2004

# Ralph Leroy Menzies v. Hank Galetka : Reply Brief of Cross-Appellant

Utah Supreme Court


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IN THE UTAH SUPREME COURT



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| RALPH LEROY MENZIES, | : | |
| Petitioner/Appellee/Cross-Appellant | : | |
| v. | : | |
| HANK GALETKA, | : | Case No. 20040360-SC |
| Respondent/Appellant/Cross-Appellee. | : | |

REPLY BRIEF OF CROSS-APPELLANT

This is the reply brief of Cross-Appellant in a capital post-conviction case presided over by the Honorable Pat B. Brian, Judge of the Third District Court, West Valley Department, Salt Lake County, State of Utah.

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IN THE UTAH SUPREME COURT

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Petitioner/Appellee/Cross-Appellant

v.

HANK GALETKA,

Respondent/Appellant/Cross-Appellee.

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IN THE UTAH SUPREME COURT

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REPLY TO JURISDICTIONAL ARGUMENT

With regard to whether the appeals in case no. 20040360 are from a final, appealable order, Galetka correctly argues that the motion to release evidence for DNA testing was filed in the criminal case, not the civil one. Cross-Appellee's brief page 1-2 n.1. Counsel for Menzies apologizes for her error.

Nonetheless, the record continues to demonstrate that since the filing of the order appealed from in this case on May 10, 2004, the parties have continued to litigate this case in the trial court, countering the assertion that the order appealed from constitutes a final, appealable order. See R. 3935-3948, 3951-3955, 3982-93 (pleadings disputing the transcripts to be included in the record on appeal); R. 3993-3998 (order resolving that dispute); R. 4000-4001, 4022-4026 (motion to appoint counsel for instant appeal); R. 4021-22, 4027-4033 (motion for extraordinary payment of counsel); R. 4076-4086 (opposition to motions to appoint counsel for instant appeal and for extraordinary

payment).

## REPLY TO CASE STATEMENT

Galetka asserts that Menzies killed Maurine Hunsaker, and claims that the sanction orders against Menzies and summary judgment order in favor of Galetka entered as a result of Menzies' failure to cooperate in discovery, and that Menzies failed to perfect his appeal from the adverse summary judgment after this Court gave notice of default. Galetka's brief at 2-3.

Menzies has consistently maintained his innocence (E.g. R. 4126 at 144) and has been unfairly deprived of his rights to litigate his claims. Appellate counsel did not challenge the effectiveness of trial counsel, who worked in the same office. See State v. Menzies, 889 P.2d 393 (Utah), cert. denied, 513 U.S. 1115 (1995). Menzies' state post-conviction lawyer, Edward K. Brass, defaulted away Menzies' rights to challenge the convictions and sentences and litigate his claims, including claims of innocence and that his trial and appellate lawyers were constitutionally ineffective (R. 4125 at 79-80).

The sanctions orders and summary judgment entered in the post-conviction case as a result of the defaults of Brass, about which defaults Menzies was unaware, and not as a result of Menzies' purported failure to cooperate in discovery (e.g. R. 4125 at 79-80).

This Court gave Brass an opportunity to revive the defaulted appeal, and Brass failed to cure the default; Menzies was not aware of the appeal or the default at the time (e.g. R. 4125 at 80).

Galetka argues that Menzies did not make the district attorney a party below or on appeal. Galetka's brief, page 6, n.4.

Under rule 65C, in felony cases originally prosecuted by the district attorney's office, the district attorney's office is not considered a party to the suit. See Rule 65C(h) (designating the State of Utah as represented by the Attorney General's Office as the respondent in felony cases, and designating the original prosecuting entity as the respondent in all other cases).

Rule 65C authorizes trial courts presiding over post-conviction cases to require original prosecuting entities to pay costs in cases involving indigent petitioners, without regard to whether the original prosecuting entities are named as official parties to the litigation. Compare Rule 65C(h) (designating the State of Utah as represented by the Attorney General's Office as the respondent in felony cases, and designating the original prosecuting entity as the respondent in all other cases) with Rule 65C(n) (permitting trial courts to require "any party" to pay costs and to require the "original prosecuting entity" to pay costs in cases with indigent petitioners, regardless of whether case is a felony or misdemeanor).

Galetka argues that the amended notice of cross-appeal added the district attorney's office as a cross-appellee, and was filed thirty four days after the order appealed from, and was therefore untimely. Galetka's brief, page 6 n.4.

The amended notice of appeal did not add the district attorney's office as a cross-

appellee, but added the district attorney's office to the mailing certificate, and expressed the intent to preserve the argument that the district attorney's office or respondent should be required to pay for the costs on appeal if the Division of Finance were not (R. 3948-49, in the addendum to this brief). The portion of the notice of appeal pertaining to the purpose in filing it was not essential. See Utah R. App. P. 3(d) ("The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken."). Including the district attorney's office in the mailing certificate was not essential. See Utah R. App. P. 3(e) (requiring service of the notice of appeal on counsel of record for each party to the judgment appealed from).

In Utah, it is permissible to amend notices of appeal. See In re Discipline of Alex, 2004 UT 81, ¶¶ 13-19, 99 P.3d 865 (amended notice of appeal was viewed as timely filed, after clerk erroneously dismissed original appeal).

The original notice of cross-appeal, in the addendum to this brief, was timely filed and obtained this Court's jurisdiction, and the subsequent amendment of the mailing certificate and explanation of why Menzies was filing the appeal, did not defeat this Court's jurisdiction. Compare Larsen v. Richards, 134 P. 583 (Utah 1913) (holding that errors in notice of appeal did not defeat jurisdiction, particularly given that the errors were in parts of the notice of appeal which were non-essential).

Assuming *arguendo* that the amended notice of appeal was untimely, the original notice of appeal, which was never withdrawn, was adequate to preserve this Court's jurisdiction, despite the lack of mention of the district attorney's office, even if the district attorney's office were an official party. Cf. In re Discipline of Alex, *supra*. See Scudder v. Kennecott Copper Corp., 886 P.2d 48, 50 (Utah 1994) (notice of appeal was not defective for failing to identify all parties to the appeal; notice of appeal must identify party taking appeal, not all parties involved in appeal).

## REPLY TO ARGUMENTS

Galetka repeats the argument made by the Division of Finance, that post-conviction attorneys are expected to pay appellate costs out of their compensation provided by Utah Administrative Rule 25-14-3, and that the trial court erred in requiring the Division to pay appellate costs out of the reasonable expense allocation of 25-14-5. Galetka's brief at 8-9.

This argument is directly contrary to the position taken by Galetka below, that counsel for Menzies should seek reimbursement for costs of appeal from the Division of Finance, and that Galetka would pay what the Division refused to, provided that counsel for Menzies could persuade counsel for Galetka of the relevance of each hearing. See Addendum B to Galetka's brief and the addendum to this brief.[1]

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[1]Galetka's Response to Motion to Require Government to Pay for Transcripts, Printing and Costs of Appeal was omitted from the record on appeal. Galetka filed a motion to supplement the record, and counsel for Menzies filed a non-opposition letter.

It is axiomatic that a party may not lead a trial court into error and then complain about the error on appeal. See, e.g., State v. Dominguez, 2003 UT App 158, ¶ 38, 72 P.3d 127 (discouraging parties from inviting error). Accordingly, this Court should reject Galetka's attack on the trial court's ruling, which essentially comports with the position Galetka advocated before that court.

Galetka contends that his obligation to pay for transcripts under Rule 65C is "irrelevant" because the Division of Finance has agreed to pay for the transcripts, and will be required to pay for the transcripts (either from the $20,000 allocation or from the compensation paid to counsel for Menzies), regardless of whether the Division or Menzies prevails in this appeal. Galetka's brief, page 7 n.5 and pages 9-10.

In the event that this Court determines that it does have jurisdiction over the order appealed from, and publishes an opinion on the issue of payment for transcripts in post-conviction cases, the Court should not disregard Rule 65C as irrelevant, but should consider all related provisions of law. See, e.g., Monson v. Hall, 584 P.2d 833, 834 (Utah 1978) ("One of the cardinal rules of statutory construction requires construction with the objective of bringing consonance to Constitutional and statutory provisions, which will be congruous with expressed intent, and the applicability of the law in general.").

The role of Rule 65C(n), which permits trial courts to order any party to pay costs,

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The Court granted the motion. A copy of the response is in Addendum B to Galetka's Brief and in the addendum to this brief.

and to order original prosecuting entities to pay the costs in post-conviction cases involving indigent petitioners, is an important one. In the normal capital post-conviction case, the petitioner's lawyer should not default away the petitioner's rights, and should spend the $20,000 allocated by R25-14-5 investigating the petitioner's case prior to the evidentiary hearing. Particularly in cases wherein those funds are exhausted, it is critical to recognize the trial courts' continuing authority to require the respondent and/or original prosecuting entity to pay additional costs that may be incurred on appeal, consistent with the government's constitutional duty to provide an adequate record for the appeals in these cases. See Point I of Menzies' original brief, pages 8-16.

As Judge Brian correctly recognized, the $7,500 for appellate post-conviction attorneys provided by R 25-15-5(5) is not sufficient to both compensate the attorneys and cover the costs of appeal (R. 3908). In cases wherein the $20,000 allotment is used for investigation, Rule 65C provides the essential mechanism for trial courts to insure that the government pays the expenses necessary to a full and fair appeal. See Menzies' opening brief Point I, pages 8-16 (explaining the constitutional law requiring, and importance of, thorough records in capital post-conviction cases).

Galetka contends that if this Court requires Galetka or the district attorney's office to pay for the transcripts on appeal, this will result in a "double recovery of costs" by Menzies. Galetka's brief at 2, 10 and 11.

Neither Menzies nor his counsel has paid for any of the transcripts to date,[2] and neither Menzies nor his counsel will recover costs once or twice in the event that the Court rules that the respondent or original prosecuting entity must pay for the transcripts. Rather, in the event that this Court rules that the Galetka or district attorney's office must pay for transcripts, it appears that Galetka or the district attorney's office will reimburse the Division of Finance for the transcripts that have been paid for out of the $20,000 allocation provided by R25-14-5.

Galetka claims the counsel for Menzies waived the arguments regarding the applicability of Rule 65C, because she did not raise them in the trial court. Galetka's brief, page 7 n.5.

Galetka's arguments regarding that inapplicability of Rule 65C, discussed at pages 25-27 of Cross-Appellant's Opening brief, were made by counsel for Galetka for the first time at oral argument (R. 4134 at 22), and were not made in his memorandum opposing Menzies' motion for the government to pay for the transcripts. In the written response before the hearing, Respondent did not contest the applicability of Rule 65C or his obligation to pay for the transcripts, but argued that counsel for Menzies should seek reimbursement for costs of appeal from the Division of Finance first, and then agreed to pay for transcripts the Division would not pay for, on the conditions that counsel for

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[2]Payment records are not currently in the record for citation. In the event that this Court would like proof, counsel for Menzies can provide a document originating from the attorney general's office on this point.

Menzies could persuade counsel for Galetka of the relevance of each hearing, and that the transcripts were not previously transcribed and lost. See Response in Addendum B to Galetka's brief and in the addendum to this brief.

Given that Galetka's position at oral argument (R. 4134 at 22) was so different from the position taken in writing before the hearing (Addendum B to Galetka's brief and in the addendum to this brief), counsel for Menzies did not have a fair opportunity to refute the new argument at oral argument before the trial court.

Assuming *arguendo* that Galetka is correct that Rule 65C and the Post-Conviction Remedies Act do not apply to Menzies' petition, which was originally filed on April 20, 1995, before the effective date of the post-conviction remedies act, see Utah Code Ann. § 78-35a-103 ("Except for the limitation period established in Section 78-35a-107, this chapter applies only to post-conviction proceedings filed on or after July 1, 1996.") and Julian v. State, 52 P.3d 1168 (Utah 2002) (Post-Conviction Remedies Act did not apply to amended petition because original petition was filed before effective date of the act), the government still has a constitutional obligation to provide the transcripts necessary to Menzies' appeal. See, e.g., Griffin v. Illinois, 351 U.S. 12 (1956); Mayer v. City of Chicago, 404 U.S. 189 (1971); Lane v. Brown, 372 U.S. 477 (1963), and other constitutional law discussed in Point I, pages 10-16 of Menzies' Responsive Brief of Appellee and Opening Brief of Cross-Appellant.

Galetka contends that counsel for Menzies waived some of the constitutional

arguments raised on appeal because they were not raised in the initial memorandum supporting the motion to require the government to pay for the transcripts. Galetka's brief at 7 n.5.

The authority relied on by Galetka, State v. Kruger, 2000 UT 60, ¶¶ 20-21, 6 P.3d 1116, stands for the proposition that an appellate court may strike an argument raised in a reply brief, which was a new argument and did not reply to any argument raised by the State. See id. It does not stand for the proposition that parties may not raise new arguments in reply memoranda in the trial courts. See id. While Utah R. App. 24 (c) expressly limits reply briefs on appeal to replying to new matters raised in the opposing briefs, Kruger at ¶¶ 20 and 21, the civil rule governing motions does not limit the content of reply memoranda, see Utah R. Civ. P. 7.

As a factual matter, the record demonstrates that counsel for Menzies first informed the trial court of the constitutional bases of the need for a thorough record in this capital case in the Memorandum Supporting Motion for Order to Produce the Record and to Vacate the Summary Judgment and Stay the Proceedings Pending Production of the Record, filed on August 12, 2003. See id. (R. 2311-2321) (discussing federal and state due process, federal access to the courts, state open courts, state courts of record provisions).

In seeking an order for the government to pay for the transcripts, the initial memorandum filed on March 3, 2004, primarily discussed the specific rule provisions

requiring the government to pay, and also asserted that ordering the government to pay would be consistent with Menzies' constitutional rights to due process and access to the courts (R. 3792-3799). Counsel for Menzies received Galetka's memorandum suggesting that Galetka would pay for transcripts if counsel could persuade his counsel of their relevance (Addendum B to Galetka's brief and in the addendum to this brief), and the Division of Finance's response that it should only be required to pay for transcripts that had not previously been transcribed and were deemed relevant (R. 3830-3835), both of which were filed on March 17, 2004. Counsel for Menzies then filed a lengthy reply memorandum refuting the government's contentions that the record should be limited on appeal, and explaining why the constitutions required a full record (R. 3836-3850).

Because the constitutional arguments were made in reply to the government's responses, they were not waived. Cf. State v. Kruger, 2000 UT 60, ¶¶ 20-21, 6 P.3d 1116 (striking argument raised in reply which was new argument and did not reply to any argument raised by the State).

Assuming arguendo that the constitutional arguments were not timely raised in the reply memorandum, the trial court had the opportunity and authority to consider them, mooting any concerns about waiver. Cf., e.g., State v. Weeks, 2000 UT App 273, ¶ 11, 12 P.3d 110 (discussing case law recognizing trial court authority to resuscitate waived issues by considering them), aff'd, 61 P.3d 1000 (Utah 2002).

Even if the trial court did not consider the arguments, this Court could still rely on

the constitutional law discussed in Menzies' Opening Brief to affirm the trial court's order. See, Buehner Block Co. v. UWC Assocs., 752 P.2d 892, 895 (Utah 1988) ("[W]e may affirm trial court decisions on any proper ground(s), despite the trial court's having assigned another reason for its ruling.").

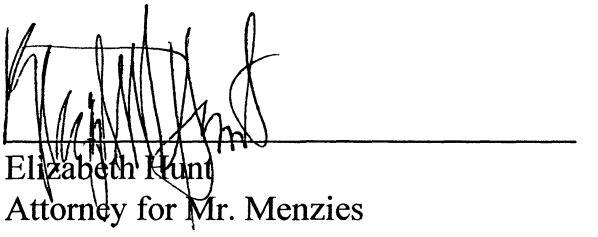
Galetka contends that under this Court's order, counsel for Menzies may have to pay for transcripts ordered for the 60(b) appeal, in the event that Court strikes any of the transcripts from the record. Respondent's brief at 10 n.8. This argument misreads the Court's order.

This Court's order of June 30, 2004, clearly distinguishes between Menzies ("Appellant") and counsel for Menzies ("Appellant's counsel"), and reflects that if the Court finds that a transcript was ordered that was not referenced during the 60(b) proceedings, "Appellant shall be required to reimburse the State for the costs of procuring the transcript." See Addendum D to Galetka's brief.

## Conclusion

This Court should affirm the trial court's ruling requiring the Division of Finance to pay the costs of Menzies' appeal. Alternatively, this Court should remand this matter to the trial court for the entry of an order requiring Galetka or the district attorney's office to pay the costs of appeal under Utah R. Civ. P. 65C(n), or ordering the government to pay for the transcripts under the constitutional law discussed in Point I of Menzies' original brief.

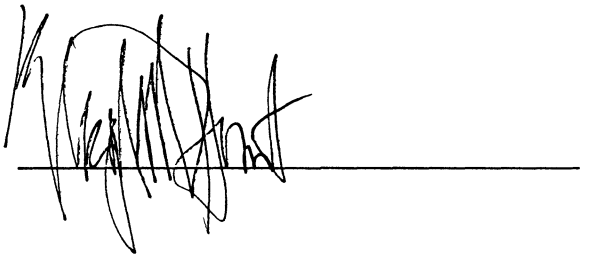
Respectfully submitted on April 8, 2005.



Elizabeth Hunt
Attorney for Mr. Menzies

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing to Assistant Attorney General Joel Ferre, 160 East 300 South, P.O. Box 140857, Salt Lake City, Utah 84114-0857, to Assistant Attorney General Thomas Brunker and Assistant Attorney General Erin Riley, 160 East 300 South, 6th Floor, P.O. Box 140854, Salt Lake City, Utah 84114-0854, and to Chief Deputy District Attorney B. Kent Morgan, 111 East Broadway, Suite 400, Salt Lake City, Utah, 84111, on April 8, 2005.



# ADDENDUM

Utah Code Ann. § 78-35a-103

Except for the limitation period established in Section 78-35a-107, this chapter applies only to post-conviction proceedings filed on or after July 1, 1996.

Utah Administrative Rule 25-14

R25-14. Payment of Attorneys Fees in Death Penalty Cases.

R25-14-1. Authority and Purpose.
(1) This rule is implemented pursuant to Section 78-35a-202.
(2) The purpose of the rule is to establish the procedures and maximum compensation amounts to be paid for attorneys fees and litigation expenses by the Division of Finance to legal counsel appointed by district courts to represent indigent persons sentenced to death who request representation to file an action under Title 78, Chapter 35a, Post-Conviction Remedies Act.

R25-14-2. Request for Payment.
In order to obtain payment for attorney's fees and litigation expenses, counsel appointed by a district court, pursuant to Section 78-35a-202(2)(c), shall present to the Division of Finance a certified copy of the district court order of appointment of legal counsel and a signed Request for Payment verifying the work has been performed as provided in Section R25-14-4 pursuant to the schedule of payments set forth in that section.

R25-14-3. Scope of Services.
(1) All appointed counsel, by accepting the court appointment to represent an indigent client sentenced to death and by presenting a Request for Payment to the Division of Finance, agree to provide all reasonable and necessary post-conviction legal services for the client, including timely filing an action under the provisions of Title 78, Chapter 35a, Post-Conviction Remedies Act and representing the client in all legal proceedings conducted thereafter including, if requested by the client, an appeal to the Utah Supreme Court.
(2) All appointed counsel agree to accept as full compensation for the legal services performed and litigation costs incurred the amounts provided in the Schedule of Payments of Attorneys Fees found in Section R25-14-4.

R25-14-4. Schedule of Payments of Attorneys Fees.
All counsel appointed to jointly represent a single client shall be paid, in the aggregate, according to the following schedule of payments upon certification to the Division of Finance that the specified legal service was performed or the specified events have occurred:
(1) $5,000.00 upon appointment by the district court and presentation of a signed Request for Payment to the Division of Finance.
(2) $5,000.00 upon timely filing a petition for post-conviction relief.
(3) $10,000.00 after all discovery has been completed, all prehearing motions have been ruled upon, and a date for an evidentiary hearing has been set.
(4) If an evidentiary hearing is required, $5,000.00 on the date the first witness is sworn.
(5) $7,500.00 if an appeal is filed from a final order of the district court. $5,000.00 of the total shall be paid when the brief on behalf of the indigent person is filed and $2,500.00 when the Utah Supreme Court finally remits the case to the district court.
(6) An additional fee of $100 per hour, but in no event to exceed $5,000.00 in the aggregate, shall be paid if:
(a) counsel satisfy the requirements of Rule 4-505, Utah Code of Judicial Administration; and
(b) the district court finds:

(i) that the appointed counsel provided extraordinary legal services that were not reasonably foreseeable at the time of accepting the appointment, such as responding to or filing a petition for interlocutory appeal, and
(ii) the services were both reasonable and necessary for the presentation of the client's claims.
(c) These additional fees shall be paid upon approval by the district court and compliance with the provisions of this rule.

R25-14-5. Payment of Reasonable Litigation Expenses.
The Division of Finance shall pay reasonable litigation expenses not to exceed a total of $20,000.00 in any one case for court approved investigators, expert witnesses, and consultants. Before payment is made for litigation expenses, the appointed counsel must submit a request for payment to the Division of Finance including:
(1) a detailed invoice of all expenses for which payment is requested; and
(2) written approval of the district court certifying that the expenses were both reasonable and necessary for the presentation of the client's claims.

R25-14-6. Withdrawal of Counsel.
(1) If an attorney appointed under Section 78-35a-202 is permitted to withdraw by the court or, due to death or disability, is unable to continue, the attorney shall be paid only for the actual work performed to the date of withdrawal as certified by the court.
(2) If withdrawal is ordered by the court because of counsel's improper conduct or the court finds that a foreseeable conflict of interest which should have been disclosed prior to appointment existed, all compensation received by the attorney shall be repaid to the Division of Finance.

Utah Rule of Appellate Procedure 3

**(a) Filing Appeal From Final Orders and Judgments.** An appeal may be taken from a district or juvenile court to the appellate court with jurisdiction over the appeal from all final orders and judgments, except as otherwise provided by law, by filing a notice of appeal with the clerk of the trial court within the time allowed by Rule 4. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the appellate court deems appropriate, which may include dismissal of the appeal or other sanctions short of dismissal, as well as the award of attorney fees.

**(b) Joint or Consolidated Appeals.** If two or more parties are entitled to appeal from a judgment or order and their interests are such as to make joinder practicable, they may file a joint notice of appeal or may join in an appeal of another party after filing separate timely notices of appeal. Joint appeals may proceed as a single appeal with a single appellant. Individual appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party, or by stipulation of the parties to the separate appeals.

**(c) Designation of Parties.** The party taking the appeal shall be known as the appellant and the adverse party as the appellee. The title of the action or proceeding shall not be changed in consequence of the appeal, except where otherwise directed by the appellate court. In original proceedings in the appellate court, the party making the original application shall be known as the petitioner and any other party as the respondent.

**(d) Content of Notice of Appeal.** The notice of appeal shall specify the party or parties taking the appeal; shall designate the judgment or order, or part thereof, appealed from; shall designate the court from which the appeal is taken; and shall designate the court to which the appeal is taken.

**(e) Service of Notice of Appeal.** The party taking the appeal shall give notice of the filing of a notice of appeal by serving personally or mailing a copy thereof to counsel of record of each party to the judgment or order; or, if the party is not represented by counsel, then on the party at the party's last known address. A certificate evidencing such service shall be filed with the notice of appeal. If counsel of record is served, the certificate of service shall designate the name of the party represented by that counsel.

**(f) Filing Fee in Civil Appeals.** At the time of filing any notice of separate, joint, or cross appeal in a civil case, the party taking the appeal shall pay to the clerk of the trial court the filing fee established by law. The clerk of the trial court shall not accept a notice of appeal unless the filing fee is paid.

**(g) Docketing of Appeal.** Upon the filing of the notice of appeal and payment of the required fee, the clerk of the trial court shall immediately transmit a certified copy of the notice of appeal, showing the date of its filing, and a copy of the bond required by Rule 6 or a certification by the clerk that the bond has been filed, to the clerk of the appellate court. Upon receipt of the copy of the notice of appeal, the clerk of the appellate court shall enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the trial court, with the appellant identified as such, but if the title does not contain the name of the appellant, such name shall be added to the title.

Utah Rule of Appellate Procedure 24

**(a) Brief of the appellant.** The brief of the appellant shall contain under appropriate headings and in the order indicated:

(a)(1) A complete list of all parties to the proceeding in the court or agency whose judgment or order is sought to be reviewed, except where the caption of the case on appeal contains the names of all such parties. The list should be set out on a separate page which appears immediately inside the cover.

(a)(2) A table of contents, including the contents of the addendum, with page references.

(a)(3) A table of authorities with cases alphabetically arranged and with parallel citations, rules, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(a)(4) A brief statement showing the jurisdiction of the appellate court.

(a)(5) A statement of the issues presented for review, including for each issue: the standard of appellate review with supporting authority; and

(a)(5)(A) citation to the record showing that the issue was preserved in the trial court; or

(a)(5)(B) a statement of grounds for seeking review of an issue not preserved in the trial court.

(a)(6) Constitutional provisions, statutes, ordinances, rules, and regulations whose interpretation is determinative of the appeal or of central importance to the appeal shall be set out verbatim with the appropriate citation. If the pertinent part of the provision is lengthy, the citation alone will suffice, and the provision shall be set forth in an addendum to the brief under paragraph (11) of this rule.

(a)(7) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of proceedings, and its disposition in the court below. A statement of the facts relevant to the issues presented for review shall follow. All statements of fact and references to the proceedings below shall be supported by citations to the record in accordance with paragraph (e) of this rule.

(a)(8) Summary of arguments. The summary of arguments, suitably paragraphed, shall be a succinct condensation of the arguments actually made in the body of the brief. It shall not be a mere repetition of the heading under which the argument is arranged.

(a)(9) An argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, with citations to the authorities, statutes, and parts of the record relied on. A party challenging a fact finding must first marshal all record evidence that supports the challenged finding. A party seeking to recover attorney's fees incurred on appeal shall state the request explicitly and set forth the legal basis for such an award.

(a)(10) A short conclusion stating the precise relief sought.

(a)(11) An addendum to the brief or a statement that no addendum is necessary under this paragraph. The addendum shall be bound as part of the brief unless doing so makes the brief unreasonably thick. If the addendum is bound separately, the addendum shall contain a table of contents. The addendum shall contain a copy of:

(a)(11)(A) any constitutional provision, statute, rule, or regulation of central importance cited in the brief but not reproduced verbatim in the brief;

(a)(11)(B) in cases being reviewed on certiorari, a copy of the Court of Appeals opinion; in all cases any court opinion of central importance to the appeal but not available to the court as part of a regularly published reporter service; and

(a)(11)(C) those parts of the record on appeal that are of central importance to the determination of the appeal, such as the challenged instructions, findings of fact and conclusions of law, memorandum decision, the transcript of the court's oral decision, or the contract or document subject to construction.

**(b) Brief of the appellee.** The brief of the appellee shall conform to the requirements of paragraph (a) of this rule, except that the appellee need not include:

(b)(1) a statement of the issues or of the case unless the appellee is dissatisfied with the statement of the appellant; or

(b)(2) an addendum, except to provide material not included in the addendum of the appellant. The appellee may refer to the addendum of the appellant.

**(c) Reply brief.** The appellant may file a brief in reply to the brief of the appellee, and if the appellee has cross-appealed, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. Reply briefs shall be limited to answering any new matter set forth in the opposing brief. The content of the reply brief shall conform to the requirements of paragraph (a)(2), (3), (9), and (10) of this rule. No further briefs may be filed except with leave of the appellate court.

**(d) References in briefs to parties.** Counsel will be expected in their briefs and oral arguments to keep to a minimum references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the lower court or in the agency proceedings, or the actual names of parties, or descriptive terms such as "the employee," "the injured person," "the taxpayer," etc.

**(e) References in briefs to the record.** References shall be made to the pages of the original record as paginated pursuant to Rule 11(b) or to pages of any statement of the evidence or proceedings or agreed statement prepared pursuant to Rule 11(f) or 11(g). References to pages of published depositions or transcripts shall identify the sequential number of the cover page of each volume as marked by the clerk on the bottom right corner and each separately numbered page(s) referred to within the deposition or transcript as marked by the transcriber. References to exhibits shall be made to the exhibit numbers. If reference is made to evidence the admissibility of which is in controversy, reference shall be made to the pages of the record at which the evidence was identified, offered, and received or rejected.

**(f) Length of briefs.** Except by permission of the court, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or portions of the record as required by paragraph (a) of this rule. In cases

involving cross-appeals, paragraph (g) of this rule sets forth the length of briefs.

**(g) Briefs in cases involving cross-appeals.** If a cross-appeal is filed, the party first filing a notice of appeal shall be deemed the appellant for the purposes of this rule and Rule 26, unless the parties otherwise agree or the court otherwise orders. The brief of the appellant shall not exceed 50 pages in length. The brief of the appellee/cross-appellant shall contain the issues and arguments involved in the cross-appeal as well as the answer to the brief of the appellant and shall not exceed 50 pages in length. The appellant shall then file a brief which contains an answer to the original issues raised by the appellee/cross-appellant and a reply to the appellee's response to the issues raised in the appellant's opening brief. The appellant's second brief shall not exceed 25 pages in length. The appellee/cross-appellant may then file a second brief, not to exceed 25 pages in length, which contains only a reply to the appellant's answers to the original issues raised by the appellee/cross-appellant's first brief. The lengths specified by this rule are exclusive of table of contents, table of authorities, and addenda and may be exceeded only by permission of the court. The court shall grant reasonable requests, for good cause shown.

**(h) Briefs in cases involving multiple appellants or appellees.** In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

**(i) Citation of supplemental authorities.** When pertinent and significant authorities come to the attention of a party after that party's brief has been filed, or after oral argument but before decision, a party may promptly advise the clerk of the appellate court, by letter setting forth the citations. An original letter and nine copies shall be filed in the Supreme Court. An original letter and seven copies shall be filed in the Court of Appeals. There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall without argument state the reasons for the supplemental citations. Any response shall be made within 7 days of filing and shall be similarly limited.

**(j) Requirements and sanctions.** All briefs under this rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs which are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees against the offending lawyer.

Utah Rule of Civil Procedure 7

**(a) Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

**(b) Motions.** An application to the court for an order shall be by motion which, unless made during a hearing or trial or in proceedings before a court commissioner, shall be made in accordance with this rule. A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought.

**(c) Memoranda.**

(c)(1) *Memoranda required, exceptions, filing times.* All motions, except uncontested or ex parte motions, shall be accompanied by a supporting memorandum. Within ten days after service of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition. Within five days after service of the memorandum in opposition, the moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised in the memorandum in opposition. No other memoranda will be considered without leave of court. A party may attach a proposed order to its initial memorandum.

(c)(2) *Length.* Initial memoranda shall not exceed 10 pages of argument without leave of the court. Reply memoranda shall not exceed 5 pages of argument without leave of the court. The court may permit a party to file an over-length memorandum upon ex parte application and a showing of good cause.

(c)(3) *Content.*

(c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a statement of material facts as to which the moving party contends no genuine issue exists. Each fact shall be separately stated and numbered and supported by citation to relevant materials, such as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.

(c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a verbatim restatement of each of the moving party's facts that is controverted, and may contain a separate statement of additional facts in dispute. For each of the moving party's facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials. For any additional facts set forth in the opposing memorandum, each fact shall be separately stated and numbered and supported by citation to supporting materials, such as affidavits or discovery materials.

(c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table of contents and a table of authorities with page references.

(c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of documents cited in the memorandum, such as affidavits or discovery materials.

**(d) Request to submit for decision.** When briefing is complete, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

**(e) Hearings.** The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing shall be separately identified in the caption of the document containing the request. The court shall grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

**(f) Orders.**

(f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.

**(g) Objection to court commissioner's recommendation.** A recommendation of a court commissioner is the order of the court until modified by the court. A party may object to the recommendation by filing an objection in the same manner as filing a motion within ten days after the recommendation is made in open court or, if the court commissioner takes the matter under advisement, ten days after the minute entry of the recommendation is served. A party may respond to the objection in the same manner as responding to a motion.

Utah Rule of Civil Procedure 65C
**(a) Scope.** This rule shall govern proceedings in all petitions for post-conviction relief filed under Utah Code Ann. §§ 78-35a-101 et seq., Post-Conviction Remedies Act.

**(b) Commencement and Venue.** The proceeding shall be commenced by filing a petition

with the clerk of the district court in the county in which the judgment of conviction was entered. The petition should be filed on forms provided by the court. The court may order a change of venue on its own motion if the petition is filed in the wrong county. The court may order a change of venue on motion of a party for the convenience of the parties or witnesses.

**(c) Contents of the Petition.** The petition shall set forth all claims that the petitioner has in relation to the legality of the conviction or sentence. Additional claims relating to the legality of the conviction or sentence may not be raised in subsequent proceedings except for good cause shown. The petition shall state:

(1) whether the petitioner is incarcerated and, if so, the place of incarceration;

(2) the name of the court in which the petitioner was convicted and sentenced and the dates of proceedings in which the conviction was entered, together with the court's case number for those proceedings, if known by the petitioner;

(3) in plain and concise terms, all of the facts that form the basis of the petitioner's claim to relief;

(4) whether the judgment of conviction, the sentence, or the commitment for violation of probation has been reviewed on appeal, and, if so, the number and title of the appellate proceeding, the issues raised on appeal, and the results of the appeal;

(5) whether the legality of the conviction or sentence has been adjudicated in any prior post-conviction or other civil proceeding, and, if so, the case number and title of those proceedings, the issues raised in the petition, and the results of the prior proceeding; and

(6) if the petitioner claims entitlement to relief due to newly discovered evidence, the reasons why the evidence could not have been discovered in time for the claim to be addressed in the trial, the appeal, or any previous post-conviction petition.

**(d) Attachments to the Petition.** If available to the petitioner, the petitioner shall attach to the petition:

(1) affidavits, copies of records and other evidence in support of the allegations;

(2) a copy of or a citation to any opinion issued by an appellate court regarding the direct appeal of the petitioner's case;

(3) a copy of the pleadings filed by the petitioner in any prior post-conviction or other civil proceeding that adjudicated the legality of the conviction or sentence; and

(4) a copy of all relevant orders and memoranda of the court.

**(e) Memorandum of Authorities.** The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.

**(f) Assignment.** On the filing of the petition, the clerk shall promptly assign and deliver it to the judge who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk shall assign the case in the normal course.

**(g)**(1) *Summary Dismissal of Claims.* The assigned judge shall review the petition, and, if it is apparent to the court that any claim has been adjudicated in a prior proceeding, or if any claim in the petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating either that the claim has been adjudicated or that the claim is frivolous on its face. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal. The order of dismissal need not recite findings of fact or conclusions of law.

(2) A petition is frivolous on its face when, based solely on the allegations contained in the pleadings and attachments, it appears that:

(A) the facts alleged do not support a claim for relief as a matter of law;

(B) the claims have no arguable basis in fact; or

(C) the petition challenges the sentence only and the sentence has expired prior to the filing of the petition.

(3) If a petition is not frivolous on its face but is deficient due to a pleading error or failure to comply with the requirements of this rule, the court shall return a copy of the petition with leave to amend within 20 days. The court may grant one additional 20 day period to amend for good cause shown.

(4) The court shall not review for summary dismissal the initial post-conviction petition in a case where the petitioner is sentenced to death.

**(h) Service of Petitions.** If, on review of the petition, the court concludes that all or part of the petition should not be summarily dismissed, the court shall designate the portions of the petition that are not dismissed and direct the clerk to serve a copy of the petition, attachments and memorandum by mail upon the respondent. If the petition is a challenge to a felony conviction or sentence, the respondent is the state of Utah represented by the Attorney General. In all other cases, the respondent is the governmental entity that prosecuted the petitioner.

**(i) Answer or Other Response**. Within 30 days (plus time allowed under these rules for service by mail) after service of a copy of the petition upon the respondent, or within such other period of time as the court may allow, the respondent shall answer or otherwise respond to the portions of the petition that have not been dismissed and shall serve the answer or other response upon the petitioner in accordance with Rule 5(b). Within 30 days (plus time allowed for service by mail) after service of any motion to dismiss or for summary judgment, the petitioner may respond by memorandum to the motion. No further pleadings or amendments will be permitted unless ordered by the court.

**(j) Hearings.** After pleadings are closed, the court shall promptly set the proceeding for a hearing or otherwise dispose of the case. The court may also order a prehearing conference, but the conference shall not be set so as to delay unreasonably the hearing on the merits of the petition. At the prehearing conference, the court may:

(1) consider the formation and simplification of issues;

(2) require the parties to identify witnesses and documents; and

(3) require the parties to establish the admissibility of evidence expected to be presented at the evidentiary hearing.

**(k) Presence of the Petitioner at Hearings.** The petitioner shall be present at the prehearing conference if the petitioner is not represented by counsel. The prehearing conference may be conducted by means of telephone or video conferencing. The petitioner shall be present before the court at hearings on dispositive issues but need not otherwise be present in court during the proceeding. The court may conduct any hearing at the correctional facility where the petitioner is confined.

**(l) Discovery; Records.** Discovery under Rules 26 through 37 shall be allowed by the court upon motion of a party and a determination that there is good cause to believe that discovery is necessary to provide a party with evidence that is likely to be admissible at an evidentiary hearing. The court may order either the petitioner or the respondent to obtain any relevant transcript or court records.

**(m) Orders; Stay.**

(1) If the court vacates the original conviction or sentence, it shall enter findings of fact and conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony conviction, the order shall be stayed for 5 days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial, pursue a new sentence, appeal the order, or take no action. Thereafter the stay of the order is governed by these rules and by the Rules of Appellate Procedure.

(2) If the respondent fails to provide notice or gives notice that no action will be taken, the stay shall expire and the court shall deliver forthwith to the custodian of the petitioner the order to release the petitioner.

(3) If the respondent gives notice that the petitioner will be retried or resentenced, the trial court may enter any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary and proper.

**(n) Costs.** The court may assign the costs of the proceeding, as allowed under Rule 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court may direct the

costs to be paid by the governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of Corrections, Section 64-13-23 and Sections 21-7-3 through 21-7- 4.7 govern the manner and procedure by which the trial court shall determine the amount, if any, to charge for fees and costs.

**(o) Appeal.** Any final judgment or order entered upon the petition may be appealed to and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with the statutes governing appeals to those courts.

[redacted]mas B. Brunker, #4804
[redacted]n Riley, #4875
[redacted]istant Attorneys General
[redacted]K L. SHURTLEFF, #4666
[redacted]n Attorney General
[redacted]er Wells Bldg.
[redacted] East 300 South, 6th Floor
[redacted]O. Box 140854
[redacted]t Lake City, Utah 84114-0854
[redacted]lephone: (801) 366-0180

[redacted]espondent's counsel

IN THE THIRD JUDICIAL DISTRICT COURT

SALT LAKE COUNTY, STATE OF UTAH

| | |
|---|---|
| RALPH LEROY MENZIES,<br><br>Petitioner,<br><br>v.<br><br>HANK GALETKA, Utah State Prison Warden,<br><br>Respondent. | RESPONSE TO MOTION TO REQUIRE GOVERNMENT TO PAY FOR TRANSCRIPTS, PRINTING AND COSTS FOR APPEAL<br><br>Judge Pat B. Brian<br><br>Case No. 030106629 |

Respondent, through counsel, submits the following response to petitioner's motion to order "the government" to pay for transcripts and his costs on appeal, including printing.

It appears that petitioner directs most of the argument to the Division of Finance, not respondent. To the extent petitioner asks the Court to order respondent to pay for the

transcripts and "costs of appeal," including printing costs, respondent responds as follows:

1. Petitioner should first seek reimbursement from the Division of Finance for all "costs of appeal."

2. If the Division of Finance refuses to pay for transcripts of any hearing the Court held in these Utah R. Civ. P. 60(b) proceedings, beginning August 12, 2003, respondent will pay for the transcription if petitioner can establish the relevance of the particular, untranscribed hearing.[1]

3. Petitioner has indicated that he is "inclined to obtain all transcripts," identifying transcripts dating back to March 6, 1996. See addendum A. Respondent objects to ordering the transcription of hearings that pre-date the rule 60(b) proceedings. At this stage, petitioner only has the right to appeal the denial of rule 60(b) relief. Any hearings that petitioner failed to have transcribed and included in the record for the Court to consider in the rule 60(b) proceedings are irrelevant for appellate purposes. In addition, respondent objects to paying for transcripts of rule 60(b) hearings without petitioner first demonstrating that they are relevant to claims he wishes to pursue on appeal.

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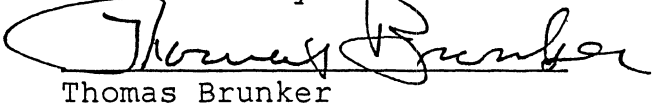
[1]Respondent has already paid for transcripts of several hearings.

4. Petitioner also asks the Court to order "the government" to pay for transcripts from the criminal proceeding that have been lost. Respondent objects to the request. "The government" did not lose the transcripts and should not have to bear the burden of reproducing them.

5. Respondent objects to any order requiring him to pay for printing costs. None of the cases petitioner cites obligates the State to pay the appellate printing costs for indigent post-conviction petitioners. Indeed, none of the cases involved indigent parties. Because petitioner cites no authority demonstrating that he has a right to printing at State expense, the Court should deny the request.

SUBMITTED March 17, 2004.

MARK SHURTLEFF
Utah Attorney General

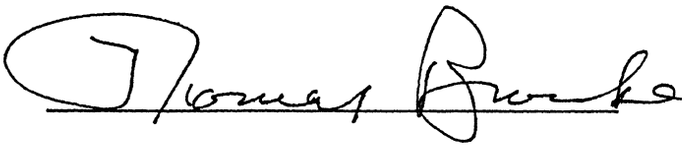


Thomas Brunker
Erin Riley
Assistant Attorneys General

Respondent's counsel

DELIVERY CERTIFICATE

I certify that, on March 17, 2004, a true and correct cop of the foregoing RESPONSE TO MOTION TO REQUIRE GOVERNMENT TO P/ FOR TRANSCRIPTS, PRINTING AND COSTS FOR APPEAL was mailed by first class mail, postage pre-paid, to petitioner's counsel, ELIZABETH HUNT, at P.O. Box 9419, Salt Lake City, Utah 84109-0419, and was hand-delivered to Division of Finance's counsel, JOEL FERRE, at 160 East 300 South, Fifth Floor, Salt Lake City, Utah 84114.



ELIZABETH HUNT (#5292)
Attorney for Mr. Menzies
P.O. Box 9419
SALT LAKE CITY, UTAH 84109-0419
Telephone: (801)706-1114



**IN THE THIRD DISTRICT COURT, WEST VALLEY DEPARTMENT**

**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

| | |
|---|---|
| **RALPH LEROY MENZIES,**<br><br>Petitioner,<br><br>v.<br><br>**HANK GALETKA, Utah State Prison Warden**<br><br>Respondent. | NOTICE OF CROSS-APPEAL<br><br>Case No. 030106629<br><br>**JUDGE BRIAN** |

The Petitioner, Ralph Leroy Menzies, by counsel, Elizabeth Hunt, hereby submits this notice of cross-appeal from this Court's order announced on April 21, 2004, that the Division of Finance must pay for the transcripts and other appellate costs in Menzies' appeal from this Court's order denying him relief from summary judgment.

The final order has yet to be entered by the Court.

This appeal will be filed with the Utah Supreme Court.

This notice of appeal is filed simultaneously with Menzies' affidavit of impecuniosity.

In filing this notice of appeal, Menzies does not waive his right to the benefits of

this Court's order in his favor. Rather, he files the notice of cross-appeal to preserve his alternative argument that the Respondent should be required to pay for the transcripts on appeal in the event that the Division of Finance is not required to do so.

DATED May 3, 2004.

Elizabeth Hunt
Counsel for Menzies

**MAILING CERTIFICATE**

I hereby certify that a true and correct copy of the foregoing was mailed, first class postage prepaid, to:

Erin Riley and Thomas Brunker
Attorney General's Office
Counsel for Respondent
Heber Wells Building
160 East 300 South
Box 140854
Salt Lake UT 84114-0854;

Joel Ferre, A.A.G.
Heber Wells Building
P.O. Box 140857
SLC, UT 84114-0857

and

Ralph Menzies
Utah State Prison
P.O. Box 250
Draper, Utah 84020

May 3, 2004.

ELIZABETH HUNT (#5292)
Attorney for Mr. Menzies
3194 South 1100 East, #202
SALT LAKE CITY, UTAH 84106
Telephone: (801)706-1114



**IN THE THIRD DISTRICT COURT, WEST VALLEY DEPARTMENT**

**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

| | |
|---|---|
| **RALPH LEROY MENZIES,**<br><br>Petitioner,<br><br>v.<br><br>**HANK GALETKA, Utah State Prison Warden**<br><br>Respondent. | AMENDED NOTICE OF CROSS-APPEAL<br><br>Case No. 030106629<br><br>**JUDGE BRIAN** |

The Petitioner, Ralph Leroy Menzies, by counsel, Elizabeth Hunt, hereby submits this notice of cross-appeal from this Court's order announced on April 21, 2004, and entered on May 10, 2004, that the Division of Finance must pay for the transcripts and other appellate costs in Menzies' appeal from this Court's order denying him relief from summary judgment.

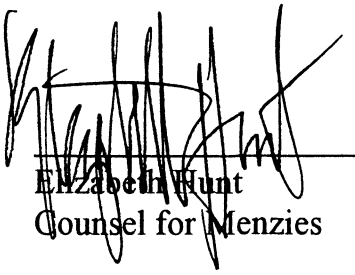
This appeal will be filed with the Utah Supreme Court.

Menzies' affidavit of impecuniosity was filed with the original notice of appeal.

In filing this notice of appeal, Menzies does not waive his right to the benefits of this Court's order in his favor. Rather, he files the notice of cross-appeal to preserve his

alternative arguments that the Respondent or the original prosecuting entity should be required to pay for the costs on appeal in the event that the Division of Finance is not required to do so.

DATED May 24, 2004.



Elizabeth Hunt
Counsel for Menzies

**MAILING CERTIFICATE**

I hereby certify that a true and correct copy of the foregoing was mailed, first class postage prepaid, to:

Chief Deputy D.A. B. Kent Morgan
111 East Broadway, Suite 400
SLC, UT 84111

Erin Riley and Thomas Brunker
Attorney General's Office
Counsel for Respondent
Heber Wells Building
160 East 300 South
Box 140854
Salt Lake UT 84114-0854;

Joel Ferre, A.A.G.
Heber Wells Building
P.O. Box 140857
SLC, UT 84114-0857

and

Ralph Menzies
Utah State Prison

P.O. Box 250
Draper, Utah 84020

May 24, 2004.