

Agenda

Advisory Committee on Rules of Civil Procedure

November 20, 2002
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, Suite N31

Approval of minutes	Fran Wikstrom
Statement of nature of the case as part of discovery plan. Rule 26	Fran Wikstrom
Recodification of Code of Judicial Administration into Rules of Civil Procedure	Cullen Battle
Reports from Probate and Domestic Subcommittees	Frank Carney Scott Waterfall Leslie Slaugh
Provisional and final remedies	Tim Shea
Rule 68. Offers of judgment	Frank Carney

Meeting Schedule

December 18 (3rd Wednesday)
January 22, 2003
February 26
March 26
April 23
May 28
September 24
October 22
November 19 (3rd Wednesday)

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, October 23, 2002
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, David W. Scofield, Thomas R. Karrenberg, Janet H. Smith, Francis J. Carney, R. Scott Waterfall, Terrie T. McIntosh, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Paula Carr, Todd M. Shaughnessy, Cullen Battle, Thomas R. Lee, Leslie W. Slauch, Virginia Smith, James T. Blanch

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Honorable Ronald N. Boyce, Glenn C. Hanni, Debora Threedy

GUESTS: Michael D. Zimmerman, Esther Chelsea-McCarty

I. WELCOME AND REPORT ON THE HONORABLE RONALD N. BOYCE

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. Mr. Wikstrom then reported on the condition of the Honorable Ronald N. Boyce, who has pneumonia and is in the intensive care unit at University of Utah Hospital. A card wishing Judge Boyce well was circulated for signatures. Mr. Wikstrom will deliver the card to Judge Boyce.

II. APPROVAL OF MINUTES

The minutes of the September 25, 2002, meeting were reviewed and approved.

III. INTRODUCTION

Mr. Wikstrom introduced Judy Wolferts as the new secretary to the Committee. Ms. Wolferts is an attorney with Snow, Christensen & Martineau.

IV. FORMATTING OF COURT RULES

Tim Shea reported on issues concerning formatting of court rules. The formatting issue was precipitated by comments from several attorneys that it is sometimes difficult to follow the court rules when all paragraphs are indented equally.

Mr. Shea described the options for formatting. It was suggested that the formatting form presented at the bottom of page 7 of the Agenda may be the simplest solution. Leslie Slaugh commented that the option on page 7 avoids white spaces and makes information easier to locate. Mr. Shea pointed out that other rules committees will weigh in with their own comments on this, and that it is likely that this Committee will have to coordinate with other committees.

Mr. Slaugh moved that the Committee support the formatting solution provided on page 7 of the Agenda. The motion was seconded and passed unanimously.

Frank Carney then expressed concern that the format approved might require a greater amount of space, resulting in more pages being needed to print the rules. Mr. Wikstrom stated he does not believe that would occur. Mr. Shea then stated that if there is a difference of opinion on formatting, the committees could ask the Utah Supreme Court's preference. Mr. Wikstrom asked Mr. Shea to check with other committees and report back as to their preferences.

V. RULE 3 FILING FEE

The Committee considered a proposed amendment to Rule 3 which would deal with situations where a check issued to pay a filing fee and deposited by the clerk's office, is returned unpaid. The proposed language refers to a party's dishonoring a check. Mr. Wikstrom discussed whether Rule 3 as proposed should be more specific, and Mr. Slaugh asked whether a party or a party's bank dishonors a check. Judy Wolferts commented that a bank typically dishonors a check if it is drawn on an account with insufficient funds, but that a party might also dishonor a check by placing a stop payment, whereupon the bank would return the check unpaid. Mr. Slaugh suggested that placing the language of the proposed amendment in the passive voice might remove any confusion. Mr. Wikstrom suggested the language of the proposed amendment be changed to read as follows:

if a check or other form of payment tendered for a filing fee is dishonored, the party shall make valid payment upon notification by the court. Dishonoring of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.

Judge Anthony Quinn made a motion to adopt the language as changed, which was seconded. Janet Smith then asked whether the court is notified that a check has been dishonored, and was told that it is. A vote was taken and the motion was approved unanimously.

VI. RULE 24: NOTICE OF CHALLENGE TO CONSTITUTIONALITY OF A STATUTE

The Committee next considered a proposed amendment to Rule 24 which would require a party challenging the constitutionality of a statute to notify the Utah Attorney General, or to notify a county or municipal attorney if challenging the constitutionality of a county or municipal ordinance. James Blanch posed a question about paragraphs (1) and (2) of the amendment, which give the state, county, or municipality absolute right to intervene. He suggested the language be changed to read that **A**the court shall grant any timely motion of the state to intervene.**@** Mr. Slaugh questioned whether it was necessary to include the **A**timely**@** language. Mr. Blanch stated that untimely intervention should not be allowed, but this change would give the court discretion to permit intervention.

The Committee then discussed whether the state should be allowed to intervene at the last minute. Ms. Smith suggested the language simply read **A**as provided herein**@** regarding intervention. Mr. Blanch stated he does not think the state or municipality is required to go through typical requirements to intervene, but that they should be required to intervene in a timely manner. Ms. Smith suggested the language might read that the state or municipality **A**may**@** intervene rather than **A**shall**@** be allowed to intervene.

Mr. Wikstrom pointed out regarding subsection (3) that it makes no sense to include a provision that the state, county, or municipality **A**has all the rights and liabilities of a party as to court costs,**@** and wondered whether this is really needed. Cullen Battle agreed this provision does not make sense, and Mr. Shea, Mr. Carney, and Mr. Slaugh stated it is superfluous.

David Scofield expressed concerns about subsection (4)~~s~~ **A**constitutional **right****@** language. Mr. Battle and Thomas Lee agreed that it may be confusing to use the word **A**right.**@**

It was then questioned whether this proposed amendment is even needed. Mr. Shea commented that Judge Ronald E. Nehring had suggested there be a state rule comparable to the federal rule. Mr. Wikstrom stated the issue is how to change this rule, but still preserve the challenge. Mr. Carney commented that the federal rule requires the court, and not the parties, to give timely notice.

A vote was taken concerning whether the language of subparagraph (4) should read **A**invalidate**@** or **A**waiver.**@** The vote was a tie. Mr. Blanch then suggested the Committee stick with the federal language.

A motion was made to change **A**right**@** to **A**challenge**@** in subparagraph (4). The motion was seconded, and passed unanimously. No other action was taken by the Committee on the proposed amendment.

VII. UNLAWFUL DETAINER STATUTE

Mr. Wikstrom introduced former Utah Supreme Court Chief Justice Michael D. Zimmerman. Mr. Zimmerman had asked to discuss with the Committee a recent opinion by the Utah Court of Appeals dealing with the unlawful detainer statute. The opinion is *Parkside Salt Lake Corp. v. Insure-Rite, Inc.*, 434 Utah Adv. Rep. 26, 37 P.3d 1202 (Utah Ct. App. 2001), *cert. granted*, 42 P.3d 951 (Utah Mar. 6, 2002) (table). Mr. Zimmerman stated that the case has since settled, so the Utah Court of Appeals ruling stands.

Mr. Zimmerman explained that *Parkside* holds that the requirement that a summons in an unlawful detainer action contain an indorsement by the trial court as to the number of days within which the tenant has to appear and defend the action, means that the judge must write the number of days on the summons in his or her own hand. By contrast, the judge may use either signature or the equivalent (*e.g.*, stamp), to certify that the indorsement number of days was made by the judge and not counsel. Mr. Zimmerman stated that if the tenant makes a challenge, the burden is on the landlord to provide an affidavit stating the indorsement is handwritten by the judge. Mr. Zimmerman stated this likely would mean the judge or judge's clerk must provide the affidavit.

Mr. Zimmerman pointed out the repercussions of *Parkside*. He stated that it means that on-line unlawful detainer forms are inconsistent with *Parkside*, and thus invalid. He also stated that it means that evictions can be set aside as improperly commenced, since this is an issue of subject matter jurisdiction. If evictions are set aside, it may involve refunding fees previously awarded. Mr. Zimmerman commented that tenants' attorneys have already picked up on *Parkside*, and are having past evictions invalidated. He stated there are two possible ways to proceed: (1) change on-line forms and accept *Parkside*, or (2) amend the unlawful detainer statute, with retroactive application specified in the statute.

The Committee discussed the amendment option. Mr. Slaugh asked whether the statutory term "indorse" could be defined in the Civil Rules, and Mr. Lee stated that in his opinion this could not be done.

The Committee also discussed whether simply changing on-line forms would help, and it was concluded that it would not. Mr. Wikstrom questioned whether the Committee even had authority to change on-line forms, and after discussion, it was agreed the Committee probably did not. Mr. Zimmerman stated that even changing on-line forms would not be sufficient, since the previous forms are subject to challenge.

Mr. Zimmerman stated that the only real remedy is to amend the statute and to specify retroactive application. He commented that this is the only situation where a judge must handwrite in the number of days on a summons. Mr. Slaugh asked whether the Committee could even make a recommendation to the legislature. Mr. Shea stated that the legislature occasionally asks the Committee's opinion, but he does not know that the Committee could initiate a recommendation. Mr. Wikstrom asked Mr. Shea to speak to the legislative liaison, and ask whether there could be a sponsor for an amendment.

Mr. Shea then asked whether such an amendment could even be retroactive. Mr. Zimmerman stated that it could be since it is procedural, but that it must be explicitly stated in the statute.

Mr. Wikstrom asked whether the Committee should recommend to the Administrative Office of the Courts that the forms be changed now. The consensus was that this recommendation should be made. Mr. Zimmerman reiterated that it is most appropriate to amend with retroactive application, but that the judges and clerks should know about this issue in the meantime.

VIII. SELECTIVE RECODIFICATION OF CODE OF JUDICIAL ADMINISTRATION INTO RULES OF CIVIL PROCEDURE

Mr. Wikstrom stated that recodification of the Code of Judicial Administration into the Rules of Civil Procedure is a pressing issue and must be wrapped up soon. Mr. Battle agreed to continue to work with Mr. Shea on the general rules of judicial administration, but commented that he thought persons with more expertise in domestic and probate matters should deal with those issues. Mr. Shea responded that the proposals on probate and domestic matters have already been sent to lawyers, and to the Probate and Domestic Committees to get their opinions.

There was a discussion as to whether the CJA constitutes local rules. It was agreed that they are state-wide rules, and procedural rules which can be included in the Rules of Civil Procedure.

Mr. Wikstrom asked for volunteers to work on family law. Mr. Shea agreed to do this, and Mr. Slauch agreed to assist with divorce issues. Mr. Carney and Scott Waterfall volunteered to help with probate.

IX. PROVISIONAL AND FINAL REMEDIES

Mr. Wikstrom suggested that the Committee put off discussing the provisional rules and final remedies to another time. It was agreed that if the Committee is unable to get through this material at the November 20, 2002, meeting, a meeting will be held December 18, 2002, at 4:00 p.m. to do this.

X. STATEMENT OF THE CASE AS PART OF RULE 26 DISCOVERY PLAN

The Committee considered changes to Rule 26 which would require a statement of the case as part of the Rule 26 discovery plan. Judge Schofield and Judge Quinn both commented that they did not see a need for this, and the Committee agreed that there did not seem to be a need for a judge to be concerned about the nature of the case if the parties had agreed to a discovery plan. There was also a discussion about a word limit for a statement of the case, and the implications if a party fails to include a claim or defense.

After Committee members continued to question the need for a statement of the case, it was agreed that Mr. Wikstrom would speak to Judge Timothy Hanson before the Committee proceeds further. Judge Hanson had suggested the amendment.

XI. SOLDIERS AND SAILORS RELIEF ACT

Mr. Shea stated that he wanted to get the consensus of the Committee as to whether the Civil Rules should require an affidavit certifying that the opposing party is not a soldier or sailor before a default judgment can be entered. Mr. Shea was asked why this is needed, and responded that no one is following the law, since the federal Soldiers and Sailors Relief Act requires it.

The Committee discussed whether this requirement should be included in the default rules. Mr. Battle asked whether a federal law could invalidate **all** Utah default judgments if this is not a requirement of the Utah default rules, even if the party is not a member of the military. There was discussion as to whether this is ever a problem, and Judge Schofield stated he has seen it come up in some divorce actions.

Mr. Carney commented that an affidavit does not seem to be needed, since it would be part of the **Agood cause** to set aside a default judgment, *i.e.*, if the person against whom default was granted is a soldier or sailor, that is good cause. Mr. Battle questioned whether the Committee wanted to start a precedent of using federal laws to change Utah Rules. Virginia Smith suggested placing information about the Soldiers and Sailors relief act in the advisory committee notes.

After further discussion, it was agreed that the issue would be tabled until it becomes a problem.

XII. RECODIFICATION OF THE CJA

The Committee then proceeded to a substantive discussion of recodification of the CJA into the Civil Rules. It was agreed that the Committee should examine each rule separately. Mr. Shea provided a handout with recommendations and remaining issues for each CJA section, and the Committee followed this form. The Committee discussed the following provisions:

CJA 4-102 The Committee agreed this provision should be omitted.

CJA 4-105 The Committee discussed whether this provision is even needed, with Mr. Lee commenting that this appeared to be inherent judicial power. The Committee agreed this provision should be omitted.

CJA 4-107 Mr. Shea stated there is still a question to be answered by this provision, and suggested that it be included in Utah R.Civ.P. 42(a).

CJA 4-501 Mr. Battle stated that the proposal is to make this provision part of a new Rule 72. Mr. Slaugh suggested that it be placed in Rule 10. Mr. Wikstrom stated this will be left an open question for now.

Mr. Battle stated this was combined so that it includes both motions and orders, which would be comparable to the federal rules of practice. He commented that he sees no justification for leaving it separate. Mr. Shea stated the Committee may want to consider whether the sections on summary judgment should be part of a proposed Rule 72 or part of Rule 56.

Mr. Shea then stated that there is a proposal that parties can request a hearing on a non-dispositive motion. The Committee then discussed what seems to be a presumption under the present CJA that a hearing will not be granted on any motion, and whether the present CJA even allows a party to request a hearing on a non-dispositive motion. Mr. Battle commented that he and Mr. Shea had attempted to make the proposed rule more neutral on the hearing issue, and Mr. Shea commented that they would work a bit more on the language.

Mr. Wikstrom raised the issue of overlength memoranda, and asked for opinions as to whether the five-page summary requirement should be retained. Judge Quinn commented that he saw no problem with omitting the summary requirement, but liked the requirement of a table of contents. After further discussion about whether a summary should be required, Mr. Wikstrom suggested that the Committee members give some thought to this for later discussion.

The Committee then discussed what a proposed order should include, and whether one was even needed. Mr. Slaugh commented that when a judge has issued a memorandum decision, he sees no reason why there needed to be an additional order saying essentially the same thing. Mr. Carney questioned why Utah courts even have memorandum decisions, as opposed to the orders issued in federal courts. Mr. Slaugh agreed that the federal practice makes more sense, since the judge makes the ruling. After a comment regarding whether the prevailing party should make a proper set of findings, Mr. Blanch commented that this would typically apply only to bench decisions.

Mr. Wikstrom reiterated that the purpose today is simply to raise issues to get Committee members thinking about them.

CJA 4-503 Mr. Battle proposed that all of this provision dealing with jury instructions be omitted, and included in Rule 51.

CJA 4-504 Mr. Shea stated that there appears to be an internal inconsistency regarding written orders in subsections (7) and (9). Mr. Battle suggested simply eliminating subsections 3, 7, and 9, and no one expressed opposition to this.

The Committee then discussed whether there even needed to be a requirement that the court be notified of a settlement. Mr. Shaughnessy stated that it is unfair not to notify the court of a settlement, and Mr. Blanch agreed. Mr. Carney agreed to draft language on a notification requirement.

CJA 4-505
and 4-505.1 Mr. Battle stated that proposed changes have been made in these rules, and it is suggested that they be made into new Rules 74 and 75.

Mr. Wikstrom asked how important it is to have monetary amounts on small defaults included in the rule . Ms. Carr stated that it is very important for the clerk. Judge Quinn commented that he is finding that attorneys are departing more frequently from the tables, and submitting attorneys= fees affidavits. Mr. Slauch stated that he would like the rule to include a legal basis for the award and the reasonableness of the attorneys= fees. He also commented that the rule should be more generic and less specific. Ms. Carr again stated that the schedule is convenient, since the clerk can handle the attorneys= fees issue, which otherwise it must be determined by the judge.

XIII. ADJOURNMENT

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, November 20, 2002, at the Administrative Office of the Courts.

1 Rule 26. General provisions governing discovery.

2

3 (f) Discovery and scheduling conference.

4 The following applies to all cases not exempt under subdivision (a)(2), except as otherwise
5 stipulated or directed by order.

6

7 (2) The plan shall include:

8 (A) a brief, non-argumentative statement of the claims and defenses sufficient to permit the
9 court to determine the reasonableness of the plan;

10 ~~(A)~~(B) what changes should be made in the timing, form, or requirement for disclosures
11 under subdivision (a), including a statement as to when disclosures under subdivision (a)(1) were
12 made or will be made;

13 ~~(B)~~(C) the subjects on which discovery may be needed, when discovery should be
14 completed, whether discovery should be conducted in phases and whether discovery should be
15 limited to particular issues;

16 ~~(C)~~(D) what changes should be made in the limitations on discovery imposed under these
17 rules, and what other limitations should be imposed; and

18 ~~(D)~~(E) any other orders that should be entered by the court.

19

1 ~~**Rule 4-102. Law and motion calendar.**~~

2 ~~Intent:~~

3 ~~To establish a uniform procedure of scheduling matters on the law and motion calendar.~~

4 ~~To establish uniform notice requirements and filing deadlines for law and motion matters.~~

5 ~~Applicability:~~

6 ~~This rule shall apply to all civil and criminal proceedings in the District Court.~~

7 ~~Statement of the Rule:~~

8 ~~(1) Law and motion matters.~~

9 ~~(A) In multi judge districts, law and motion matters arising in connection with a case which~~
10 ~~has been assigned for all purposes to a particular judge shall be heard by the assigned judge.¹~~

11 ~~(B) If the assigned judge is unavailable, the case shall not be assigned or transferred to any~~
12 ~~other judge for handling without the approval of the presiding judge.²~~

13 ~~(2) Notice and filing requirements.~~

14 ~~(A) Orders to show cause and other matters requiring written notice shall be heard only after~~
15 ~~written notice served no less than five days prior to the date of the hearing, unless the court for~~
16 ~~good cause shown orders the period of time for notice of hearing shortened.³~~

17 ~~(B) Affidavits in support of law and motion matters must be filed with the motion or~~
18 ~~memorandum of points and authorities supporting or opposing the motion. Other documents~~
19 ~~filed in support of or in opposition to law and motion matters, including returns of service on~~
20 ~~supplemental orders, orders to show cause and bench warrants, must be filed in the clerk's office~~
21 ~~at least two working days before the hearing on the matter, together with a copy of the signed~~
22 ~~order showing the date and time of the required appearance.⁴~~

¹ Goes without saying. This is the defining feature of individual calendaring.

² The case itself is never reassigned. A substitute judge might hear an emergency L&M matter. This might have been needed 20 years ago when individual calendaring was getting started, but now it's best left to the local court to figure out. It's probably ignored as often as it's followed. Also, it's covered by URCP 7(b)(3).

³ Governed by URCP 6(d).

⁴ First sentence governed by 4-501. Second sentence: OSC, warrants and orders to appear should already be part of the court file. Deadline for return of service governed by URCP 5(d): "before or within a reasonable time after service."

1 ~~(C) Proceedings based upon supporting documents which are not filed in accordance with~~
2 ~~this rule may be dismissed.~~⁵

3 ~~(3) Ex parte matters, stipulated matters and supplemental proceedings.~~⁶

4 ~~(A) Ex parte matters based upon stipulations may be presented at any time to the assigned~~
5 ~~judge. Proceedings on the law and motion calendar involving the taking of evidence may be~~
6 ~~heard after those not requiring the taking of evidence. Add ons may be heard on the day set for~~
7 ~~hearing, provided proper notice has been given and the convenience of the court permits such~~
8 ~~hearing.~~

9 ~~(B) Motions for supplemental proceedings may be set on the weekly supplemental~~
10 ~~proceedings calendar or before the judge assigned to the case on the assigned judge's regular law~~
11 ~~and motion calendar.~~

12 **Rule 4-105. Continuances in special circumstances.**

13 **Intent:**

14 ~~To establish uniform procedures governing the granting and denial of continuances in civil~~
15 ~~and criminal cases.~~

16 **Applicability:**

17 ~~This rule shall apply to the trial courts of record.~~

18 **Statement of the Rule:**

19 ~~(1) In civil law and motion matters, except orders to show cause and bench warrants, matters~~
20 ~~may be continued upon stipulation of the parties and notice to the clerk of the judge to whom the~~
21 ~~case is assigned, except that when a matter has been placed upon the official law and motion~~
22 ~~calendar, the matter may be continued only upon approval of the court.~~⁷

⁵ Sanctions for late filings are probably inherent in the discretion of the judge. If express authority is needed, incorporate it into URCP 11 or 4-501.

⁶ Goes without saying. The judge has inherent discretion to call the calendar in whatever order makes sense.

⁷ This paragraph makes no sense, (There is no "official" L&M calendar, so when a party needs court approval for a continuance is unclear.) but it raises the legitimate issue: Should the courts have a uniform policy on continuance? If so, should the parties control continuances or should the court have to approve? If a blend of both, when does responsibility shift from one to the other? At what point do penalties, such as in ¶3 apply?

1 ~~(2) In sexual abuse cases involving minor victims, continuances may be granted upon a~~
2 ~~written finding by the court, or written minute entry which shall include the reason(s) for the~~
3 ~~continuance.⁸~~

4 ~~(3) A motion to continue made on or within 10 days prior to the date of a hearing may be~~
5 ~~granted by the court upon a showing of good cause and upon such conditions as the court~~
6 ~~determines to be just, including but not limited to the payment of costs and attorney fees.~~

7 ~~(4) If the hearing is an "important criminal justice hearing" or an "important juvenile justice~~
8 ~~hearing" as defined by ' 77-38-2 of which the victim has requested notification, the court should~~
9 ~~consider the impact of the continuance upon the victim.⁹~~

10 **Rule 4-107. Consolidation of cases.¹⁰**

11 **Intent:**

12 ~~To provide a procedure for hearing motions to consolidate cases and for the consolidation of~~
13 ~~cases.~~

14 **Applicability:**

15 ~~This rule shall apply to civil and criminal proceedings in all courts of record.~~

16 **Statement of the Rule:**

17 ~~(1) Motions to consolidate cases shall be heard by the judge assigned to either the lowest~~
18 ~~numbered or the first filed case.~~

19 ~~(2) Notice of a motion to consolidate shall be given to all parties in each action involved, and~~
20 ~~a copy shall be filed in each case involved. The order denying or granting the motion shall also~~
21 ~~be filed in each file involved.~~

22 ~~(3) In the event a motion to consolidate is granted, the order shall specify the case number~~
23 ~~under which all future papers shall be filed, which shall be the lowest of the case numbers~~
24 ~~involved. Thereafter, that number shall be used exclusively for all papers filed, and such papers~~
25 ~~shall be filed only in the designated case file.~~

⁸ Criminal only.

⁹ Criminal only.

¹⁰ Integrate into URCP 42.

1 ~~(4) If a motion to consolidate is granted, the case shall be heard by the judge who was~~
2 ~~assigned to the lowest numbered of the cases involved, except that for good cause shown the~~
3 ~~presiding judge may assign the case to another judge.~~

4 **Rule 4-501. Rule 72. Motions and orders.**¹¹

5 **Intent:**

6 ~~To establish a uniform procedure for filing motions, supporting memoranda and documents~~
7 ~~with the court.~~

8 ~~To establish a uniform procedure for requesting and scheduling hearings on dispositive~~
9 ~~motions.~~

10 ~~To establish a procedure for expedited dispositions.~~

11 **Applicability:**

12 ~~This rule shall apply to motion practice in all trial courts of record except proceedings before~~
13 ~~the court commissioners and small claims cases. This rule does not apply to petitions for habeas~~
14 ~~corpus or other forms of extraordinary relief.~~

15 **Statement of the Rule:**

16 ~~(4)(a)~~ Filing and service of motions and memoranda.

17 ~~(A)(1)~~ Motion and supporting memoranda. All motions, except uncontested or ex-parte
18 ~~matters motions~~, shall be accompanied by a memorandum of points and authorities with citation
19 to or a copy of controlling or persuasive precedent, appropriate affidavits, and copies of or
20 citations by page number to relevant portions of ~~depositions, exhibits or other documents relied~~
21 upon in support of the motion the record. The moving party may include proposed findings and a
22 proposed order. Memoranda ~~supporting or opposing a motion shall not that~~ exceed ten pages ~~in~~
23 ~~length~~ exclusive of the "statement of material facts" as provided in paragraph (2), ~~except as~~
24 ~~waived by order of the court on ex parte application shall contain a table of contents~~. ~~If an~~
25 ~~ex parte application is made to file an over length memorandum, the application shall state the~~
26 ~~length of the principal memorandum, and if the memorandum is in excess of ten pages, the~~
27 ~~application shall include a summary of the memorandum, not to exceed five pages.~~

¹¹ Proposed to recodify as URCP 72. Includes portions of 4-504 governing orders. Includes suggestion by Christopher Daines that proposed findings and order be included. (Makes them optional, not required.) A reasonable reading of URCP yields the conclusion that including the order with the motion is already required.

1 ~~(B)~~(2) Memorandum in opposition to motion. ~~The~~ Within ten days after service of a motion,
2 the responding party shall file ~~and serve upon all parties within ten days after service of a~~
3 ~~motion, a memorandum~~ in opposition to the motion, ~~and all supporting documentation a~~
4 memorandum of points and authorities with citation to or a copy of controlling or persuasive
5 precedent, appropriate affidavits, a copy of or citation by page number to relevant portions of the
6 record and objections to the moving party's order. The responding party may include proposed
7 findings and a proposed order. If the responding party fails to timely file a memorandum in
8 opposition to the motion ~~within ten days after service of the motion~~, the moving party may notify
9 the clerk to submit the matter to the court for decision as provided in paragraph (1)(D) ~~of this~~
10 ~~rule.~~

11 ~~(C)~~(3) Reply memorandum. The moving party may ~~serve and~~ file a reply memorandum
12 within five days after service of the responding party's memorandum. The reply memorandum
13 may include objections to the responding party's order.

14 ~~(D)~~(4) Notice to submit for decision. Upon the expiration of the five-day period to file a
15 reply memorandum, either party may notify the clerk to submit the matter to the court for
16 decision. The notification shall be in the form of a separate written pleading and captioned
17 "Notice to Submit for Decision." The Notice to Submit for Decision shall state the date on which
18 the motion was served, the date the memorandum in opposition, if any, was served, the date the
19 reply memorandum, if any, was served, and whether a hearing has been requested. ~~The~~
20 ~~notification shall contain a certificate of mailing to all parties.~~ If neither party files a notice, the
21 motion will not be submitted for decision.

22 ~~(2)~~(b) Motions for summary judgment.

23 ~~(A)~~(1) Memorandum in support of a motion. The points and authorities in support of a
24 motion for summary judgment shall begin with a section that contains a concise statement of
25 material facts as to which ~~movant~~ moving party contends no genuine issue exists. The facts shall
26 be stated in separate numbered sentences, ~~and shall specifically refer to those~~ For each fact the
27 moving party shall provide a copy of or citation by page number to relevant portions of the
28 record ~~upon which the movant relies.~~

1 | ~~(B)(2)~~ Memorandum in opposition to a motion. The points and authorities in opposition to a
2 | motion for summary judgment shall begin with a section that contains a verbatim restatement of
3 | each of the ~~movant's-moving party's~~ statement of facts as to which the party contends a genuine
4 | issue exists followed by a concise statement of material facts which support the party's
5 | contention. Each disputed fact shall be stated in separate numbered sentences. ~~and shall~~
6 | ~~specifically refer to those~~ For each disputed fact, the responding party shall provide a copy of or
7 | citation by page number to relevant portions of the record ~~upon which the opposing party relies.~~
8 | All material facts set forth in the ~~movant's-moving party's~~ statement and properly supported by
9 | an accurate reference to the record ~~shall be~~ are deemed admitted for the purpose of summary
10 | judgment unless specifically controverted by the ~~opposing-responding~~ party's statement.

11 | ~~(3)(c)~~ Hearings.

12 | ~~(A) A decision on a motion shall be rendered~~ (1) The court shall decide a motion without a
13 | hearing unless ordered by the court, ~~or requested by the parties as provided in paragraphs (3)(B)~~
14 | ~~or (4) below~~ on its own initiative or in response to a request by a party.

15 | ~~(B)(2)~~ In cases ~~where the~~ in which granting ~~of~~ a motion would dispose of the action or any
16 | claim in the action on the merits with prejudice, either party at the time of filing the principal
17 | memorandum in support of or in opposition to a motion may file a written request for a hearing.

18 | ~~(C) Such request shall be granted~~ (3) The court shall grant the request unless the court finds
19 | that ~~(a)~~ the motion or opposition to the motion is frivolous or ~~(b) that~~ the dispositive issue ~~or set~~
20 | ~~of issues governing the granting or denial of the motion~~ has been authoritatively decided.

21 | ~~(D)(4)~~ When a request for hearing is denied, the court shall notify the requesting party. When
22 | a request for hearing is granted, the court shall set the matter for hearing or notify the requesting
23 | party that the matter shall be heard, and the requesting party shall schedule the matter for hearing
24 | and notify all parties of the date and time.

25 | ~~(E) In those cases where~~ (5) If a hearing is granted, a courtesy copy of the motion,
26 | memorandum of points and authorities and all documents supporting or opposing the motion
27 | shall be delivered to the judge hearing the matter at least two ~~working~~ days before the ~~date set for~~
28 | hearing. Copies shall be clearly marked as courtesy copies and indicate the date and time of the
29 | hearing. Courtesy copies shall not be filed with the clerk of the court.

1 ~~(F)(6)~~ If no written request for a hearing is made at the time the parties file their principal
2 memoranda, a hearing on the motion ~~shall be is~~ deemed waived.

3 ~~(G) All dispositive motions shall be heard at least thirty (30) days before the scheduled trial~~
4 ~~date.~~ ~~(7)~~ No dispositive motions shall be heard ~~after that date~~ less than 30 days before the trial
5 date without leave of the court.

6 ~~(H)(8)~~ If a hearing has been requested and the non-moving party fails to file a memorandum
7 in opposition, the moving party may withdraw the request or the court ~~on its own motion~~ may
8 strike the request and decide the motion without oral argument.

9 ~~(4)(d)~~ Expedited dispositions. Upon motion and notice and for good cause shown, the court
10 may ~~grant a request for an expedited~~ expedite disposition in any ~~ease where~~ motion in which
11 time is of the essence and compliance with the provisions of this rule would be impracticable or
12 where the motion does not raise significant legal issues and ~~could~~ can be resolved summarily.

13 ~~(5) Telephone conference. The court on its own motion or at a party's request may direct~~
14 ~~arguments of any motion by telephone conference without court appearance. A verbatim record~~
15 ~~shall be made of all telephone arguments and the rulings thereon if requested by counsel.~~¹²

16 ~~(e) Orders.~~¹³ Unless the court approves the proposed findings and order submitted in support
17 of or in opposition to a motion, the prevailing party shall, within fifteen days after the court's
18 decision or within such shorter time as the court directs, file proposed findings and order in
19 conformity with the court's decision. Objections to the proposed findings and order shall be filed
20 within five days after service.

21 ~~(1) Orders, judgments and decrees shall state whether they are entered upon stipulation,~~
22 ~~motion or the court's initiative.~~

23 ~~(2) Unless otherwise directed by the court, judgments and decrees shall be separate~~
24 ~~documents and not include any matters by reference. Unless otherwise directed by the court,~~
25 ~~orders other than judgments and decrees may be made a part of or refer to the documents~~
26 ~~containing the stipulation or motion upon which the order is based.~~

27 **Rule 4-503. Requests for jury instructions.**¹⁴

¹² Governed by CJA 4-106, which is not proposed for inclusion in the URCP.

¹³ Those parts of 4-504 governing orders.

¹⁴ Governed by URCP 51.

1 **Intent:**

2 ~~To establish a uniform procedure for submitting and requesting jury instructions.~~

3 **Applicability:**

4 ~~This rule shall apply to the District and Justice Courts.~~

5 **Statement of the Rule:**

6 ~~(1) All jury instruction requests shall be presented to the court five days prior to the~~
7 ~~scheduled trial date unless otherwise ordered by the court. The court, in its discretion, may allow~~
8 ~~the presentation of jury instructions at any time prior to the submission of the case to the jury. At~~
9 ~~the time of presentation to the court, a copy of the requested instructions shall be furnished to~~
10 ~~opposing counsel.~~

11 ~~(2) Jury instruction requests must be in writing and state in full the instruction requested.~~
12 ~~Each request shall be upon a separate sheet of paper, the original and copies of which shall be~~
13 ~~free from red lines and firm names and shall be entitled:~~

14 "Instruction No. _____"

15 The number of the request shall be written in lead pencil.

16 ~~(3) If case citations are used in support of a requested instruction, at least one copy of the~~
17 ~~requested instruction furnished to the court shall be submitted without the citations. Citations~~
18 ~~may be provided upon separate sheets attached to the particular instruction to which the citation~~
19 ~~applies.~~

20 **~~Rule 4-504. Written orders, judgments and decrees.~~**

21 **Intent:**

22 ~~To establish a uniform procedure for submitting written orders, judgments, and decrees to the~~
23 ~~court. This rule is not intended to change existing law with respect to the enforceability of~~
24 ~~unwritten agreements.~~

25 **Applicability:**

26 ~~This rule shall apply to all civil proceedings in courts of record except small claims.~~

27 **Statement of the Rule:**

1 ~~(1) In all rulings by a court, counsel for the party or parties obtaining the ruling shall within~~
2 ~~fifteen days, or within a shorter time as the court may direct, file with the court a proposed order,~~
3 ~~judgment, or decree in conformity with the ruling.~~¹⁵

4 ~~(2) Copies of the proposed findings, judgments, and orders shall be served upon opposing~~
5 ~~counsel before being presented to the court for signature unless the court otherwise orders.~~
6 ~~Notice of objections shall be submitted to the court and counsel within five days after service.~~¹⁶

7 ~~(3) Stipulated settlements and dismissals shall also be reduced to writing and presented to the~~
8 ~~court for signature within fifteen days of the settlement and dismissal.~~¹⁷

9 ~~(4) All orders, judgments, and decrees shall be prepared in such a manner as to show whether~~
10 ~~they are entered upon the stipulation of counsel, the motion of counsel or upon the court's own~~
11 ~~initiative and shall identify the attorneys of record in the cause or proceeding in which the~~
12 ~~judgment, order or decree is made.~~¹⁸

13 ~~(5) Except where otherwise ordered, all judgments and decrees shall contain, if known, the~~
14 ~~judgment debtor's address or last known address and social security number.~~¹⁹

15 ~~(6) All judgments and decrees shall be prepared as separate documents and shall not include~~
16 ~~any matters by reference unless otherwise directed by the court. Orders not constituting~~
17 ~~judgments or decrees may be made a part of the documents containing the stipulation or motion~~
18 ~~upon which the order is based.~~²⁰

19 ~~(7) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless~~
20 ~~the stipulation is in writing, signed by the attorneys of record for the respective parties and filed~~
21 ~~with the clerk or the stipulation was made on the record.~~²¹

22 ~~(8) In all cases where judgment is rendered upon a written obligation to pay money and a~~
23 ~~judgment has previously been rendered upon the same written obligation, the plaintiff or~~

¹⁵ Integrated into 4-501.

¹⁶ Integrated into 4-501.

¹⁷ Does the court care how long between stipulation and order?

¹⁸ Integrated into 4-501.

¹⁹ Governed by §78-22-1.5.

²⁰ Integrated into 4-501.

²¹ Conflicts with ¶(9).

1 ~~plaintiff's counsel shall attach to the new complaint a copy of all previous judgments based upon~~
2 ~~the same written obligation.~~²²

3 ~~(9) Nothing in this rule shall be construed to limit the power of any court, upon a proper~~
4 ~~showing, to enforce a settlement agreement or any other agreement which has not been reduced~~
5 ~~to writing.~~²³

6 **Rule 4-505. Rule 74. Attorney fees affidavits.**

7 **Intent:**

8 ~~To establish uniform criteria and a uniform format for affidavits in support of attorney fees.~~

9 **Applicability:**

10 ~~This rule shall govern the award of attorney fees in the trial courts.~~

11 **Statement of the Rule:**

12 ~~(1) Affidavits (a) If an affidavit in support of an award of attorney fees must be filed with the~~
13 ~~court and is required, the affidavit shall set forth: specifically~~

14 ~~(1) the legal basis for the award;~~;

15 ~~(2) the nature of the work performed by the attorney;~~;

16 ~~(3) the number of hours spent to prosecute the claim to judgment, or the time spent in~~
17 ~~pursuing the matter to the stage for which attorney fees are claimed, and affirm the~~
18 ~~reasonableness of the fees for comparable legal services;~~;

19 ~~(2) The affidavit must also separately state by (4) the number of hours, hourly rate and nature~~
20 ~~of work for persons other than attorneys, for time spent, work completed and hourly rate billed;~~;
21 ~~and~~

22 ~~(5) any other factors showing the reasonableness of the fees.~~

23 ~~(3) If (b) If the affidavit is in support of attorney fees for services rendered to a person or~~
24 ~~entity who has been assigned an interest in a claim for the purpose of collection an assignee or a~~
25 ~~person hired by the obligee to collect a debt, the affidavit shall also state that the attorney is not~~
26 ~~sharing the fee or any portion thereof in violation of Rule of Professional Conduct 5.4.~~

²² As written, this is a pleading requirement and should be added to URCP 9. In substance it appears to be something the court could take notice of under the rules of evidence or proven under URCP 44 and therefore superfluous. It's been part of the rule since 1988.

²³ Conflicts with ¶(7).

1 | ~~(4)(c)~~ If judgment is being taken by default for a principal sum ~~which it is expected that~~ will
2 require considerable additional work to collect, the following phrase may be included in the
3 judgment after an award consistent with the time spent to the point of default judgment, to cover
4 additional fees incurred in pursuit of collection:

5 "AND IT IS FURTHER ORDERED THAT THIS JUDGMENT SHALL BE AUGMENTED
6 IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEY'S FEES EXPENDED IN
7 COLLECTING SAID JUDGMENT ~~BY EXECUTION OR OTHERWISE~~ AS SHALL BE
8 ESTABLISHED BY AFFIDAVIT."²⁴

9 ~~(5)(d)~~ Attorney fees may be awarded pursuant to this rule or pursuant to Rule ~~4-505.1 75~~.

10 ~~Rule 4505.01. Rule 75.~~ Awards of attorney fees in civil default judgments with a
11 principal amount of \$5,000 or less.

12 Intent:

13 ~~To provide for uniformity in awards of attorney fees in civil default judgments with a~~
14 ~~principal damages amount of \$5,000 or less.~~

15 ~~To provide for notice of the amount of attorney fees that may be awarded in the event of~~
16 ~~default.~~

17 Applicability:

18 ~~This rule shall govern awards of attorney fees in civil default judgments with a principal~~
19 ~~damages amount of \$5,000 or less in which the claimant elects to seek an award of attorney fees~~
20 ~~pursuant to this rule.~~

21 Statement of the Rule:

22 ~~(4)(a)~~ When reasonable attorney fees are provided for by contract or statute and the claimant
23 elects to seek an award of attorney fees pursuant to this rule, such fees shall be computed in
24 accordance with the schedule approved by the Judicial Council. as follows:

~~Principal Amount of Damages,~~

~~Exclusive of Costs and Interest,~~

Attorney Fees

Between

and:

Allowed

\$0.00

\$700.00

\$150.00

²⁴ Is this needed?

700.01	900.00	175.00
900.01	1,000.00	200.00
1,000.01	1,500.00	250.00
1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00
3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	5,000.00	775.00

1 ~~(2)(b)~~ Reference to this rule and the amount of attorney fees allowed pursuant to paragraph
2 (1) shall be stated with particularity in the body or prayer of the complaint.

3 ~~(3)(c)~~ When a statute provides the basis for the award of attorney fees, reference to the
4 statutory authority shall be included in the complaint.

5 ~~(4)(d)~~ Clerks may enter civil default judgments which include attorney fees awarded pursuant
6 to this rule.

7 ~~(5)(e)~~ Attorney fees awarded pursuant to this rule may be augmented after judgment pursuant
8 to Rule ~~4-505~~ 74. When the court considers a motion for augmentation of attorney fees awarded
9 pursuant to this rule, it shall consider the attorney time spent prior to the entry of judgment, the
10 amount of attorney fees included in the judgment, and the statements contained in the affidavit
11 supporting the motion for augmentation.

12 ~~(6)(f)~~ Prior to entry of a judgment which grants attorney fees pursuant to this rule, any party
13 may move the court to depart from the fees allowed by paragraph (1) ~~of this rule~~. Such
14 application shall be made pursuant to Rule ~~4-505~~ 74.

15 ~~(7)(g)~~ If a contract or other document provides for an award of attorney fees, an original or
16 copy of the document shall be made a part of the file before attorney fees may be awarded
17 pursuant to this rule.

18 ~~(8)(h)~~ No affidavit for attorney fees need be filed in order to receive an award of attorney
19 fees pursuant to this rule.

1 | ~~(9)(i)~~ No attorney fees awarded pursuant to this rule, nor portion thereof, may be shared in
2 | violation of Rule of Professional Conduct 5.4.

3 | ~~**Rule 4-506. Rule 76. Withdrawal of counsel in civil cases.**~~

4 | ~~Intent:~~

5 | ~~To establish a uniform procedure and criteria for withdrawal of counsel in civil cases.~~

6 | ~~Applicability:~~

7 | ~~This rule shall apply to all counsel in civil proceedings in trial courts of record except~~
8 | ~~guardians ad litem and court appointed counsel.~~

9 | ~~Statement of the Rule:~~

10 | ~~(1) Withdrawal requiring court approval. Consistent with the Rules of Professional Conduct,~~
11 | ~~an attorney may withdraw as counsel of record only upon approval of the court when (a) An~~
12 | ~~attorney may withdraw as counsel of record by filing notice of withdrawal with the court. If a~~
13 | ~~motion has been filed and the court has not issued an order on the motion or after is pending or a~~
14 | ~~certificate of readiness for trial has been filed. Under these circumstances, an attorney may not~~
15 | ~~withdraw except upon motion and order of the court.~~

16 | ~~(2) Withdrawal not requiring court approval. If an attorney withdraws under circumstances~~
17 | ~~where court approval is not required, the notice of withdrawal shall include a statement by the~~
18 | ~~attorney that no motion has been filed on which the court has not issued an order is pending and~~
19 | ~~that no certificate of readiness for trial has been filed.~~

20 | ~~(3) If an attorney withdraws as counsel of record, the withdrawing attorney must serve~~
21 | ~~written notice of the withdrawal upon the client of the withdrawing attorney²⁵ and upon all other~~
22 | ~~parties not in default.²⁶ A certificate of service must be filed with the court.²⁷ If a trial date or~~
23 | ~~hearing has been set scheduled, the notice of withdrawal shall include a notification of the ~~trial~~~~
24 | ~~date and nature of the hearing.~~

25 | ~~(4) (b) If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or~~
26 | ~~is removed from the case by the court, opposing counsel shall serve a Notice to Appear or~~
27 | ~~Appoint Counsel on the unrepresented client self-represented party. ~~The Notice to Appear or~~~~

²⁵ Governed by RPC 1.16

²⁶ Governed by URCP 5(a).

²⁷ Governed by URCP 5(d).

1 | ~~Appoint Counsel must inform the unrepresented client~~ informing the party of the responsibility
2 | to appear in a court or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must
3 | be filed with the court. No further proceedings shall be held in the case until 20 days ~~have~~
4 | ~~elapsed from after~~ filing ~~of~~ the Notice to Appear or Appoint Counsel unless the ~~client of the~~
5 | ~~withdrawing attorney~~ self-represented party waives the time requirement or unless otherwise
6 | ordered by the court.

7 | ~~(5)(c)~~ Substitution of counsel. An attorney may replace ~~the current~~ counsel of record by
8 | filing ~~and serving~~²⁸ a notice of substitution of counsel. ~~Filing a substitution of counsel enters the~~
9 | ~~appearance of new counsel of record and effectuates the withdrawal of the attorney being~~
10 | ~~replaced. Where a request for a delay of proceedings is not made, substitution of counsel does~~
11 | ~~not require the approval of the court. Where~~ If new counsel requests a ~~delay of proceedings~~
12 | continuance, substitution of counsel requires ~~the~~ approval of the court ~~as provided in this rule~~.

13 |
14 | ~~**Rule 4-507. Disposition of funds on trustee's sale.**~~²⁹

15 | ~~Intent:~~

16 | ~~To establish a uniform procedure for filing trustee affidavits of deposit and claimant petitions~~
17 | ~~for adjudication of priority in trustee's sales.~~

18 | ~~To establish a uniform procedure in determining the disposition of funds on trustee's sales.~~

19 | ~~Applicability:~~

20 | ~~This rule shall apply to all courts of record.~~

21 | ~~Statement of the Rule:~~

22 | ~~(1) At the time of depositing with the Clerk of the Court any proceeds from a trustee's sale in~~
23 | ~~accordance with Utah Code Ann. Section 57-1-29, the trustee shall file an affidavit with the clerk~~
24 | ~~setting forth the facts of the deposit and a list of all known claimants, including known addresses.~~
25 | ~~The clerk shall notify the listed claimants within 10 days of receiving the affidavit of deposit.~~

26 | ~~(2) Any claimant may then file a petition for adjudication of priority to these funds and~~
27 | ~~request a hearing before the court. The petitioner requesting the hearing shall give notice of the~~

²⁸ Governed by URCP 5(a).

²⁹ Governed by §57-1-29.

1 ~~hearing to all claimants listed in the trustee's affidavit of deposit and any others known to the~~
2 ~~petitioner. All persons having or claiming an interest must appear and assert their claim or be~~
3 ~~barred thereafter.~~

4 ~~(3) Pursuant to the determination hearing, the court will establish the priorities of the parties~~
5 ~~to the trustee's sale proceeds and enter an order with the clerk of the court or county treasurer~~
6 ~~directing the disbursement of funds as determined.~~

7 **Rule 4-508. Unpublished opinions.**³⁰

8 Intent:

9 ~~To establish a uniform standard for the use of unpublished opinions.~~

10 Applicability:

11 ~~This rule shall apply to all courts of record and not of record.~~

12 ~~Statement of the Rule:~~

13 ~~(1) Unpublished opinions, orders and judgments have no precedential value and shall not be~~
14 ~~cited or used in the courts of this state, except for purposes of applying the doctrine of the law of~~
15 ~~the case, res judicata, or collateral estoppel.~~

16 ~~(2) An opinion in a case involving taxation published under CJA 6-103 may be cited.~~

17 ~~(3) For the purposes of this rule, any memorandum decision, per curiam opinion, or other~~
18 ~~disposition of the Court designated "not for official publication" shall be regarded as an~~
19 ~~unpublished opinion.~~

20 **Rule 4-509. Rule 73. Property bonds.**

21 Intent:

22 ~~To establish criteria for real property bonds posted in civil proceedings.~~

23 Applicability:

24 ~~This rule shall apply to the district court.~~

25 ~~Statement of the Rule:~~

26 ~~(1) Each (a) A~~ real property bond posted with the court ~~in a civil proceedings~~ shall:

27 ~~(A)(1)~~ be prepared by an owner of record or counsel;

28 ~~(B)(2)~~ be signed by all owners of record;

³⁰ Contrary to *Grand County v. Rogers*, 2002 UT 25.

1 | ~~(C)~~(3) contain the complete legal description of the property and the property tax
2 | identification number;

3 | ~~(D)~~(4) be acknowledged before a notary public;

4 | ~~(E)~~(5) be accompanied by a copy of the document by which title is vested in the owners;

5 | ~~(F)~~(6) be accompanied by a copy of the property tax statement for the current or previous
6 | year;

7 | ~~(G)~~(7) be accompanied by a current title report, a current foreclosure report, or such other
8 | information as required by the court; and

9 | ~~(H)~~(8) be accompanied by a written statement from each lienholder stating:

10 | ~~(i)~~(A) the current balance of the lien;

11 | ~~(ii)~~(B) the date the most recent payment was made;

12 | ~~(iii)~~(C) that the debt is not in default; and

13 | ~~(iv)~~(D) that the lienholder will notify the court if a default occurs or if a foreclosure process
14 | is commenced during the period the property bond is in effect.

15 | ~~(2) Each property bond accepted by the court shall be recorded (b) Upon acceptance by the~~
16 | ~~court, the property owner shall record the bond~~ with the county recorder of the county ~~or~~
17 | ~~counties where-in which~~ the property is located.

18 | ~~(3)(c)~~ Upon exoneration of the bond, the property owner shall present a release of property
19 | bond to the court.

20 | **Rule 4-801. Transfer of small claims cases.³¹**

21 | **Intent:**

22 | ~~To establish a procedure for the transfer of small claims cases to the appropriate justice court.~~

23 | **Applicability:**

24 | ~~This rule shall apply to the courts of record and not of record.~~

25 | **Statement of the Rule:**

³¹ This rule appears more administrative than procedural. The last sentence should be stricken. It's superfluous and if planned small claims changes are approved will be an incorrect cross reference. If the civil procedures committee agrees with the recodification committee that this rule is procedural, it should be incorporated, as amended, into the rules of small claims procedures Rule 1 or 2.

1 ~~(1) Small claims actions filed in a court of record may be assigned to a judge pro tempore, if~~
2 ~~one has been appointed under Rule 11-202 to adjudicate small claims actions. (a)~~ If no judge pro
3 tempore has been appointed to adjudicate small claims actions, the case may be transferred to a
4 justice court with jurisdiction under Section 78-5-104.

5 ~~(2)(b)~~ At the time of the transfer, the court shall also transfer the filing fee, less the portion
6 dedicated to the judges' retirement trust fund.

7 ~~(3)(c)~~ If there is no justice court with territorial jurisdiction of the small claims action and no
8 judge pro tempore, a district judge of the court shall hear and determine the action. ~~The appeal~~
9 ~~shall be as provided in Rule 4-803.~~

10 **Rule 4-802. Motion to reinstate small claims proceedings.**³²

11 **Intent:**

12 ~~To establish a procedure for reinstating small claims proceedings in cases where one of the~~
13 ~~parties fails to appear.~~

14 **Applicability:**

15 ~~This rule shall apply to small claims actions.~~

16 **Statement of the Rule:**

17 ~~(1) Any party to a small claims action who has an affidavit or counter affidavit dismissed for~~
18 ~~failure to appear may request a hearing to show cause why the court should not reinstate the~~
19 ~~cause of action.~~

20 ~~(2) The request must be in the form of a written motion supported by an affidavit setting~~
21 ~~forth the reasons why the party failed to appear and filed within the time prescribed by the Rules~~
22 ~~of Civil Procedure.~~

23 ~~(3) The moving party shall send a copy of the motion and affidavit to the opposing party and~~
24 ~~file with the court a certificate of mailing.~~

25 ~~(4) The clerk of the court shall schedule the motion for hearing and notify the parties of the~~
26 ~~hearing date.~~

27 **Rule 4-803. Trials de novo in small claims cases.**³³

³² Governed by Rule of Small Claims Procedures 10.

³³ That which is not already governed by Rule of Small Claims Procedure 12 will be under recommendations being studied by a small claims work group.

1 ~~Intent:~~

2 ~~To establish uniform procedures governing trials de novo of small claims actions.~~

3 ~~Applicability:~~

4 ~~This rule shall apply to the trial de novo of small claims actions.~~

5 ~~Statement of the Rule:~~

6 ~~(1) General provisions:~~

7 ~~(A) Right to trial de novo. Any party to a judgment in a small claims action may appeal the~~
8 ~~judgment in accordance with Section 78-6-10. The appeal shall be by trial de novo.~~

9 ~~(B) Venue. The trial de novo of a justice court adjudication shall be heard in the district court~~
10 ~~location nearest to and in the same county as the justice court from which the appeal is taken.~~
11 ~~The trial de novo from the small claims department of the district court shall be held at the same~~
12 ~~district court location. Either party may move for a change of venue under the applicable Rules~~
13 ~~of Civil Procedure.~~

14 ~~(2) Small claims appeals.~~

15 ~~(A) Filing notice of appeal. Either party may appeal a small claims judgment by filing a~~
16 ~~notice of appeal in the court issuing the judgment within ten days of the notice of entry of the~~
17 ~~judgment.~~

18 ~~(B) Contents of notice of appeal. The notice of appeal shall designate the district court~~
19 ~~location in which the trial de novo will be held, shall specify the parties in their original capacity,~~
20 ~~shall identify the party obtaining the trial de novo, and shall designate the judgment and the court~~
21 ~~from which the appeal is taken.~~

22 ~~(C) Service of notice of appeal. The appellant shall give notice of the filing of the notice of~~
23 ~~appeal by personally serving or mailing a copy to the counsel of record of each party to the~~
24 ~~judgment, or, if a party is not represented by counsel, then to the party at his last known address.~~
25 ~~The appellant shall file proof of service or mailing with the district court.~~

26 ~~(D) Fees. At the time of filing the notice of appeal, the appellant must deposit into court~~
27 ~~issuing the judgment the fees established under Utah Code Ann. Section 21-1-5 and Section~~
28 ~~78-6-14. The payment of the filing fee is necessary for conferring jurisdiction upon the district~~

1 court. Payment of filing fees may be waived upon filing of an affidavit of impecuniosity pursuant
2 to Utah Code Ann. Section 21-7-3.

3 (E) Stay of judgment. A judgment is automatically stayed upon the filing of a notice of
4 appeal with the court issuing the judgment and the posting of a supersedeas bond with the district
5 court. The stay shall continue until the entry of the judgment or final order of the district court.

6 (F) Procedures—Record of justice court. Within ten days of the filing of the notice of appeal
7 in a justice court, the court shall transmit to the district court the notice of appeal, the district
8 court fees, a certified copy of the docket or register of actions, and the original of all pleadings,
9 notices, motions, orders, judgment, and other papers filed in the case.

10 (G) Orders governing trials de novo. Upon the filing of the notice of appeal, the district court
11 shall issue all further orders governing the trial de novo.

12 (H) Disposition. The trial de novo shall be tried in accordance with the procedures of small
13 claims actions. The enforcement, collection or satisfaction of a judgment shall be according to
14 district court procedures. Upon the entry of the judgment or final order of the district court, the
15 clerk of the district court shall transmit to the justice court which rendered the original judgment
16 notice of the manner of disposition of the case. Such notice shall be for informational purposes
17 only and shall not be construed as a remand of the case.

18 **Rule 4-901. Rule 100. Coordination of cases pending in district court and juvenile court.**

19 **Intent:**

20 To require parties to notify the court of multiple cases related to the same family before more
21 than one judge or commissioner.

22 To permit communication among judges and commissioners assigned to cases related to the
23 same family regarding consolidation and coordination of the cases.

24 To facilitate coordination of proceedings in cases related to the same family.

25 **Applicability:**

26 This rule shall apply to the district court, juvenile court and justice court.

27 **Statement of the Rule:**

28 (1) Criminal and delinquency cases; Notice to the court.

1 ~~(A) In a criminal case all parties have a continuing duty to notify the court of a delinquency~~
2 ~~case pending in juvenile court in which the defendant is a party.~~

3 ~~(B) In a delinquency case all parties have a continuing duty to notify the court:~~

4 ~~(i) of a criminal or delinquency case in which the respondent or the respondent's parent is a~~
5 ~~party; and~~

6 ~~(ii) of an abuse, neglect or dependency case in which the respondent is the subject of the~~
7 ~~petition or the respondent's parent is a party.~~

8 ~~(C) The notice shall be filed with a party's initial pleading or as soon as practicable after~~
9 ~~becoming aware of the other pending case. The notice shall include the case caption, file number~~
10 ~~and name of the judge or commissioner in the other case.~~³⁴

11 ~~(2)(a)~~ Custody, support and parent time cases.

12 ~~(A)(1)~~ Notice to the court. In a civil case in which child custody, child support or parent time
13 is an issue, all parties have a continuing duty to notify the court:

14 ~~(i)(A)~~ of a case in which a party or the party's child in the instant case is a party to or the
15 subject of a petition or order involving child custody, child support or parent time;

16 ~~(ii)(B)~~ of a criminal or delinquency case in which a party or the party's child in the instant
17 case is a defendant or respondent;

18 ~~(iii)(C)~~ of a protective order case involving a party in the instant case regardless whether a
19 child of the party is involved.

20 ~~(B)(2)~~ The notice shall be filed with a party's initial pleading or as soon as practicable after
21 becoming aware of the other case. The notice shall include the case caption, file number and
22 name of the judge or commissioner in the other case.

23 ~~(C)(3)~~ Communication among judges and commissioners. The judge or commissioner
24 assigned to a case in which child custody, child support or parent time is an issue shall
25 communicate and consult with any other judge or commissioner assigned to any other pending
26 case involving the same issues and the same parties or their children. The judges and
27 commissioners may allow the parties to participate in the communication. The objective of the

³⁴ Criminal and delinquency cases only.

1 communication is to consider the feasibility of consolidating the cases before one judge or
2 commissioner or of coordinating hearings and orders.

3 | ~~(3)~~(b) Consolidation of cases. If the parties have not participated in the communication, the
4 parties shall be given notice and the opportunity to present facts and arguments before a decision
5 on consolidation is made.

6 | ~~(A)~~(1) Within one county and court level. The court on its own motion or motion of a party
7 and upon the agreement of the judges or commissioners assigned to the cases may consolidate
8 the cases within one county and one court level pursuant to §78-3a-115(3), URCP 42, URCP 78,
9 and URJP 28 ~~and CJA 4-107.~~

10 | ~~(B)~~(2) Between counties in one court level. The court on its own motion or motion of a party
11 and upon the agreement of the judges or commissioners assigned to the cases may transfer cases
12 in different counties of one court level to any county with venue or to any other county in
13 accordance with §78-13-9.

14 | ~~(C)~~(3) Between court levels. If the district court and juvenile court have concurrent
15 jurisdiction over cases, either court may transfer a case to the other court upon the agreement of
16 the judges or commissioners assigned to the cases. The district court shall certify to the juvenile
17 court issues of child custody, support and parent time in accordance with §78-3a-105(3) ~~and CJA~~
18 ~~4-902.~~

19 | ~~(4)~~(c) Judicial reassignment. Within a district and a court level, the court may assign cases
20 from different counties to one judge upon the agreement of the judges or commissioners assigned
21 to the cases. A judge of one court or district may hear and determine a case in another court or
22 district upon assignment in accordance with Rule 3-108(3).

23 | **Rule 4-902. Rule 110. Certification of district court cases to juvenile court.**

24 | **Intent:**

25 | ~~To establish a procedure for the district court to certify questions of support, custody or~~
26 ~~parent time to the juvenile court.~~

27 | **Applicability:**

28 | ~~This rule shall apply to the district and juvenile courts.~~

29 | **Statement of the Rule:**

1 ~~(1) Pursuant to §78-3a-105(3), the district court shall certify to the juvenile court for~~
2 ~~determination the question of child custody, support or parent time regarding a minor who is the~~
3 ~~subject of a petition pending in juvenile court or over whom the juvenile court has continuing~~
4 ~~jurisdiction.~~³⁵

5 ~~(2)(a)~~ When the district court certifies a question to the juvenile court, the clerk of the
6 district court shall transmit the entire case file to the clerk of the juvenile court who shall refer it
7 to the presiding judge for assignment.

8 ~~(3)(b)~~ When the question certified to the juvenile court has been determined by the juvenile
9 court and the appropriate order entered, the clerk of the juvenile court shall transmit the file to
10 the clerk of the district court, who shall refer it back to the judge assigned to handle the matter.

11 **Rule 4-903. Rule 101. Uniform custody evaluations.**³⁶

12 **Intent:**

13 ~~To establish uniform guidelines for the preparation of custody evaluations.~~

14 **Applicability:**

15 ~~This rule shall apply to the district and juvenile courts.~~

16 **Statement of the Rule:**

17 ~~(1)(a)~~ Custody evaluations shall be performed by persons with the following minimum
18 qualifications:

19 ~~(A)(1) Social work evaluations shall be performed by social workers licensed by the state in~~
20 ~~which they practice. workers who hold the designation of Licensed Clinical Social Worker and~~
21 ~~are licensed by the state in which they practice may perform custody evaluations within the~~
22 ~~scope of their licensure.~~

23 ~~(B) Psychological evaluations shall be performed by (2) Doctoral level psychologists who are~~
24 licensed by the state in which they practice may perform custody evaluations within the scope of
25 their licensure.

26 ~~(C)(3) Physicians who are board certified in psychiatry and are licensed by the state in which~~
27 they practice may perform custody evaluations within the scope of their licensure.

³⁵ Governed by §78-3a-105.

³⁶ Except for renumbering the paragraphs in accordance with the Supreme Court's protocol, the amendments to this rule are currently out for comment.

1 ~~Psychiatric examinations shall be performed by a licensed physician with a specialty in~~
2 ~~psychiatry.~~

3 (4) Marriage and family therapists who hold the designation of Licensed Marriage and
4 Family Therapist (Masters level minimum) by the state in which they practice may perform
5 custody evaluations within the scope of their licensure.

6 (b) Every motion or stipulation for the performance of a custody evaluation shall include:

7 (1) the name, address, and telephone number of each evaluator nominated, or the evaluator
8 agreed upon;

9 (2) the anticipated dates of commencement and completion of the evaluation and the
10 estimated cost of the evaluation;

11 (3) specific factors, if any, to be addressed in the evaluation.

12 (c) Every order requiring the performance of a custody evaluation shall:

13 (1) require the parties to cooperate as requested by the evaluator;

14 (2) restrict disclosure of the evaluation's findings or recommendations and privileged
15 information obtained except in the context of the subject litigation or other proceedings as
16 deemed necessary by the court;

17 (3) assign responsibility for payment;

18 (4) specify dates for commencement and completion of the evaluation;

19 (5) specify factors, if any, to be addressed in the evaluation;

20 (6) require the evaluator to provide written notice to the court, counsel and parties within five
21 business days of completion or termination of the evaluation and, if terminated, the reason;

22 (7) require counsel or parties to schedule a settlement conference with the court to include
23 the evaluator within 45 days of notice of completion or termination unless otherwise directed by
24 the court.

25 ~~(2)-(d)~~ (d) In divorce cases where custody is at issue, one evaluator may be appointed by the
26 Court to conduct an impartial and objective assessment of the parties and submit a written report
27 to the Court. ~~shall perform the evaluation on both parties and shall submit a written report to the~~
28 court, unless ~~When~~ one of the prospective custodians resides outside of the jurisdiction of the
29 court. ~~In those cases,~~ two individual evaluators may be appointed. In cases in which two

1 evaluators are appointed, the court will designate a primary evaluator. The evaluators must
2 confer prior to the commencement of the evaluation to establish appropriate guidelines and
3 criteria for the evaluation and shall submit only one joint report to the Court.

4 ~~(3)~~(e) The purpose of the custody evaluation will be to provide the Court with information it
5 can use to make decisions regarding custody and parenting time arrangements that are in the
6 child's best interest. This is accomplished by assessing the prospective custodians' capacity to
7 parent, the developmental, emotional, and physical needs of the child, and the fit between each
8 prospective custodian and child. Unless otherwise specified in the order, ~~Evaluators~~ evaluators
9 must consider and respond to each of the following factors:

10 ~~(A)~~(1) the child's preference;

11 ~~(B)~~(2) the benefit of keeping siblings together;

12 ~~(C)~~(3) the relative strength of the child's bond with one or both of the prospective custodians;

13 ~~(D)~~(4) the general interest in continuing previously determined custody arrangements where
14 the child is happy and well adjusted;

15 ~~(E)~~(5) factors relating to the prospective custodians' character or status or their capacity or
16 willingness to function as parents, including:

17 ~~(i)~~(A) moral character and emotional stability;

18 ~~(ii)~~(B) duration and depth of desire for custody;

19 ~~(iii)~~(C) ability to provide personal rather than surrogate care;

20 ~~(iv)~~(D) significant impairment of ability to function as a parent through drug abuse, excessive
21 drinking or other causes;

22 ~~(v)~~(E) reasons for having relinquished custody in the past;

23 ~~(vi)~~(F) religious compatibility with the child;

24 ~~(vii)~~(G) kinship, including in extraordinary circumstances stepparent status;

25 ~~(viii)~~(H) financial condition; and

26 ~~(ix)~~(I) evidence of abuse of the subject child, another child, or spouse; and

27 ~~(x)~~(J) any other factors deemed important by the evaluator, the parties, or the court.

28 (f) In cases in which specific areas of concern exist such as domestic violence, sexual abuse,
29 substance abuse, mental illness, and the evaluator does not possess specialized training or

1 experience in the area(s) of concern, the evaluator shall consult with those having specialized
2 training or experience. The assessment shall take into consideration the potential danger posed to
3 the child's custodian and the child(ren).

4 (g) In cases in which psychological testing is employed as a component of the evaluation, it
5 shall be conducted by a licensed psychologist who is trained in the use of the tests administered,
6 and adheres to the ethical standards for the use and interpretation of psychological tests in the
7 jurisdiction in which he or she is licensed to practice. If psychological testing is conducted with
8 adults and/or children, it shall be done with knowledge of the limits of the testing and should be
9 viewed within the context of information gained from clinical interviews and other available
10 data. Conclusions drawn from psychological testing should take into account the inherent
11 stresses associated with divorce and custody disputes.

12 **Rule 4-905. Rule 102. Domestic pretrial conferences and orders.**

13 **Intent:**

14 ~~To establish a uniform procedure for conducting pretrial conferences in contested domestic~~
15 ~~matters.~~

16 ~~To provide for uniformity in pretrial orders in contested domestic matters.~~

17 **Applicability:**

18 ~~This rule shall apply to the district courts which have court commissioners.~~

19 **Statement of the Rule:**

20 ~~(1)(a)~~ Court commissioners shall conduct pretrial conferences in all contested matters
21 seeking divorce, annulment, paternity or modification of a decree of divorce.

22 ~~(2)(b)~~ At the pretrial conference, the commissioner shall discuss the issues with counsel and
23 the parties, may receive proffers of evidence, and may receive evidence if authorized to do so by
24 the presiding district judge.

25 ~~(3)(c)~~ Following the pretrial conference, the commissioner shall issue a pretrial order which
26 shall include:

27 ~~(A)(1)~~ the issues stipulated to by the parties;

28 ~~(B)(2)~~ the issues which remain in dispute; and

1 | ~~(C)~~(3) the commissioner's recommendations as to the disputed issues if the commissioner
2 | conducted an evidentiary hearing on those issues.

3 | ~~(4)~~(d) The commissioner may designate one of the parties' counsel to reduce the pretrial
4 | order to writing pursuant to Rule ~~4-504~~ 72.

5 | ~~(5)~~(e) The disputed issues identified in the pretrial order shall remain at issue for purposes of
6 | trial.

7 | **Rule 4-911. Rule 103. Motion and order for payment of costs and fees.**

8 | **Intent:**

9 | ~~To establish the process by which the court may order the payment by one party of the costs~~
10 | ~~and fees of another party in a domestic relations or domestic violence action.~~

11 | **Applicability:**

12 | ~~This rule applies to the district court.~~

13 | **Statement of the Rule:**

14 | ~~(1)~~(a) In any action designated by ' 30-3-3(1), either party may move the court for an order
15 | requiring the other party to provide costs, attorney fees, and witness fees, including expert
16 | witness fees, to enable the moving party to prosecute or defend the action. The motion shall be
17 | accompanied by an affidavit setting forth the factual basis for the motion and the amount
18 | requested. The motion may include a request for costs or fees incurred:

19 | ~~(A)~~(1) prior to the commencement of the action;

20 | ~~(B)~~(2) during the action; or

21 | ~~(C)~~(3) after entry of judgment for the costs of enforcement of the judgment.

22 | ~~(2)~~(b) The court may grant the motion if the court finds that:

23 | ~~(A)~~(1) the moving party lacks the financial resources to pay the costs and fees;

24 | ~~(B)~~(2) the non-moving party has the financial resources to pay the costs and fees;

25 | ~~(C)~~(3) the costs and fees are necessary for the proper prosecution or defense of the action;

26 | and

27 | ~~(D)~~(4) the amount of the costs and fees are reasonable.

1 | ~~(3)(c)~~ The court may deny the motion or award limited payment of costs and fees if the court
2 finds that one or more of the grounds in paragraph (2) is missing or enters in the record the
3 reason for denial of the motion.

4 | ~~(4)(d)~~ The order shall specify the costs and fees to be paid within 30 days of entry of the
5 order or the court shall enter findings of fact that a delay in payment will not create an undue
6 hardship to the moving party and will not impair the ability of the moving party to prosecute or
7 defend the action. The order shall specify the amount to be paid. The court may order the amount
8 to be paid in a lump sum or in periodic payments. The court may order the fees to be paid to the
9 moving party or to the provider of the services for which the fees are awarded.

10 | ~~Rule 4-912. Rule 104. Child support worksheets.~~

11 | ~~Intent:~~

12 | ~~To assist judges and commissioners in applying the statutory child support guidelines to~~
13 ~~determine child support awards.~~

14 | ~~To assist the Administrative Office in collecting data regarding child support awards in~~
15 ~~compliance with 42 U.S.C. ' 667.~~

16 | ~~Applicability:~~

17 | ~~This rule applies to every final order of child support, including modifications of existing~~
18 ~~awards.~~

19 | ~~Statement of the Rule:~~

20 | ~~(1) The parties shall prepare a worksheet containing information set forth in Appendix G. If~~
21 ~~the filing party is the Office of Recovery Services, the section on "child care adjustment" need~~
22 ~~not be completed.~~

23 | ~~(2) The parties shall file a completed worksheet with the court and the information thereon~~
24 ~~shall be provided to the Administrative Office of the Courts.~~

25 | ~~(A) If the information on the worksheet is not electronically transferred to the Administrative~~
26 ~~Office by the filing party, that party shall~~ (a) When filing a child support worksheet required by
27 §78-45-7.3, a party may:

28 | (1) file the worksheet in duplicate ~~with the court. The and the~~ clerk of court shall send one
29 copy ~~of the worksheet~~ to the Administrative Office of the Courts; or

1 ~~(B) If (2) file one worksheet with the court, send~~ the information on the worksheet is
2 electronically ~~transferred~~ to the Administrative Office ~~by the filing party, that party shall and~~ so
3 indicate on the worksheet ~~and shall file a single copy of the worksheet with the court.~~

4 ~~(3)(b)~~ The court shall not enter the final decree of divorce, final order of modification, or
5 final decree of paternity until the completed worksheet is filed.

6 ~~(4) The Administrative Office shall compile the data contained on the worksheet and shall~~
7 ~~annually provide a report to the Child Support Guidelines Advisory Committee regarding the~~
8 ~~compiled data.~~³⁷

9 **Rule 4-913. Rule 105. Divorce decree upon affidavit.**

10 **Intent:**

11 ~~To authorize the use of an affidavit of a party for the entry of a default divorce decree as~~
12 ~~permitted by ' 30-3-4.~~

13 ~~To establish the minimum requirements for the content of the affidavit and accompanying~~
14 ~~documents.~~

15 **Applicability:**

16 ~~This rule shall apply in district court.~~

17 **Statement of the Rule:**

18 ~~(1)(a)~~ A party in a divorce case may apply for a default judgment in accordance with the
19 Utah Rules of Civil Procedure if the opposing party fails to make a timely appearance after
20 service of process or other appropriate notice, waives notice, stipulates to the withdrawal of the
21 answer, or stipulates to the entry of the decree or entry of default. An affidavit in support of the
22 decree shall accompany the application for default. The affidavit shall contain evidence
23 sufficient to support necessary findings of fact and a final judgment by stating that:

24 ~~(A)(1)~~ either petitioner or respondent was at the time of the petition

25 ~~(i)(A)~~ a resident of Utah for at least three months immediately prior to the commencement of
26 the action and

27 ~~(ii)(B)~~ a resident of the county in which the action was filed;

³⁷ ¶4 is administrative. It appears to be a self imposed requirement. I find nothing in state or federal statutes requiring the annual report.

1 | ~~(B)~~(2) petitioner and respondent are currently married;

2 | ~~(C)~~(3) the grounds for divorce provided in ' 30-3-1 that exist;

3 | ~~(D)~~(4) public assistance has been provided or is being provided, or that public assistance has
4 | not been and is not being provided; and

5 | ~~(E)~~(5) the proposed findings of fact and decree conform to the complaint or to the stipulation,
6 | whichever forms the basis for entry of the decree by default.

7 | ~~(2)~~(b) If the grounds for divorce are irreconcilable differences of the marriage, the affidavit
8 | shall further state the steps taken to try to resolve the differences and that despite the attempts at
9 | resolution, irreconcilable differences remain.

10 | ~~(3)~~(c) At a minimum the affidavit shall contain or be accompanied by the following:

11 | ~~(A)~~(1) the stipulation of the non-moving party, if applicable; and

12 | ~~(B)~~(2) as required by ~~CJA-4-504~~ Rule 5(d), proof of service of the proposed order on the
13 | non-moving party; and

14 | ~~(C)~~(3) as required by ' 78-45-7.3 and ~~Rule-4-912~~ 104,

15 | ~~(i)~~(A) a written statement that there are no dependent children of the marriage; or

16 | ~~(ii)~~(B) two copies of a completed child support worksheet; and

17 | ~~(iii)~~(C) a written statement that the amount of requested child support is or is not consistent
18 | with the child support guidelines; and

19 | ~~(D)~~(4) as required by ' 78-45-7.5,

20 | ~~(i)~~(A) a statement of petitioner's current earnings;

21 | ~~(ii)~~(B) a statement of respondent's current earnings;

22 | ~~(iii)~~(C) verification of earnings such as petitioner's and respondent's tax returns, pay stubs, or
23 | employer statements or records of the Department of Employment Security pursuant to the
24 | Employment Security Act, Section 35-4-312 and the rules of the Department; and

25 | ~~(E)~~(5) as required by ' 30-3-11.3 and Rule 4-907, a certificate of completion of a parenting
26 | class or a written statement that there are no dependent children of the marriage; and

27 | ~~(F)~~(6) as required by ' 78-45-9, if public assistance has been or is being provided, proof of
28 | service upon the Office of Recovery Services of an invitation to join; and

1 | ~~(G)(7)~~ as required by ' 62A-11-501 through ' 62A-11-504, universal income withholding
2 | forms and affidavits.

3 | ~~(4)(A)(d)(1)~~ If the requested amount of child support is not consistent with the child support
4 | guidelines, the statement regarding child support shall include facts sufficient to support a
5 | finding of good cause why the amount of child support should deviate from the guidelines.

6 | ~~(B)(2)~~ If the application is for a divorce decree upon the failure of the respondent to answer,
7 | and if verification of earnings of the respondent are not available, the petitioner may, by affidavit
8 | based on the best available evidence, represent to the court the income of the respondent. The
9 | affidavit shall be served on the respondent. The court may permit the verification of income by
10 | this process in other cases governed by this rule upon a showing of diligent efforts to obtain
11 | verification of the income of the respondent.

12 | ~~(5)(e)~~ The party applying for entry of the decree or counsel on behalf of the party shall file
13 | with the affidavit and accompanying documents a "notice to submit" that shall identify each
14 | document or statement required by this rule and note whether the document or statement is being
15 | filed concurrent with the notice to submit. If the document or statement is not being filed
16 | concurrently, the notice to submit shall state that the document or statement has already been
17 | filed with the court or shall explain why the document or statement is not required in the
18 | application of this rule to the facts of the particular case. The Administrative Office of the Courts
19 | shall develop a notice to submit form that may be used.

20 | ~~(6)(f)~~ A complaint for divorce alleging the insanity of the respondent shall not be granted
21 | under this rule, but shall proceed as provided in ' 30-3-1.

22 | **~~Rule 6-403. Rule 106. Shortening 90-day waiting period in domestic matters.~~**

23 | **~~Intent:~~**

24 | ~~To establish a procedure for shortening or waiving the 90-day waiting period in domestic~~
25 | ~~cases.~~

26 | **~~Applicability:~~**

27 | ~~This rule shall apply to the district courts.~~

28 | **~~Statement of the Rule:~~**

1 ~~(1) Proceedings on the merits of a divorce action shall not be heard by the district courts~~
2 ~~unless 90 days have elapsed from the time the petition was filed or unless the Court finds that~~
3 ~~there is good cause for shortening or eliminating the waiting period and enters a formal order to~~
4 ~~that effect prior to the hearing date.~~³⁸

5 ~~(2) Application for a hearing less than 90 days from the date the petition was filed shall be~~
6 ~~made by motion and accompanied by an affidavit setting forth the factual matters constituting~~
7 ~~good cause. The affidavit shall also include the date on which the petition for divorce was filed.~~
8 ~~The motion and supporting affidavit(s) shall be served on the opposing party at least five days~~
9 ~~prior to the scheduled hearing unless the party is in default.~~³⁹

10 ~~(3) In the event the Court finds that there is good cause for hearing in less than 90 days from~~
11 ~~the filing of the petition, the facts constituting such cause shall be included in the findings of fact~~
12 ~~and presented to the Court for signature.~~⁴⁰

13 **Rule 6-404. Rule 107. Modification of divorce decrees.**

14 **Intent:**

15 ~~To establish procedures for modification of existing divorce decrees.~~

16 **Applicability:**

17 ~~This rule shall apply to all district courts.~~

18 **Statement of the Rule:**

19 ~~(1) Proceedings to modify a divorce decree shall be commenced by the filing of a petition to~~
20 ~~modify in the original divorce action. Service of the petition and summons upon the opposing~~
21 ~~party shall be in accordance with the requirements of Rule 4 of the Utah Rules of Civil~~
22 ~~Procedure. No request for a modification of an existing decree shall be raised by way of an order~~
23 ~~to show cause.~~

24 ~~(2) The responding party shall serve the reply within twenty days after service of the~~
25 ~~petition.~~⁴¹ ~~Either party may file a certificate of readiness for trial.~~⁴² ~~Upon filing of the certificate,~~

³⁸ Governed by §30-3-18.

³⁹ Governed by URCP 6(d).

⁴⁰ Governed by §30-3-18.

⁴¹ Governed by URCP 12(a)

⁴² Certificate of readiness goes beyond petitions to modify a divorce decree. URCP 41 directs that the court will provide a method of placing matters on the trial calendar upon request of the parties. The committee note to

1 ~~the matter shall be referred to the domestic relations commissioner prior to trial, or in those~~
2 ~~districts where there is not a domestic relations commissioner, placed on the trial calendar.~~⁴³

3 ~~(3) No petition for modification shall be placed on a law and motion or order to show cause~~
4 ~~calendar without the consent of the commissioner or the district judge.~~⁴⁴

5 **Rule 6-406. Rule 108. Opening sealed adoption files.**

6 **Intent:**

7 ~~To establish uniform procedures for opening sealed adoption files and providing identifying~~
8 ~~information to adoptees and/or birth parents.~~

9 **Applicability:**

10 ~~This rule shall apply to all district and juvenile courts.~~

11 **Statement of the Rule:**

12 ~~(1)(a)~~ Except as set forth in paragraph ~~(3)(c)~~, all requests to open sealed adoption files to
13 obtain identifying information of adoptee or birth parents shall be initiated by filing a ~~formal~~
14 petition with the clerk of the court in the county ~~where-in which~~ the adoption was granted. The
15 petition must set forth in detail the reasons the information is desired ~~and must be accompanied~~
16 ~~by the appropriate filing fee.~~

17 ~~(2) If a petition to open a sealed adoption file is filed, the (b)~~ The petition shall be assigned to
18 the judge who presided in the adoption case. If the judge who presided in the adoption case is not
19 available, the case shall be assigned in the normal course.

20 ~~(3)(c)~~ An adoptive parent or adoptee may obtain a certified copy of the decree of adoption by
21 filing a motion and affidavit stating the purpose for the request. Neither a hearing nor notice to
22 the placement agency or the attorney who handled the private placement is required.

23 ~~(4) In cases where (d) If~~ the petitioner is seeking specific medical information to aid in the
24 preservation of the health of the petitioner, the petitioner ~~must contact shall request from~~ the
25 Bureau of Vital Statistics and the adoption agency involved in the placement (if applicable) ~~and~~
26 ~~make a request for~~ all non-identifying information regarding the birth parents and other relatives.

URCP 26 contains a deadline for filing a certificate of readiness for trial, but the phrase is not used in the rule itself. CJA 4-103, which is not proposed for incorporation into the URCP provides for a penalty if a certificate is not filed within 330 days of the first answer.

⁴³ Governed by CJA 6-401, which is not proposed for incorporation in the URCP.

⁴⁴ Goes without saying.

1 The petition must be accompanied by a letter from a licensed physician stating what the need is
2 and whether the information is necessary for the preservation of the health of the petitioner.

3 ~~(5) In cases where (e) If~~ the petitioner is requesting the information for reasons other than to
4 acquire specific medical data needed to aid in the preservation of the health of the petitioner, the
5 petitioner must register with the Voluntary Adoption Registry established by the Bureau of Vital
6 Statistics in accordance with Utah Code Ann. ' 78-30-18.

7 ~~(6) Upon receipt of the formal petition, filing fee, and supporting documents, the (f) The~~
8 court shall set the matter for hearing. ~~The court shall and~~ give notice of the hearing ~~date and~~
9 ~~time~~ to the placement agency or the attorney who handled the private placement. The notice shall
10 advise the placement agency or the attorney of the petition and request their attendance at the
11 hearing or their written response to the petition.

12 ~~(7)(g)~~ After a hearing, the court shall make ~~specific~~ findings of fact that good cause exists
13 and ~~that the adoption records shall be opened to petitioner. The findings shall address such issues~~
14 ~~as~~ whether the birth parents should be notified of the petition and given the opportunity to
15 respond, and, if it is not possible to contact the birth parents, why the adoptee's need to know
16 overrides the duty of confidentiality owed to the birth parents.⁴⁵

17 ~~(8)(h)~~ Upon a finding of good cause to open the adoption records, the court shall specify
18 which records or portions of records the petitioner may have access to. The court should be
19 sensitive to the fact that some of the records may not be appropriate for release to the adoptee,
20 including agency notes regarding the personal observations of the birth parents and the
21 circumstances surrounding the birth, etc. The court shall carefully consider what effect the
22 release of such information would have on the parties involved and may restrict access to such
23 information in the court records as well as the records of the adoption agency.

24 ~~(9)(i)~~ The adoption records shall be opened only for the limited purpose contained in the
25 court order and once the information is disseminated to the proper party or parties the court shall
26 order the file sealed, only to be opened thereafter upon further order of the court.

27 **Rule 6-407. Rule 109. Adoptions.**

⁴⁵ Coming as it does as part of the order, it may be a little late to let the birth parents oppose the petition. The rule should be restructured to give notice to the birth parents as part of notice to the attorney/placement agency.

1 **Intent:**

2 ~~To establish a procedure for requesting or waiving an adoption investigation.~~

3 **Applicability:**

4 ~~This rule shall apply to the District Courts.~~

5 **Statement of the Rule:**

6 ~~(1) In adoption cases, the petitioner(s) shall, sixty days or more prior to the hearing on the~~
7 ~~adoption, unless such period is waived by the judge, file with the court a motion and order either~~
8 ~~requesting that the Division of Family Services verify the petition and conduct an investigation~~
9 ~~into the adoption or waiving the investigation.~~⁴⁶

10 ~~(2) If a motion is filed to waive the investigation, an affidavit shall be filed by the~~
11 ~~petitioner(s) setting forth A petition⁴⁷ for adoption shall contain the following information~~
12 pertaining to the petitioner(s):

13 ~~(A)(a)~~ name;

14 ~~(B)(b)~~ place of residence for the last five years;

15 ~~(C)(c)~~ age;

16 ~~(D)(d)~~ marital status, including all prior marriages;

17 ~~(E)(e)~~ dependent children;

18 ~~(F)(f)~~ information on ownership of home;

19 ~~(G)(g)~~ employment within last five years;

20 ~~(H)(h)~~ average monthly income for the past year;

21 ~~(I)(i)~~ where and how the child was placed with petitioners;

22 ~~(J)(j)~~ information on natural parents; and

23 ~~(K)(k)~~ other pertinent information.

24 **Rule 6-501. Attorney's fees.**⁴⁸

25 **Intent:**

⁴⁶ This investigation by DCFS is governed by §78-30-14 and appears to be distinct from the pre-placement and post-placement evaluations under §78-30-3.5. It is for the court, not the petitioner, to determine whether the investigation is needed.

⁴⁷ Without a waiver of the investigation, this information, if it is needed will have to be part of the petition.

⁴⁸ Integrate into 4-505.

1 ~~To assist the probate division of the district courts in awarding reasonable attorneys fees~~
2 ~~(whether pled for in the personal representative's petition or shown as part of the personal~~
3 ~~representative's accounting).~~

4 **Applicability:**

5 ~~This rule is applicable to any proceeding concerning a decedent's estate where the probate~~
6 ~~court is asked to approve the award of attorneys fee. Rule 4-505 of this Code does not govern~~
7 ~~where this rule is applicable.~~

8 **Statement of the Rule:**

9 ~~(1) A "reasonable fee" for an attorney is a fee that is customary in the county in which the~~
10 ~~district court is located based on the following factors:~~

- 11 ~~(A) the time and labor required;~~
- 12 ~~(B) the novelty and difficulty of the questions involved;~~
- 13 ~~(C) the skill requisite to perform the legal services properly;~~
- 14 ~~(D) whether acceptance of this assignment precluded other employment by the attorney;~~
- 15 ~~(E) the amounts involved and the results obtained;~~
- 16 ~~(F) the time limitations imposed by the personal representative or the circumstances;~~
- 17 ~~(G) the experience, reputation, and ability of the lawyers performing the services; and~~
- 18 ~~(H) whether any part of the representation was done for a contingent fee.~~

19 ~~(2) The attorney for the personal representative shall file an affidavit in support of the request~~
20 ~~for fees. The affidavit need not address each of the factors set forth above provided that the court~~
21 ~~determines that the factors the affidavit does address are sufficient to establish the requested fee.~~

22 ~~(3) Attorney fees include all work done by attorneys and their paralegal associates (including~~
23 ~~paralegal work done by secretaries) and do not include secretarial and staff work done by~~
24 ~~secretaries and others.~~

25 **~~Rule 6-502. Attorney's fees in conservatorships.~~**⁴⁹

26 **Intent:**

⁴⁹ Integrate into 4-505.

1 ~~To assist the probate division of the district courts in awarding reasonable attorneys fees in~~
2 ~~conservatorships (whether pled for in the conservator's petition or shown as part of the~~
3 ~~conservator's accounting).~~

4 ~~Applicability:~~

5 ~~This rule is applicable to any proceeding involving a conservatorship estate where the~~
6 ~~probate court is asked to enter an order approving the award of attorneys fees. Rule 4-505 of this~~
7 ~~Code does not govern where this rule is applicable.~~

8 ~~Statement of the Rule:~~

9 ~~(1) "Reasonable compensation" for an attorney is a fee that is customary in the county in~~
10 ~~which the district court is located based on the following factors:~~

- 11 ~~(A) the time and labor required;~~
- 12 ~~(B) the novelty and difficulty of the questions involved;~~
- 13 ~~(C) the skill requisite to perform the legal services properly;~~
- 14 ~~(D) whether acceptance of this assignment precluded other employment by the attorney;~~
- 15 ~~(E) the amounts involved and the results obtained;~~
- 16 ~~(F) the time limitations imposed by the conservator or the circumstances;~~
- 17 ~~(G) the experience, reputation, and ability of the lawyers performing the services; and~~
- 18 ~~(H) whether any part of the representation was done for a contingent fee.~~

19 ~~(2) The attorney for the conservator shall file an affidavit in support of the fee request. The~~
20 ~~affidavit need not address each of the factors set forth above provided that the court determines~~
21 ~~that the factors the affidavit does address are sufficient to establish the requested fee.~~

22 ~~(3) Attorney fees include all work done by attorneys and their paralegal associates (including~~
23 ~~paralegal work done by secretaries) and do not include secretarial and staff work done by~~
24 ~~secretaries and others.~~

25 ~~**Rule 6-503. Rule 90. Annual report of guardian.**~~

26 ~~Intent:~~

27 ~~To assist the probate division of the district court in administering annual reports filed by~~
28 ~~guardians.~~

29 ~~Applicability:~~

~~This rule applies to the filing of annual reports by the guardians except where the guardian is the parent or ward.~~

~~Statement of the Rule:~~

~~(1)(a)~~ Individual guardians.

~~(A)(1)~~ Each individual guardian who possesses or controls the property of a ward valued at \$50,000 or more shall file with the court an annual report and an accounting and a formal petition seeking approval of the report and accounting. The petition shall identify all interested persons who are entitled to notice under the Utah Uniform Probate Code and provide all other information necessary for the court to review and rule upon the guardian's report and accounting. The guardian shall also file a copy of the petition, the report and the accounting for each interested person who is to receive notice of the petition. In those jurisdictions where it is the local practice for the guardian to prepare the notice, the guardian shall prepare the notice and file the original notice with the court. The guardian shall also file one copy of the notice for each interested person who is to receive notice of the petition, report and accounting.

~~(i) The report and accounting shall be in the following form:~~⁵⁰

THIS IS A REPORT OF _____, GUARDIAN FOR _____, A WARD. THIS REPORT HAS BEEN FILED WITH THE _____ DISTRICT COURT FOR _____ COUNTY. IF YOU HAVE AN OBJECTION TO THIS REPORT, YOU SHOULD FILE IT IN WRITING WITH THE COURT. YOU SHOULD CONSIDER SEEKING LEGAL ADVICE IF YOU HAVE ANY QUESTIONS REGARDING THIS MATTER.

YOU WILL ALSO RECEIVE A NOTICE THAT A FORMAL HEARING WILL BE HELD ON THIS REPORT. YOU HAVE THE RIGHT TO APPEAR IN COURT AT THE HEARING AND TO STATE ANY OBJECTIONS YOU HAVE TO THE REPORT AT THAT TIME. IF YOU FAIL TO APPEAR AT THE HEARING OR TO OBJECT TO THIS REPORT, THE DISTRICT COURT WILL CONSIDER THE REPORT WITHOUT ANY FURTHER NOTICE TO YOU AND WITHOUT ANY OPPORTUNITY FOR YOU TO MAKE ANY POINTS YOU WISH TO MAKE.

⁵⁰ The form should be removed from the rule and published with other forms.

1 1. This report covers the period of time from _____ to _____, ____ .

2 2. During this period, the guardian took the following actions on behalf of the ward:
3 _____ .

4 3. During this period, the ward's condition was as follows: (Describe ward's physical and
5 mental condition)

6 4. The ward is living at: _____ .

7 5. The following persons are living with the ward at this address:
8 _____ .

9 6. The guardian has attached to this report an accounting. The accounting shows the
10 beginning balance of property subject to the guardian's control, all receipts during this period, all
11 expenditures during this period and the balance at the end of this period.

12 7. The guardian believes this is an accurate report of the guardian's actions and the ward's
13 condition for this period.

14 | ~~(ii)(A)~~ Upon receipt of the petition, report and accounting, the clerk of the court shall set a
15 date and time for hearing the guardian's petition and shall send a copy of the notice, the petition,
16 the report and the accounting to each interested person (including the ward) and shall send a
17 copy of the notice to the guardian and the guardian's attorney.

18 | ~~(iii)(C)~~ The guardian or the guardian's attorney shall appear at the hearing on the guardian's
19 petition.

20 | ~~(iv)(D)~~ The court shall take appropriate action in the proceedings based on the court's review
21 of the petition, report, accounting, any objections that are lodged by interested persons and any
22 other relevant factors.

23 | ~~(B)(2)~~ Each individual guardian who possesses or controls the property of a ward valued at
24 less than \$50,000 shall prepare a report and accounting.

25 | ~~(i) The report and accounting shall be in the following form:~~⁵¹

26 THIS IS A REPORT OF _____ , GUARDIAN FOR
27 _____ , A WARD. THIS REPORT HAS BEEN FILED WITH THE
28 _____ DISTRICT COURT FOR _____ COUNTY. IF YOU HAVE

⁵¹ The form should be removed from the rule and published with other forms.

1 AN OBJECTION TO THIS REPORT, YOU SHOULD FILE IT IN WRITING WITH THE
2 COURT. YOU SHOULD CONSIDER SEEKING LEGAL ADVICE IF YOU HAVE ANY
3 QUESTIONS REGARDING THIS MATTER.

4 YOU HAVE FOURTEEN DAYS FROM THE DATE OF THIS REPORT TO FILE AN
5 OBJECTION WITH THE _____ DISTRICT COURT. IF YOU FAIL TO OBJECT TO
6 THIS REPORT, THE DISTRICT COURT WILL CONSIDER THE REPORT WITHOUT ANY
7 FURTHER NOTICE TO YOU AND WITHOUT ANY OPPORTUNITY FOR YOU TO
8 APPEAR BEFORE THE DISTRICT COURT JUDGE AND MAKE ANY POINTS YOU WISH
9 TO MAKE.

10 1. This report covers the period of time from _____ to _____, ____ .

11 2. During this period, the guardian took the following actions on behalf of the ward:
12 _____ .

13 3. During this period, the ward's condition was as follows: (Describe ward's physical and
14 mental condition)

15 4. The ward is living at: _____ .

16 5. The following persons are living with the ward at this address:
17 _____ .

18 6. The guardian has attached to this report an accounting. The accounting shows the
19 beginning balance of property subject to the guardian's control, all receipts during this period, all
20 expenditures during this period and the balance at the end of this period.

21 7. The guardian believes this is an accurate report of the guardian's actions and the ward's
22 condition for this period.

23 | ~~(ii)~~(A) The guardian shall date the report on the date the guardian delivers or mails a copy of
24 the report to each interested person and the original report to the clerk of the court.

25 | ~~(iii)~~(B) Fourteen days after the date of the report and accounting, if no objections have been
26 filed with the clerk of the court, the court shall review the accounting and, if the report and
27 accounting are in order, the court will approve the report and accounting. The court in its
28 discretion may order a formal hearing on the report and accounting.

1 | ~~(iv)~~(C) If an interested person objects to the report and accounting within fourteen days or if
2 | the court orders a formal hearing sua sponte, the clerk of the court shall set a date and time for
3 | hearing the guardian's report and accounting and shall send a notice of the date and time for
4 | hearing to each interested person (including the ward) and to the guardian and the guardian's
5 | attorney.

6 | ~~(v)~~(D) The guardian or the guardian's attorney shall appear at the hearing on the guardian's
7 | report and accounting.

8 | ~~(vi)~~(E) The court shall call the guardian's report and accounting and take appropriate action
9 | in the proceedings, based on the court's review of the report, accounting, and any objections that
10 | are lodged by interested persons and any other relevant factors.

11 | ~~(2)~~(b) Corporate guardians.

12 | ~~(A)~~(1) Each corporate guardian shall prepare a report and accounting ~~in the form set forth in~~
13 | ~~paragraph (1)(A)(i) above~~⁵².

14 | ~~(i)~~(A) The guardian shall mail or deliver a copy of the report and accounting to each
15 | interested person and the original report and accounting to the clerk of the court.

16 | ~~(ii)~~(B) Fourteen days after the date of the report and accounting, if no objections have been
17 | filed with the clerk of the court, the court shall review the accounting and, if the report and
18 | accounting are in order, the court will approve the report and accounting. The court in its
19 | discretion may order a formal hearing on the report and accounting.

20 | ~~(iii)~~(C) If an interested person objects to the report and accounting within fourteen days or if
21 | the court orders a formal hearing sua sponte, the clerk of the court shall set a date and time for
22 | hearing the guardian's report and accounting and shall send a notice of the date and time for
23 | hearing to each interested person (including the ward) and to the guardian and the guardian's
24 | attorney.

25 | ~~(iv)~~(D) The guardian or the guardian's attorney shall appear at the hearing on the guardian's
26 | report and accounting.

⁵² Form will not be part of the rule.

1 | ~~(E)~~(E) The court shall take appropriate action in the proceedings, based on the court's review
2 | of the report, accounting, and any objections that are lodged by interested persons and any other
3 | relevant factors.

4 | ~~(3)(c)~~(c) Summary of account. Every accounting shall include a Summary of Account ~~in the~~
5 | ~~following form:~~⁵³

6 | SUMMARY OF ACCOUNT

7 | Accounting Period from _____ , ____ to _____ , ____

8 | 1. Assets on hand at end of Last

9 | Accounting Period. Schedule 1 attached. _____

10 | (Value at fair market value on

11 | last day of Accounting Period.)

12 | 2. Receipts during accounting period

13 | Include only amounts received from

14 | sale of assets in excess of value

15 | See Schedule 2. _____

16 | 3. Total assets and receipts _____

17 | 4. Disbursements

18 | Schedule 3 _____

19 | 5. Losses on sales

20 | Schedule 4 _____

21 | 6. Total disbursements and losses on

22 | sales _____

23 | 7. Total assets on hand at end of

24 | this Accounting Period

25 | (line 3 less line 6) _____

26 | (Value at fair market value on

27 | last day of Accounting Period)

28 | Total assets by type:

⁵³ The form should be removed from the rule and published with other forms

1	Cash	
2	Schedule 5	_____
3	Bonds	
4	Schedule 6	_____
5	(Value at fair market value on	
6	last day of Accounting Period)	
7	Realty	
8	Schedule 7	_____
9	(Value at fair market value on	
10	last day of Accounting Period)	
11	Other property	
12	Schedule 8	_____
13	(Value at fair market value on	
14	last day of Accounting Period)	
15	8. Total assets on hand	
16	at end of this Accounting	
17	Period	_____
18	(Value at fair market value on	
19	last day of Accounting Period)	
20	(This must equal line 7)	

21 | ~~(4)~~(d) Supporting schedules. In lieu of filing supporting schedules and original checks and
22 | vouchers, corporate guardians may file copies of their internal reports. All other guardians shall
23 | file supporting schedules and original checks or vouchers in support of all expenditures and
24 | distributions. Where checks or vouchers are not available, the guardian shall file an affidavit in
25 | support of the affected expenditures or distributions.

26 | ~~(5)~~(e) Court orders restricting access to property. For purposes of this rule, if some or all of
27 | the ward's property cannot be used by the guardian except pursuant to a court order and if no
28 | court order has been entered during the accounting period allowing the guardian to use that
29 | property, then the guardian does not have possession or control of that property. In addition, for

1 | purposes of paragraph ~~(1) of this rule (a)~~, when determining the value of the ward's property
2 | pursuant to this rule, the guardian shall not include the value of the ward's residence; however,
3 | the guardian shall account for income from and expenses on the ward's residence, where
4 | applicable.

5 | **Rule 6-504. Rule 91. Annual accounting of conservator.**

6 | **Intent:**

7 | ~~To assist the probate division of the district court in administering annual accountings filed~~
8 | ~~by conservators.~~

9 | **Applicability:**

10 | ~~This rule applies to the filing of annual accountings by conservators except where the~~
11 | ~~conservator is the parent or ward.~~

12 | **Statement of the Rule:**

13 | ~~(1)(a)~~ Individual conservators.

14 | ~~(A)(1)~~ Each individual conservator who administers an estate for a protected person valued at
15 | \$50,000 or more shall file with the court an annual accounting and a formal petition seeking
16 | approval of the accounting. The petition shall identify all interested persons who are entitled to
17 | notice under the Utah Uniform Probate Code and provide all other information necessary for the
18 | court to review and rule upon the conservator's accounting. The conservator shall also file a copy
19 | of the petition and the accounting for each interested person who is to receive notice of the
20 | petition. In those jurisdictions where it is the local practice for the conservator to prepare the
21 | notice, the conservator shall prepare the notice and file the original notice with the court. The
22 | conservator shall also file one copy of the notice for each interested person who is to receive
23 | notice of the petition and accounting.

24 | ~~(i) The accounting shall be in the following form:~~⁵⁴

25 | THIS IS AN ACCOUNTING OF _____, CONSERVATOR FOR THE
26 | ESTATE OF _____, A PROTECTED PERSON. THIS ACCOUNTING HAS
27 | BEEN FILED WITH THE _____ DISTRICT COURT FOR _____ COUNTY.
28 | IF YOU HAVE AN OBJECTION TO THIS ACCOUNTING, YOU SHOULD FILE IT IN

⁵⁴ The form should be removed from the rule and published with other forms

1 WRITING WITH THE COURT. YOU SHOULD CONSIDER SEEKING LEGAL ADVICE IF
2 YOU HAVE ANY QUESTIONS REGARDING THIS MATTER.

3 YOU WILL ALSO RECEIVE A NOTICE THAT A FORMAL HEARING WILL BE HELD
4 ON THIS ACCOUNTING. YOU HAVE THE RIGHT TO APPEAR IN COURT AT THE
5 HEARING AND TO STATE ANY OBJECTIONS YOU HAVE TO THE ACCOUNTING AT
6 THAT TIME. IF YOU FAIL TO APPEAR AT THE HEARING OR TO OBJECT TO THIS
7 ACCOUNTING, THE DISTRICT COURT WILL CONSIDER THE ACCOUNTING
8 WITHOUT ANY FURTHER NOTICE TO YOU AND WITHOUT ANY OPPORTUNITY FOR
9 YOU TO MAKE ANY POINTS YOU WISH TO MAKE.

- 10 1. This accounting covers the period of time from _____ to _____, ____ .
11 2. The conservator's accounting for this period is attached.
12 3. The conservator believes this is an accurate accounting for this period.

13 | ~~(ii)(A)~~ Upon receipt of the petition and accounting, the clerk of the court shall set a date and
14 | time for hearing the conservator's petition and shall send a copy of the notice, the petition and the
15 | accounting to each interested person (including the protected person) and shall send a copy of the
16 | notice to the conservator and the conservator's attorney.

17 | ~~(iii)(B)~~ The conservator or the conservator's attorney shall appear at the hearing on the
18 | conservator's petition.

19 | ~~(iv)(C)~~ The court shall take appropriate action in the proceedings, based on the court's review
20 | of the petition, accounting, any objections that are lodged by interested persons and any other
21 | relevant factors.

22 | ~~(B)(2)~~ Each individual conservator who administers an estate for a protected person valued at
23 | less than \$50,000 shall prepare an accounting.

24 | ~~(i) The accounting shall be in the following form:~~⁵⁵

25 | THIS IS AN ACCOUNTING OF _____, CONSERVATOR FOR
26 | THE ESTATE OF _____, A PROTECTED PERSON. THIS ACCOUNTING
27 | HAS BEEN FILED WITH THE _____ DISTRICT COURT FOR
28 | _____ COUNTY. IF YOU HAVE AN OBJECTION TO THIS ACCOUNTING,

⁵⁵ The form should be removed from the rule and published with other forms

1 YOU SHOULD FILE IT IN WRITING WITH THE COURT. YOU SHOULD CONSIDER
2 SEEKING LEGAL ADVICE IF YOU HAVE ANY QUESTIONS REGARDING THIS
3 MATTER.

4 YOU HAVE FOURTEEN DAYS FROM THE DATE OF THIS ACCOUNTING TO FILE
5 AN OBJECTION WITH THE _____ DISTRICT COURT. IF YOU FAIL TO
6 OBJECT TO THIS ACCOUNTING, THE DISTRICT COURT WILL CONSIDER THE
7 ACCOUNTING WITHOUT ANY FURTHER NOTICE TO YOU AND WITHOUT ANY
8 OPPORTUNITY FOR YOU TO APPEAR BEFORE THE DISTRICT COURT JUDGE AND
9 MAKE ANY POINTS YOU WISH TO MAKE.

10 1. This accounting covers the period of time from _____ to _____ , ____ .

11 2. The conservator's accounting for this period is attached.

12 3. The conservator believes this is an accurate accounting for this period.

13 | ~~(ii)~~(B) The conservator shall date the accounting on the date the conservator delivers or mails
14 a copy of the accounting to each interested person and the original accounting to the clerk of the
15 court.

16 | ~~(iii)~~(C) Fourteen days after the date of the accounting, if no objections have been filed with
17 the clerk of the court, the court shall review the accounting and, if the accounting is in order, the
18 court will approve the report and accounting. The court in its discretion may order a formal
19 hearing on the accounting.

20 | ~~(iv)~~(D) If an interested person objects to the accounting within fourteen days or if the court
21 orders a formal hearing sua sponte, the clerk of the court shall set a date and time for hearing the
22 conservator's accounting and shall send a notice of the date and time for hearing to each
23 interested person (including the protected person) and to the conservator and the conservator's
24 attorney.

25 | ~~(v)~~(E) The conservator or the conservator's attorney shall appear at the hearing on the
26 conservator's accounting.

27 | ~~(vi)~~(F) The court shall take appropriate action in the proceedings, based on the court's review
28 of the accounting, any objections that are lodged by interested persons and any other relevant
29 factors.

1 | ~~(vii)(G)~~ If all of the protected person's property cannot be used by the conservator except
2 | pursuant to court order and if no court order has been entered during the accounting period
3 | allowing the conservator to use that property, then the conservator shall not be required to file an
4 | accounting for that period. However, the conservator shall file a pleading with the court for that
5 | period citing this rule and the court's order as explanation for the conservator's failure to file an
6 | accounting.

7 | ~~(2)(b)~~ Corporate conservators.

8 | ~~(A)(1)~~ Each corporate conservator shall prepare an accounting ~~in the form set forth in~~
9 | ~~paragraph (1)(B)(i) above.~~⁵⁶

10 | ~~(B)(2)~~ The conservator shall mail or deliver a copy of the accounting to each interested
11 | person and the original accounting to the clerk of the court.

12 | ~~(C)(3)~~ Fourteen days after the date of the accounting, if no objections have been filed with
13 | the clerk of the court, the court shall review the accounting and, if the accounting is in order, the
14 | court will approve the accounting. The court in its discretion may order a formal hearing on the
15 | accounting.

16 | ~~(D)(4)~~ If an interested person objects to the accounting within fourteen days or if the court
17 | orders a formal hearing sua sponte, the clerk of the court shall set a date and time for hearing the
18 | conservator's accounting and shall send a notice of the date and time for hearing to each
19 | interested person (including the protected person) and to the conservator and the conservator's
20 | attorney.

21 | ~~(E)(5)~~ The conservator or the conservator's attorney shall appear at the hearing on the
22 | conservator's accounting.

23 | ~~(F)(6)~~ The court shall call the conservator's accounting and take appropriate action in the
24 | proceedings, based on the court's review of the accounting, any objections that are lodged by
25 | interested persons and any other relevant factors.

26 | ~~(3)(c)~~ Summary of account. Every accounting shall include a Summary of Account ~~in the~~
27 | ~~following form:~~⁵⁷

⁵⁶ The form should be removed from the rule and published with other forms.

⁵⁷ The form should be removed from the rule and published with other forms.

1 SUMMARY OF ACCOUNT
2 Accounting Period from _____, _____ to _____, _____
3 1. Assets on hand at end of Last
4 Accounting Period. Schedule 1 attached. _____
5 (Value at fair market value on
6 last day of Accounting Period)
7 2. Receipts during accounting period
8 Include only amounts received from
9 sale of assets in excess of value.
10 See Schedule 2 _____
11 3. Total assets and receipts _____
12 4. Disbursements
13 Schedule 3 _____
14 5. Losses on sales
15 Schedule 4 _____
16 6. Total disbursements and losses on
17 sales _____
18 7. Total assets on hand at end of
19 this Accounting Period
20 (line 3 less line 6) _____
21 (Value at fair market value on
22 last day of Accounting Period)
23 Total assets by type:
24 Cash
25 Schedule 5 _____
26 Bonds
27 Schedule 6 _____
28 (Value at fair market value on
29 last day of Accounting Period)

1 Realty
2 Schedule 7 _____

3 (Value at fair market value on
4 last day of Accounting Period)

5 Other property
6 Schedule 8 _____

7 (Value at fair market value on
8 last day of Accounting Period)

9 8. Total assets on hand
10 at end of this Accounting Period _____

11 (Value at fair market value on
12 last day of Accounting Period)

13 (This must equal line 7)

14 | ~~(4)~~(d) Supporting schedules. In lieu of filing supporting schedules and original checks and
15 vouchers, corporate conservators may file copies of their internal reports. All other conservators
16 shall file supporting schedules and original checks or vouchers in support of all expenditures and
17 distributions. Where checks or vouchers are not available, the conservator shall file an affidavit
18 in support of the affected expenditures or distributions.

19 | ~~(5)~~(e) Court orders restricting access to property. For purposes of this rule, if some of the
20 protected person's property cannot be used by the conservator except pursuant to a court order
21 and if no court order has been entered during the accounting period allowing the conservator to
22 use that property, then the conservator is not required to account for that property. In addition,
23 | for purposes of paragraph ~~(1) of this rule (a)~~, when determining the value of the protected
24 person's property pursuant to this rule, the conservator shall not include the value of the
25 protected person's residence; however, the conservator shall account for income from and
26 expenses on the protected person's residence, where applicable.

27 | **Rule 6-505. Rule 92. Fiduciary accountings.**

28 | **Intent:**

1 | ~~To recognize standard accounting publications and forms as sufficient to meet the~~
2 | ~~requirements of fiduciary accountings.~~

3 | ~~Applicability:~~

4 | ~~This rule shall apply to an accounting filed by a fiduciary in district court.~~

5 | ~~Statement of the Rule:~~

6 | ~~(1)(a)~~ A fiduciary accounting shall contain sufficient information to put interested persons
7 | on notice as to all significant transactions affecting administration during the accounting period.
8 | The accounting may be typewritten or prepared by automated data processing or trust accounting
9 | systems. The court may require the fiduciary to keep or produce vouchers or other evidence of
10 | payment.

11 | ~~(2)(b)~~ An accounting substantially conforming to the Uniform Fiduciary Accounting
12 | Principles and accompanying Model Account Formats published as the Fiduciary Accounting
13 | Guide, 1990 Revision by ALI-ABA, as revised and republished, is acceptable as to content and
14 | format for an accounting filed under the Utah Uniform Probate Code. An accounting
15 | substantially conforming to the Fiduciary Accounting Guide is acceptable as to content and
16 | format for an accounting filed under ' 75-5-312 provided the accounting reports, as required by
17 | statute:

18 | ~~(A)(1)~~ the status and physical condition of the ward;

19 | ~~(B)(2)~~ the physical condition of the place of residence; and

20 | ~~(C)(3)~~ a list of others living in the household.

21 | ~~(3)(c)~~ An accounting substantially conforming to the Utah Uniform Probate Code forms of
22 | the Estate Planning Section of the Utah State Bar, as revised and republished, is acceptable as to
23 | content and format for an accounting filed under the Utah Uniform Probate Code.

24 | ~~(4)(d)~~ An accounting substantially conforming to Rule ~~6-503-90~~ or Rule ~~6-504-91~~ is
25 | acceptable as to content and format for an accounting filed under ' 75-5-312 or ' 75-5-417,
26 | respectively.

27 | ~~(5)(e)~~ The court may direct an accounting be prepared with such content and in such format
28 | as it deems necessary.

29 | **Rule 5. Service and filing of pleadings and other papers.**

1 (a) Service: When required.

2 (1) Except as otherwise provided in these rules or as otherwise directed by the court, every
3 judgment, every order required by its terms to be served, every pleading subsequent to the
4 original complaint, every paper relating to discovery, every written motion other than one which
5 may be heard ex parte, and every written notice, appearance, demand, offer of judgment, and
6 similar paper shall be served upon each of the parties.

7 (2) No service need be made on parties in default for failure to appear except as provided in
8 Rule 55(a)(2)(default proceedings). Pleadings asserting new or additional claims for relief
9 against a party in default shall be served in the manner provided for service of summons in Rule
10 4.

11 (3) In an action begun by seizure of property, whether through arrest, attachment,
12 garnishment or similar process, in which no person need be or is named as defendant, any service
13 required to be made prior to the filing of an answer, claim or appearance shall be made upon the
14 person having custody or possession of the property at the time of its seizure.

15 (b) Service: How made and by whom.

16 (1) Whenever under these rules service is required or permitted to be made upon a party
17 represented by an attorney, the service shall be made upon the attorney unless service upon the
18 party is ordered by the court. Service upon the attorney or upon a party shall be made by
19 delivering a copy or by mailing a copy to the last known address or, if no address is known, by
20 leaving it with the clerk of the court.

21 (A) Delivery of a copy within this rule means: Handing it to the attorney or to the party; or
22 leaving it at the person's office with a clerk or person in charge thereof; or, if there is no one in
23 charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be
24 served has no office, leaving it at the person's dwelling house or usual place of abode with some
25 person of suitable age and discretion then residing therein or, if consented to in writing by the
26 person to be served, delivering a copy by electronic or other means.

27 (B) Service by mail is complete upon mailing. If the paper served is notice of a hearing and if
28 the hearing is scheduled 5 days or less from the date of service, service shall be by delivery or
29 other method of actual notice. Service by electronic means is complete on transmission if

1 transmission is completed during normal business hours at the place receiving the service;
2 otherwise, service is complete on the next business day.

3 (2) Unless otherwise directed by the court:

4 (A) an order signed by the court and required by its terms to be served or a judgment signed
5 by the court shall be served by the party preparing it;

6 (B) every other pleading or paper required by this rule to be served shall be served by the
7 party preparing it; and

8 (C) an order or judgment prepared by the court shall be served by the court.

9 (c) Service: Numerous defendants. In any action in which there is an unusually large number
10 of defendants, the court, upon motion or of its own initiative, may order that service of the
11 pleadings of the defendants and replies thereto need not be made as between the defendants and
12 that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense
13 contained therein shall be deemed to be denied or avoided by all other parties and that the filing
14 of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the
15 parties. A copy of every such order shall be served upon the parties in such manner and form as
16 the court directs.

17 (d) Filing. ~~Except where rules of judicial administration prohibit the filing of discovery~~
18 ~~requests and responses, all~~ All papers after the complaint required to be served upon a party shall
19 be filed with the court either before or within a reasonable time after service. The papers shall be
20 accompanied by a certificate of service showing the date and manner of service completed by the
21 person effecting service. Rule 26(i) governs filing papers related to discovery.

22 (e) Filing with the court defined. The filing of pleadings and other papers with the court as
23 required by these rules shall be made by filing them with the clerk of the court, except that the
24 judge may accept the papers, note thereon the filing date and forthwith transmit them to the
25 office of the clerk.

26 **Rule 6. Time**

27 (a) Computation. In computing any period of time prescribed or allowed by these rules, by
28 the local rules of any district court, by order of court, or by any applicable statute, the day of the
29 act, event, or default from which the designated period of time begins to run shall not be

1 included. The last day of the period so computed shall be included, unless it is a Saturday, a
2 Sunday, or a legal holiday, in which event the period runs until the end of the next day which is
3 not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed,
4 without reference to any additional time provided under subsection (e), is less than 11 days,
5 intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

6 (b) Enlargement. When by these rules or by a notice given thereunder or by order of the court
7 an act is required or allowed to be done at or within a specified time, the court for cause shown
8 may at any time in its discretion (1) with or without motion or notice order the period enlarged if
9 request therefor is made before the expiration of the period originally prescribed or as extended
10 by a previous order or (2) upon motion made after the expiration of the specified period permit
11 the act to be done where the failure to act was the result of excusable neglect; but it may not
12 extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b),
13 except to the extent and under the conditions stated in them.

14 (c) Unaffected by expiration of term. The period of time provided for the doing of any act or
15 the taking of any proceeding is not affected or limited by the continued existence or expiration of
16 a term of court. The continued existence or expiration of a term of court in no way affects the
17 power of a court to do any act or take any proceeding in any civil action which has been pending
18 before it.

19 (d) For motions - Affidavits. A written motion, other than one which may be heard ex parte,
20 and notice of the hearing thereof shall be served not later than 5 days before the time specified
21 for the hearing, unless a different period is fixed by these rules, ~~by CJA 4-501~~, or by order of the
22 court. Such an order may for cause shown be made on ex parte application. When a motion is
23 supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise
24 provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the
25 hearing, unless the court permits them to be served at some other time.

26 (e) Additional time after service by mail. Whenever a party has the right or is required to do
27 some act or take some proceedings within a prescribed period after the service of a notice or
28 other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added
29 to the end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and

1 legal holidays shall be included in the computation of any 3-day period under this subsection,
2 except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the
3 period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

4 **Rule 7. Pleadings allowed; form of motions.**

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

11 (b) Motions, orders and other papers.

12 (1) Motions. An application to the court for an order shall be by motion which, unless made
13 during a hearing or trial, shall be made ~~in writing, shall state with particularity the grounds~~
14 ~~therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if~~
15 ~~the motion is stated in a written notice of the hearing of the motion~~ in accordance with Rule 72.

16 (2) Orders. An order includes every direction of the court including a minute order made and
17 entered in writing and not included in a judgment. An order for the payment of money may be
18 enforced ~~by execution~~ in the same manner as if it were a judgment. Except as otherwise
19 ~~specifically~~ provided by these rules, any order made without notice to the adverse party may be
20 vacated or modified with or without notice by the judge who made it, ~~or may be vacated or~~
21 ~~modified on notice.~~

22 (3) Hearings on motions or orders to show cause. ~~When on the day fixed for the hearing of a~~
23 ~~motion or an order to show cause, If~~ the judge before whom such a motion or order to show
24 cause is to be heard is unable to hear the parties, the matter shall stand continued until the further
25 order of the court, or it may be transferred by the court ~~or judge~~ to some other judge ~~of the court~~
26 for such hearing.

1 | ~~(4) Application of rules to motions, orders, and other papers. The rules applicable to captions,~~
2 | ~~signings, and other matters of form of pleadings apply to all motions, orders, and other papers~~
3 | ~~provided for by these rules.~~⁵⁸

4 | (c) Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a
5 | pleading shall not be used.

6 | **Rule 9. Pleading special matters.**

7 | (a) (1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the
8 | authority of a party to sue or be sued in a representative capacity or the legal existence of an
9 | organized association of persons that is made a party. When a party desires to raise an issue as to
10 | the legal existence of any party or the capacity of any party to sue or be sued or the authority of a
11 | party to sue or be sued in a representative capacity, he shall do so by specific negative averment,
12 | which shall include such supporting particulars as are peculiarly within the pleader's knowledge,
13 | and on such issue the party relying on such capacity, authority, or legal existence, shall establish
14 | the same on the trial.

15 | (2) Designation of unknown defendant. When a party does not know the name of an adverse
16 | party, he may state that fact in the pleadings, and thereupon such adverse party may be
17 | designated in any pleading or proceeding by any name; provided, that when the true name of
18 | such adverse party is ascertained, the pleading or proceeding must be amended accordingly.

19 | (3) Actions to quiet title; description of interest of unknown parties. In an action to quiet title
20 | wherein any of the parties are designated in the caption as "unknown," the pleadings may
21 | describe such unknown persons as "all other persons unknown, claiming any right, title, estate or
22 | interest in, or lien upon the real property described in the pleading adverse to the complainant's
23 | ownership, or clouding his title thereto."

24 | (b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the
25 | circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent,
26 | knowledge, and other condition of mind of a person may be averred generally.

27 | (c) Conditions precedent. In pleading the performance or occurrence of conditions precedent,
28 | it is sufficient to aver generally that all conditions precedent have been performed or have

⁵⁸ Adequately governed by URCP 10.

1 occurred. A denial of performance or occurrence shall be made specifically and with
2 particularity, and when so made the party pleading the performance or occurrence shall on the
3 trial establish the facts showing such performance or occurrence.

4 (d) Official document or act. In pleading an official document or act it is sufficient to aver
5 that the document was issued or the act done in compliance with law.

6 (e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or
7 quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision
8 without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be
9 made specifically and with particularity and when so made the party pleading the judgment or
10 decision shall establish on the trial all controverted jurisdictional facts.

11 (f) Time and place. For the purpose of testing the sufficiency of a pleading, averments of
12 time and place are material and shall be considered like all other averments of material matter.

13 (g) Special damage. When items of special damage are claimed, they shall be specifically
14 stated.

15 (h) Statute of limitations. In pleading the statute of limitations it is not necessary to state the
16 facts showing the defense but it may be alleged generally that the cause of action is barred by the
17 provisions of the statute relied on, referring to or describing such statute specifically and
18 definitely by section number, subsection designation, if any, or otherwise designating the
19 provision relied upon sufficiently clearly to identify it. If such allegation is controverted, the
20 party pleading the statute must establish, on the trial, the facts showing that the cause of action is
21 so barred.

22 (i) Private statutes; ordinances. In pleading a private statute of this state, or an ordinance of
23 any political subdivision thereof, or a right derived from such statute or ordinance, it is sufficient
24 to refer to such statute or ordinance by its title and the day of its passage or by its section number
25 or other designation in any official publication of the statutes or ordinances. The court shall
26 thereupon take judicial notice thereof.

27 (j) Libel and slander.

28 (1) Pleading defamatory matter. It is not necessary in an action for libel or slander to set forth
29 any intrinsic facts showing the application to the plaintiff of the defamatory matter out of which

1 the action arose; but it is sufficient to state generally that the same was published or spoken
2 concerning the plaintiff. If such allegation is controverted, the party alleging such defamatory
3 matter must establish, on the trial, that it was so published or spoken.

4 (2) Pleading defense. In his answer to an action for libel or slander, the defendant may allege
5 both the truth of the matter charged as defamatory and any mitigating circumstances to reduce
6 the amount of damages, and, whether he proves the justification or not, he may give in evidence
7 the mitigating circumstances.

8 (k) If a complaint seeks judgment on a written obligation to pay money and a judgment has
9 previously been rendered upon the same written obligation, plaintiff shall describe the judgment
10 in detail in the complaint or attach a copy of the judgment to the complaint.⁵⁹

11 **Rule 42. Consolidation; separate trials.**

12 (a) Consolidation. When actions involving a common question of law or fact are pending
13 before the court, it may order a joint hearing or trial of any or all the matters in issue in the
14 actions; it may order all the actions consolidated; and it may make such orders concerning
15 proceedings therein as may tend to avoid unnecessary costs or delay.

16 (1) A motion to consolidate cases shall be heard by the judge assigned to the first case filed.
17 Notice of a motion to consolidate cases shall be given to all parties in each case. The order
18 denying or granting the motion shall be filed in each case.

19 (2) If a motion to consolidate is granted, the case number of the first case filed shall be used
20 for all subsequent papers filed. If a motion to consolidate is granted, the case shall be heard by
21 the judge assigned to the first case filed, except that for good cause the presiding judge may
22 assign the case to another judge.⁶⁰

23 (b) Separate trials. The court in furtherance of convenience or to avoid prejudice may order a
24 separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate
25 issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

26 **Rule 51. Instructions to jury; objections.**

⁵⁹ From CJA 4-504(8).

⁶⁰ From CJA 4-107.

1 (a) Preliminary instructions. After the jury is sworn and before opening statements, the court
2 may instruct the jury concerning the jurors' duties and conduct, the order of proceedings, the
3 elements and burden of proof for the cause of action, and the definition of terms. The court may
4 instruct the jury concerning any matter stipulated to by the parties and agreed to by the court and
5 any matter the court in its discretion believes will assist the jurors in comprehending the case.
6 Preliminary instructions shall be in writing and a copy provided to each juror. At the final
7 pretrial conference or at such other time as the court directs, a party may file a written request
8 that the court instruct the jury on the law as set forth in the request. The court shall inform the
9 parties of its action upon a requested instruction prior to instructing the jury, and it shall furnish
10 the parties with a copy of its proposed instructions, unless the parties waive this requirement.

11 (b) Interim written instructions. During the course of the trial, the court may instruct the jury
12 on the law if the instruction will assist the jurors in comprehending the case. Prior to giving the
13 written instruction, the court shall advise the parties of its intent to do so and of the content of the
14 instruction. A party may request an interim written instruction.

15 (c) Final instructions. ~~At the close of the evidence or at such earlier time as the court~~
16 ~~reasonably directs, any party may file written requests that the court instruct the jury on the law~~
17 ~~as set forth in said requests. Parties shall file requested jury instructions at the time and in the~~
18 ~~format directed by the court. If a party relies on controlling or persuasive precedent to support or~~
19 ~~object to a requested instruction, the party shall file a copy of the precedent.~~ The court shall
20 inform counsel of its proposed action upon the requests prior to instructing the jury; and it shall
21 furnish counsel with a copy of its proposed instructions, unless the parties waive this
22 requirement. Final instructions shall be in writing and at least one copy provided to the jury. The
23 court shall provide a copy to any juror who requests one and may, in its discretion, provide a
24 copy to all jurors.

25 (d) Objections to instructions. Objections to written instructions shall be made before the
26 instructions are given to the jury. Objections to oral instructions may be made after they are
27 given to the jury, but before the jury retires to consider its verdict. The court shall provide an
28 opportunity to make objections outside the hearing of the jury. Unless a party objects to an
29 instruction or the failure to give an instruction, the instruction may not be assigned as error

1 except to avoid a manifest injustice. In objecting to the giving of an instruction, a party shall
2 identify the matter to which the objection is made and the grounds for the objection.

3 (e) Arguments. Arguments for the respective parties shall be made after the court has given
4 the jury its final instructions. The court shall not comment on the evidence in the case, and if the
5 court states any of the evidence, it must instruct the jurors that they are the exclusive judges of
6 all questions of fact.

Rule 68. Offer of judgment.

(a) Tender of money before suit. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which the plaintiff was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation is found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant.

(b) Offer before trial. At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon judgment shall be entered. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the costs incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

KENNETH R. IVORY, P.C.

A PROFESSIONAL CORPORATION

October 10, 2002

Received
10-22-02

Frank Carney, Esq.
Anderson & Karrenberg
700 Bank One Tower
50 West Broadway
Salt Lake City, UT 84101-2006

Re: Amendment of URCP 68 - Offer of Judgment

Dear Mr. Carney:

Thank you for your energetic presentation at the recent Trial Academy. I found the information very practical.

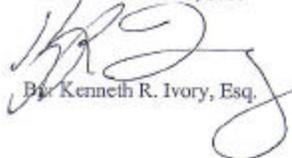
We spoke briefly about the Nevada Rule of Civil Procedure 68 (Offer of Judgment), which provides as basis for *both* plaintiffs and defendants to recover *both* fees and costs in connection with a rejected Offer of Judgment. As you are aware, URCP 68 permits only defendants to recover only costs upon rejection of an offer and successfully obtaining an award in excess of the offer.

The purpose and benefit of NRCP 68 are readily apparent, "to facilitate and encourage settlement, and do so by placing risk of loss on an offeree who fails to accept an offer, with no risk to the offeror, thus encouraging both offers and acceptance of offers." *Mathews v. Collman*, 878 P.2d 971 (Nev. 1994).

Nevada also expands the scope of NRCP 68 by statute, Nevada Revised Statute 17.115. Combined, these provisions significantly promote judicial economy. Because parties willing to make reasonable offers of settlement may be rewarded with an additional award of fees and costs and parties unwilling to accept reasonable offers of settlement may be penalized in the same manner, a substantial number of cases are resolved by the parties in the early stages of litigation.

Enclosed are copies of NRCP 68 (with annotations), NRS 17.115, and URCP 68 for your review. I believe amending URCP 68 and/or enacting supplemental legislation would free up judicial resources to focus on those matters that can only be properly resolved through litigation. At your convenience, could you please help me understand the procedure in Utah for bring about such changes.

Very Truly Yours,
KENNETH R. IVORY, P.C.



By Kenneth R. Ivory, Esq.

Enclosures as noted.

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RULE 68. OFFER OF JUDGMENT

At any time more than 10 days before the trial begins, any party may serve upon the adverse party an offer to allow judgment to be entered for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree shall not recover costs, nor attorneys' fees, but shall pay the costs and attorneys' fees, if any be allowed, of the party making the offer from the time of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer. When the liability of one party to another has been determined by verdict or order or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than 10 days prior to the commencement of hearings to determine the amount or extent of liability.

[As amended; effective January 1, 1988.]

ADVISORY COMMITTEE'S NOTE.

The next to last sentence of the federal rule was revised to conform to the 1951 amendment of NCL § 8821, as to costs and attorneys' fees. In 1971, the rule was further revised in accordance with the federal amendment, effective July 1, 1966.

WEST PUBLISHING CO.

Judgment ! 74.

WESTLAW Topic No. 228.

C.J.S. Judgments § 179.

NEVADA CASES.

Provisions of rule were inapplicable to divorce actions where statute specified right to costs. In proceeding to modify divorce decree to increase child support payments, fact that additional child support awarded was less than amount tendered as alimony in husband's "offer of judgment" did not