

## **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 the appeal because it appears that the appellate court does not have jurisdiction.

The parties may each file a response (sometimes called a “memorandum”) explaining why they think the court should – or should not – dismiss 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, it will issue a written decision dismissing the appeal. If the court determines that it does have jurisdiction, it will withdraw the motion for summary disposition and issue a decision on the merits at a later time.

## **Briefing Process**

Appellate Rules 24, 26 & 27

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If the court does not issue a written decision after reviewing the Petition on Appeal and the Response, the case moves on to briefing. The briefing schedule is established by order of the court.

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.

### **Appellant’s Brief**

The appellant’s brief is what the appellant uses to persuade the appellate court that the juvenile court 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. Rule 24 explains what should be included in a brief and how it should be organized.

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

### **Appellee’s Brief**

The appellee can respond to the arguments made by the appellant and explain why the decision in the trial court was correct.

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

### **Reply Brief**

The appellant may file a reply brief in answer to the appellee’s brief. 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 appellee’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

One brief with original signature and 7 copies must be filed with the court.

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

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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.

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 repeat 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 appellant and the appellee each get 15 minutes.

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](#)
- [Supreme Court oral argument recordings](#)
- [Court of Appeals oral argument recordings](#)

## **Appellate Court Decision**

### Appellate Rule 30

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

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

## **Options After the Written Decision is Issued**

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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

## **Petition for Rehearing**

Appellate Rule 35

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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

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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 [Guide to Filing a Petition for Writ of Certiorari](#) on the courts' website for more information.

The Supreme Court is the court of last resort in Utah. If a party's Petition for 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

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Once the case is completely finished in the appellate court, the appellate court returns the record to the trial court 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

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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/](http://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/](http://www.law.utah.edu/library/)

## Other Resources

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

## Representing Yourself in an Appeal

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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, such as another parent, guardian or grandparent.

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