Agenda

Advisory Committee on Rules of Civil Procedure

December 18, 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
Comment to Rule 47. Questions by jurors	Tim Shea
Recodification of Code of Judicial Administration into Rules of Civil Procedure	Cullen Battle Frank Carney Leslie Slaugh
Rule 68. Offers of judgment	Frank Carney

Meeting Schedule

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, November 20, 2002
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, David W. Scofield, Janet H. Smith, Francis J. Carney, Glenn C. Hanni, R. Scott Waterfall, Terrie T. McIntosh, Paula Carr, Todd M. Shaughnessy, W. Cullen Battle, Thomas R. Lee, Leslie W. Slaugh, Virginia S. Smith, James T. Blanch, Honorable Lyle R. Anderson (by telephone conference call)

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Thomas R. Karrenberg, R. Scott Waterfall, Debora Threedy

I. WELCOME AND INTRODUCTION

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. Mr. Wikstrom introduced the Honorable Lyle R. Anderson as a new member of the Committee. Judge Anderson will attend today's meeting by telephone conference call.

II. APPROVAL OF MINUTES

The minutes of the October 23, 2002, meeting were reviewed and approved.

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

Mr. Wikstrom informed the Committee that he has spoken to Judge Timothy Hanson to obtain further information on Judge Hanson's suggestion that the parties be required to include a statement of the case as part of their Rule 26 discovery plan. However, since Judge Anthony Schofield and Judge Anthony Quinn are not in attendance at today's meeting and the Committee would like their input, it was agreed that further discussion on this issue will be postponed until a later date.

IV. RECODIFICATION OF CODE OF JUDICIAL ADMINISTRATION INTO RULES OF CIVIL PROCEDURE

Cullen Battle then took charge of the meeting to present the members with suggestions concerning the Committee's continuing work of recodifying the Code of Judicial Administration

into the Utah Rules of Civil Procedure. Mr. Battle stated that before going on to other issues, he would like to go back and discuss Tim Shea's latest draft of revisions.

A. Page Limits

Referring to page 14 of the Agenda (revision of Rule 4-501(1)(A)), Mr. Battle asked whether the members agreed that this revision does away with the 10-page limit for memoranda supporting or opposing a motion. The members agreed that the revision appears to do this, and discussed whether the removal of this requirement is appropriate.

Mr. Battle commented that he has no objection to eliminating the page limit since it would do away with ex-parte motions requesting an extension of page limits. Leslie Slaugh stated that he would like the page limit to remain because it places a restriction on those persons who tend to go on and on. Glenn Hanni commented that a page limit forces attorneys to give more thought to what they are doing, and that he believes judges are liberal in granting requests for overlength memoranda. Mr. Wikstrom stated that he believes the ten-page limit should remain in the Rule.

James Blanch then asked if anyone knew of any judges who refuse to grant requests for overlength memoranda. There was mention of one state judge who typically refuses such requests. A comment was made that refusing these requests is an abuse of discretion and a due process issue, but that no one ever challenges a judge who refuses.

Thomas Lee suggested that more pages should be allowed for summary judgment memoranda, but believes the ten-page limit for other memoranda should be retained. Mr. Slaugh agreed that it makes sense to allow more pages for summary judgment memoranda. Mr. Hanni agreed with Mr. Slaugh, and stated that if judges cannot be relied on to grant page limit extensions, a page limit increase should be written into the Rule.

It was then suggested that the Rule should not include a page limit at all, but include instead a requirement that memoranda be "concise." Mr. Lee disagreed, and stated there must be a bright-line rule on limit rather than leaving it open-ended. Several people commented that the federal court's 25-page limit for summary judgment memoranda works very well.

After additional discussion, a vote was taken on whether to adopt a 25-page limit for summary judgment memoranda. Judge Anderson did not vote. Otherwise, the vote was unanimously in favor.

A vote was also taken on whether to retain the 10-page limit for memoranda on other types of motions. The vote was unanimously in favor.

B. Citation to Evidence

Mr. Lee then stated that he had a few grammatical changes, and pointed out a few places where he believes that "memoranda" should be changed to "memorandum." Mr. Lee also stated that the term "points and authorities" should be eliminated from the new Rule. Mr. Carney explained the meaning of "points and authorities," and the members agreed that it was an antiquated phrase and should be removed.

Mr. Blanch asked whether there will be a different page limit for reply memoranda and commented that, if so, the Rule should state what it is.

Mr. Battle stated that the title of this section should simply be "Filing and Service."

Mr. Lee stated that referring to "the record" is ambiguous, and suggested that this portion of the new Rule read "accompanied by a memorandum, including citation to or copies of any legal materials and relevant factual materials." Mr. Carney agreed with eliminating the term "the record," and commented that this typically is an appellate term.

Todd Shaughnessy stated that he believes the new Rule must include the requirement of citing to specific pages. Mr. Carney asked whether this means the Committee must require the type of pinpoint cites that Utah appellate courts now require. Tim Shea pointed out that he had included "pinpoint citations" in the last draft of the Rule, and that members had objected to that term.

Mr. Wikstrom stated that he is concerned that if the Committee removes language regarding citing to relevant evidence, that those people who do not know the Rules of Evidence will construe the removal as meaning they do not have to provide such citations.

A discussion then began about whether the Committee is trying to over-instruct in this new Rule. Mr. Carney stated that the Committee is not over-instructing, and that judges need something to point to as requirements. Mr. Lee suggested again that the new Rule read "accompanied by a memorandum, including citation to or copies of any legal materials and relevant factual materials." Mr. Wikstrom suggested using the term "admissible evidence." Janet Smith commented that if the term "factual" is the only one used, it will leave out other types of evidence.

Ms. Smith then stated that she thinks the Committee should leave the language as it originally was. Mr. Hanni agreed and asked why we would want to change language that has worked for years. Echoing Mr. Wikstrom's concern, Mr. Shea expressed concern that if the Committee removes certain language such as that requiring certain evidence, some people will interpret this to mean something that the Committee does not intend.

A motion was made to stay with the original language, but to remove the term "points and authorities." The motion was approved unanimously.

C. Page Limits for Reply Memoranda

Mr. Shea stated that he wanted to confirm that the page limits previously approved apply to all memoranda, *i.e.*, original, response, reply. The general answer was "yes."

Mr. Carney then suggested that reply memoranda have a lesser page limit, and Mr. Blanch commented that in federal court, the rules require that reply memoranda be shorter. There was no further discussion.

D. Notice to Submit for Judgment

Mr. Shaughnessy suggested that the order of items in the new Rule be changed so that the Notice to Submit section is at the end.

Mr. Carney suggested that the term "Notice" be changed to "Request." After discussion about the history of the use of the terms "Notice" and "Request," Mr. Slaugh moved to change the term "Notice to Submit" to "Request to Submit." Mr. Blanch voted against the change, and all other members voted in favor.

E. Requests for Hearings

Mr. Battle directed the Committee's attention to subparagraph (c) (Hearings) on page 16 of the Agenda, and stated that he thinks this creates a presumption that no one can request a hearing in a non-dispositive motion. He suggested that the new Rule include that a party will have to request **any** hearing, and that the court must grant the hearing unless the motion is frivolous. Mr. Battle also commented that he thinks this section is awkward as revised, and should be completely revamped.

Mr. Shea stated that it is difficult to make the changes Mr. Battle suggests without rewriting the entire Rule. Mr. Slaugh commented that since these are new Rules, the Committee is not just making revisions, and questioned whether changes must be shown by interlineations. Mr. Shea noted that he had planned to use interlineation when he submits the new rules.

Mr. Wikstrom stated that he is concerned about the process involved in revising the Rules, and Mr. Shea commented that the Rules of Judicial Administration were never "vetted" like the Rules of Civil Procedure were. Mr. Wikstrom then suggested that the Committee just issue the new rules because of their volume, and let the Bar compare those with the Rules of Judicial Administration they will replace. Mr. Battle stated that he will work on this.

F. Time for Completing Revisions

Mr. Wikstrom expressed concern as to whether the Committee will meet the deadline for revising the rules. Mr. Shea stated that he does not know what would happen if this occurs, but will speak to Alicia about it. Mr. Shea commented that November of 2003 is the target date for the new rules to become effective. Mr. Battle said that two recommendations must go to the Supreme Court at the same time: the Advisory Committee's recommendations on new rules, and the Judicial Council's recommendation to revoke the Rules of Judicial Administration.

G. Courtesy Copies

Mr. Carney questioned whether the courtesy copy requirement should even be included in a rule. Mr. Lee commented that there are only a small number of judges who do not want courtesy copies. Mr. Slaugh suggested that those judges who want courtesy copies could make this

known during the Rule 26 scheduling conference. Ms. Smith suggested that the requirement be left in, and that judges who do not want courtesy copies can simply throw them away.

The members discussed who should be required to submit the copies, and the timing of when they are sent to the judge. Judge Anderson commented that he believes the best way to handle this is to include it in the section on submitting a motion for decision, and to have the submitting party provide all copies to the judge, with the other side permitted to supplement if they believe it necessary. Mr. Carney suggested including a requirement that the party who submits for decision must ask the judge's preference regarding courtesy copies.

Mr. Carney volunteered to rewrite the section on courtesy copies and send it to Mr. Shea before the next meeting.

H. Orders

Mr. Battle pointed the members to the section on "Orders" on page 17 of the Agenda, and stated that he questions whether subparagraph (2) is even needed. Mr. Battle commented that the problem is the second sentence of subparagraph (2). Mr. Slaugh stated that he thinks subparagraph (2) is necessary, but that the second sentence should be eliminated.

Mr. Carney then commented that there used to be a Registry of Judgments, and Mr. Slaugh stated that he thinks this no longer exists. Mr. Wikstrom stated that he thinks the concern is that a judgment may get tacked onto something else. The members then discussed whether there is a separate Registry of Judgments, with Mr. Shea stating that a Registry does not exist, but that an Index of judgments is kept on the computer. Mr. Shea also stated that the only way to obtain a copy of a judgment is to go to the court file.

Mr. Battle then suggested that the first sentence of subparagraph (2) be left as is, but that the second sentence of this subparagraph be deleted.

A discussion then began in response to Mr. Shea's question about whether subparagraph (1) is needed. David Scofield stated that subparagraph (1) should be taken out. Mr. Slaugh disagreed, noting that something is needed to show how the judgment is entered since not everything shows up in hearing minutes. Mr. Lee pointed out that subparagraph (1) is needed since the standard on appeal is determined by the way judgment is entered.

I. Attorneys' Fees Affidavits

Mr. Battle pointed to line 23 of proposed Rule 74 (page 20 of Agenda), and stated that he thinks this is broader than the term "affidavit" which is used. Mr. Wikstrom noted that line 16 on page 20 should read "prosecute and defend the claim."

Mr. Battle also questioned the inclusion of the statement about Rule 5.4 of the Rules of Professional Conduct. Judge Anderson commented that he believes the section prohibiting fee sharing comes from the CJA section on bad check collections. Mr. Wikstrom stated that the mere existence of the statement about Rule 5.4 is a flag, and that perhaps it was originally

included to address some demonstrated abuse. Mr. Carney stated that he believes there was a good reason for the inclusion of Rule 5.4, but that perhaps it is no longer needed. Mr. Carney then volunteered to speak to some judges and collections lawyers to find out why the reference to Rule 5.4 was originally included.

The members discussed and agreed that detailed time sheets should not be required. According to Mr. Shaughnessy, the hourly rate must be included in an affidavit, and there is a body of case law dealing with what is needed to establish the amount of attorneys' fees.

Mr. Battle then pointed to page 21 of the Agenda regarding default judgments, and questioned whether lines 5-8[1] could even be included in a judgment. Paula Carr commented that when court clerks see the language of lines 5-8, they know the document is to be filed as a judgment, but that the "augmentation" of "reasonable costs and attorney's fees expended in collecting said judgment" is not added into the actual judgment amount unless there is a supplemental judgment and the judge approves it. Mr. Carney commented that he believes there will be protests if the language of lines 5-8 is eliminated.

Mr. Wikstrom asked the members if they thought there is a due process problem with allowing the language of lines 5-8 to be included in judgments. Mr. Scofield agreed that there is, and commented that parties are entitled to notice and the opportunity to be heard before this is tacked onto a judgment. Mr. Lee observed that the Committee may be treading on substantive ground here, as opposed to procedure.

Ms. Smith suggested looking at the history of this section to determine why the language about "augmentation" was originally included. Ms. Smith and Mr. Carney both stated that before this language is removed, the Committee should find out why it was originally included. It was agreed that Mr. Carney would attempt to find out why this language was originally included and why it is needed.

J. Withdrawal of Counsel in Civil Cases

Mr. Battle pointed to page 23 of the Agenda (new Rule 76--Withdrawal of Counsel), and commented that little has been changed in this Rule.

Judge Anderson asked that the rule include language that the client must be notified. Judge Anderson also stated that it is unclear to him whether subsection (c) means that an attorney can withdraw without leave of court. Mr. Carney stated that it sounds as though subsection (c) does not require court approval to substitute counsel. Judge Anderson then expressed concern that

[1]The original language is:

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

under the new Rule, if counsel that has been substituted later requests a delay in the proceedings, it will be impossible for them to obtain it.

Mr. Battle questioned whether a "substitution" rule is even needed, and stated that perhaps only a "withdrawal" rule is needed. Mr. Hanni commented that he believes that to substitute counsel, both old and new counsel should have to sign the notice. Judge Anderson stated that it is his experience that when new attorneys file a substitution of counsel, they do not think they are required to step into the prior counsel's shoes. Mr. Shea suggested that the rule read that, unless otherwise approved by the court, new attorneys take the case subject to existing deadlines.

V. 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, December 18, 2002, at the Administrative Office of the Courts. The December 18, 2002, meeting will begin with a discussion on property bonds, and Mr. Carney and Mr. Slaugh will lead the discussion on probate and divorce rules.

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: December 13, 2002
Re: Statement of the nature of the case as part of proposed discovery plan

Judge Timothy Hanson of the Third District Court has observed that it is difficult to know whether a proposed discovery plan is reasonable because there is little information about the case contained in the proposed plan. Without pulling and reviewing the case file, which is time consuming, the judge can't evaluate whether the plan is reasonable under the circumstances. Judge Hanson proposes an amendment to Rule 26 to require a brief statement of the case as one of the elements in the discovery plan submitted to the court.

Due to it's length, I've excerpted only the relevant portion of Rule 26.

(f) Discovery and scheduling conference.
….
(2) The plan shall include:
(A) a brief statement of the nature of the case sufficient to permit the court to determine the reasonableness of the plan;
~~(A)~~(B) what changes should be made in the timing, form, or requirement for disclosures under subdivision (a), including a statement as to when disclosures under subdivision (a)(1) were made or will be made;
~~(B)~~(C) the subjects on which discovery may be needed, when discovery should be completed, whether discovery should be conducted in phases and whether discovery should be limited to particular issues;
~~(C)~~(D) what changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed; and
~~(D)~~(E) any other orders that should be entered by the court.
….

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November 9, 2002

Tim Shea
Senior Staff Attorney
Administrative Office of the Courts
P.O. Box 140241
Salt Lake City, Utah 84114-0241

Re: Comment of Proposed Rule Change to Rules of Civil Procedure, Rule 47.

Dear Mr. Shea:

Thank you for providing to us the full text of proposed changes to Rule 47. We write collectively as the Litigation Practice Group of our Firm, and comment specifically on the proposed changes found in sub-section "(j) Questions by jurors."

First, let us offer our unqualified opposition to the proposed changes. We cannot think of any change that would be more disruptive of a trial, then permitting the trial of fact, to become involved in the evidentiary portion of a trial. The delays caused by even occasional inquiries posed by a jury, would not only interfere with the smooth introduction of evidence, but would be enormously time-consuming, unproductive, and disruptive.

For those who try many cases, the occasion of a note from the jury is one that causes great consternation, discussion, and most often the crafting of a note from the Court to the Jury. That note most often includes a polite retort to the question, and a reminder to the jury, to rely on their collective memories. Nonetheless, each such event requires much time from the Court as well as counsel. To even suggest an invitation to the Jury, to engage in such practice will undoubtediy squander much Court and counsel time, will surely disrupt the flow of all trials, and likely result in few if any questions actually being posed to any witness.

We encourage the rejection of the proposed rule change to Rule 47.

Very truly yours,

Van Cott, Bagley, Cornwall & McCarthy

LWEISS:257907v1

Rule 47. Jurors.

….

(j) Questions by jurors. A judge may invite jurors to submit written questions to a witness as provided in this section.

(1) If the judge permits jurors to submit questions, the judge shall control the process to ensure the jury maintains its role as the impartial finder of fact and does not become an investigative body. The judge may disallow any question from a juror and may discontinue questions from jurors at any time.

(2) If the judge permits jurors to submit questions, the judge should advise the jurors that they may write the question as it occurs to them and submit the question to the bailiff for transmittal to the judge. The judge should advise the jurors that some questions might not be allowed.

(3) The judge shall review the question with counsel and unrepresented parties and rule upon any objection to the question. The judge may disallow a question even though no objection is made. The judge shall preserve the written question in the court file. If the question is allowed, the judge shall ask the question or permit counsel or an unrepresented party to ask it. The question may be rephrased into proper form. The judge shall allow counsel and unrepresented parties to examine the witness after the juror's question.[2]

Renumber subsequent paragraphs

[2] Advisory Committee Note. The committee intends neither to encourage nor to discourage the practice of inviting jurors to submit written questions of witnesses, but only to regulate and make uniform the procedure by which it occurs should the judge exercise discretion in favor of the practice. In exercising that discretion, the committee encourages the judge to discuss the matter beforehand, at the pretrial conference if possible, and consider points in favor of or opposed to the practice. In instructing the jurors and to promote restraint among them, the committee encourages the judge to remind jurors that lawyers are trained to elicit the evidence necessary to decide the case.

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

~~Intent:~~

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

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

~~(A) In multi-judge districts, law and motion matters arising in connection with a case which has been assigned for all purposes to a particular judge shall be heard by the assigned judge.~~[3]

~~(B) If the assigned judge is unavailable, the case shall not be assigned or transferred to any other judge for handling without the approval of the presiding judge.~~[4]

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

~~(A) Orders to show cause and other matters requiring written notice shall be heard only after written notice served no less than five days prior to the date of the hearing, unless the court for good cause shown orders the period of time for notice of hearing shortened.~~[5]

~~(B) Affidavits in support of law and motion matters must be filed with the motion or memorandum of points and authorities supporting or opposing the motion. Other documents filed in support of or in opposition to law and motion matters, including returns of service on supplemental orders, orders to show cause and bench warrants, must be filed in the clerk's office at least two working days before the hearing on the matter, together with a copy of the signed order showing the date and time of the required appearance.~~[6]

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[3] Goes without saying. This is the defining feature of individual calendaring.

[4] 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).

[5] Governed by URCP 6(d).

[6] 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."

~~(C) Proceedings based upon supporting documents which are not filed in accordance with this rule may be dismissed.~~[7]

~~(3) Ex-parte matters, stipulated matters and supplemental proceedings.~~[8]

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

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

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

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1) In civil law and motion matters, except orders to show cause and bench warrants, matters may be continued upon stipulation of the parties and notice to the clerk of the judge to whom the case is assigned, except that when a matter has been placed upon the official law and motion calendar, the matter may be continued only upon approval of the court.~~[9]

[7] 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.

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

[9] 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?

~~(2) In sexual abuse cases involving minor victims, continuances may be granted upon a written finding by the court, or written minute entry which shall include the reason(s) for the continuance.~~[10]

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

~~(4) If the hearing is an "important criminal justice hearing" or an "important juvenile justice hearing" as defined by ' 77-38-2 of which the victim has requested notification, the court should consider the impact of the continuance upon the victim.~~[11]

~~Rule 4-107. Consolidation of cases.~~[12]

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

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

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

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10 Criminal only.
11 Criminal only.
12 Integrate into URCP 42.

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

~~**Rule 4-501. Motions.**~~

~~Intent:~~

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

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

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1) Filing and service of motions and memoranda.~~

~~(A) Motion and supporting memoranda. All motions, except uncontested or ex parte matters, shall be accompanied by a memorandum of points and authorities appropriate affidavits, and copies of or citations by page number to relevant portions of depositions, exhibits or other documents relied upon in support of the motion. Memoranda supporting or opposing a motion shall not exceed ten pages in length exclusive of the "statement of material facts" as provided in paragraph (2), except as waived by order of the court on ex parte application. If an ex parte application is made to file an over length memorandum, the application shall state the length of the principal memorandum, and if the memorandum is in excess of ten pages, the application shall include a summary of the memorandum, not to exceed five pages.~~

~~(B) Memorandum in opposition to motion. The responding party shall file and serve upon all parties within ten days after service of a motion, a memorandum in opposition to the motion, and all supporting documentation. If the responding party fails to file a memorandum in opposition to~~

~~the motion within ten days after service of the motion, the moving party may notify the clerk to submit the matter to the court for decision as provided in paragraph (1)(D) of this rule.~~

~~(C) Reply memorandum. The moving party may serve and file a reply memorandum within five days after service of the responding party's memorandum.~~

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

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

~~(A) Memorandum in support of a motion. The points and authorities in support of a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the movant relies.~~

~~(B) Memorandum in opposition to a motion. The points and authorities in opposition to a motion for summary judgment shall begin with a section that contains a verbatim restatement of each of the movant's statement of facts as to which the party contends a genuine issue exists followed by a concise statement of material facts which support the party's contention. Each disputed fact shall be stated in separate numbered sentences and shall specifically refer to those portions of the record upon which the opposing party relies. All material facts set forth in the movant's statement and properly supported by an accurate reference to the record shall be deemed admitted for the purpose of summary judgment unless specifically controverted by the opposing party's statement.~~

~~(3) Hearings.~~

~~(A) A decision on a motion shall be rendered without a hearing unless ordered by the court, or requested by the parties as provided in paragraphs (3)(B) or (4) below.~~

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

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

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

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

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

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

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

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

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

Rule 72. Motions, hearings and orders.

(a) Memoranda.

(1) Filing; time. The party filing a motion shall simultaneously file a memorandum in support of the motion. The party opposing the motion shall file a memorandum in opposition to the motion within ten days after service of a motion and memorandum in support. The party filing the motion may file a reply memorandum within five days after service of the memorandum in opposition. A party may file proposed findings of fact and order with the party's principal memorandum. Memoranda need not be filed for uncontested or ex-parte motions.

(2) Content. Principal memoranda shall contain in the following order: a table of contents with page numbers; a brief statement of the nature of the case; a brief statement of the issue to be resolved; a brief statement of the facts material to the issue; the party's argument; and a brief statement of the relief requested by the motion. The memorandum shall state all facts and arguments relevant to an issue before stating the next issue. The memorandum may contain a request for a hearing. The memorandum shall contain a copy of all material cited but not reproduced verbatim in the memorandum. The opposing memoranda shall contain objections to proposed findings and order.[13] The reply memorandum shall not repeat anything contained in the supporting memorandum. The reply memorandum shall not raise new facts or arguments. The reply memorandum shall only reply to new facts or arguments raised in the opposing memorandum. The reply memorandum shall contain objections to proposed findings and order.[14]

(3) Citations. The facts shall be stated in separate numbered sentences and may be cited by that number. For each fact the party shall cite to relevant supporting documents, such as affidavits, depositions and exhibits. For each point in the party's argument the party shall cite to

[13] Should objections to a proposed order follow the court's decision? It seems premature to raise objections here.

[14] Should objections to a proposed order follow the court's decision? It seems premature to raise objections here.

relevant legal authority, such as statutes, rules, ordinances and case law. Citations shall be in the same format as a brief on appeal.

(4) Length. A principal memorandum shall not exceed ten pages of argument, except that a memorandum supporting or opposing a motion for summary judgment shall not exceed 30 pages of argument. A reply memorandum shall not exceed six pages. The court may permit a party to file an over length memorandum upon ex parte application, but the memorandum shall include a summary of the argument that does not exceed half the maximum length.

(b) Motions for summary judgment.

(1) Supporting memorandum. The statement of facts in the supporting memorandum shall be a concise statement of material facts as to which moving party contends no genuine issue exists.

(2) Opposing memorandum. To controvert a material fact stated by the moving party, the opposing memorandum shall include a verbatim restatement of each of the moving party's facts as to which the responding party claims a genuine issue exists followed by a concise statement of material facts supporting the responding party's claim. The moving party's statement of a material fact is deemed admitted for the purpose of summary judgment unless controverted by the responding party.

(b) Request to submit for decision.

(1) Timing. If a party fails to file a timely opposing memorandum, the moving party may file a request to submit the motion for decision. Upon the filing of a reply memorandum or the expiration of the time in which to do so, either party may file a request to submit the motion for decision. The request shall be a separate pleading captioned "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

(2) Courtesy copies. Each party shall ascertain whether the judge determining the motion wants a courtesy copy of that party's motion, memoranda and supporting documents and, if so when and where to deliver them.

(c) Hearings.

(1) The court may allow a hearing on any motion at the request of a party or on the court's initiative. The court shall grant a request for a hearing on a motion that would dispose of the action or any claim in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(2) When a request for hearing is granted, the court shall schedule the hearing and notify the parties of the date and time, or the court may notify the requesting party and the requesting party shall schedule the hearing and notify the parties of the date and time.

(d) Expedited dispositions. Upon application and notice and for good cause, the court may expedite disposition of a motion in which time is of the essence and compliance with the provisions of this rule would be impracticable or the motion does not raise significant legal issues and can be resolved summarily.

(e) Orders. Unless the court approves the proposed findings and order, if any, submitted in a principal memorandum, the prevailing party shall, within fifteen days after the court's decision or within such shorter time as the court directs, file proposed findings and order in conformity with the court's decision. Objections to the proposed findings and order shall be filed within five days after service.

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

(2) Unless otherwise directed by the court, a judgment or a decree shall not include any matters by reference.

(f) Objection to court commissioner's order.[15] A recommended order of a court commissioner is the order of the court until modified by the court. A party may object to the recommended order of a court commissioner by filing an objection in the same manner as filing a motion within ten days after the recommended order is entered. A party may respond to the objection in the same manner as responding to a motion. The objection shall be determined a judge.

[15] Rule 4-501 says that it does not apply to motions made to a court commissioner. There currently is no rule to say what procedures do apply. Rule 6-401 says that an objection to the commissioner's recommended order proceeds as though it were a motion. Settlement suggestions coming out of the pretrial conference (Rule 4-905) have no binding effect and unresolved issues are automatically set for trial.

Rule 4-503. Requests for jury instructions.[16]

Intent:

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

Applicability:

This rule shall apply to the District and Justice Courts.

Statement of the Rule:

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

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

"Instruction No. _____"

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

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

Rule 4-504. Written orders, judgments and decrees.

Intent:

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

Applicability:

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

Statement of the Rule:

[16] Governed by URCP 51.

~~(1) In all rulings by a court, counsel for the party or parties obtaining the ruling shall within fifteen days, or within a shorter time as the court may direct, file with the court a proposed order, judgment, or decree in conformity with the ruling.~~[17]

~~(2) Copies of the proposed findings, judgments, and orders shall be served upon opposing counsel before being presented to the court for signature unless the court otherwise orders. Notice of objections shall be submitted to the court and counsel within five days after service.~~[18]

~~(3) Stipulated settlements and dismissals shall also be reduced to writing and presented to the court for signature within fifteen days of the settlement and dismissal.~~[19]

~~(4) All orders, judgments, and decrees shall be prepared in such a manner as to show whether they are entered upon the stipulation of counsel, the motion of counsel or upon the court's own initiative and shall identify the attorneys of record in the cause or proceeding in which the judgment, order or decree is made.~~[20]

~~(5) Except where otherwise ordered, all judgments and decrees shall contain, if known, the judgment debtor's address or last known address and social security number.~~[21]

~~(6) All judgments and decrees shall be prepared as separate documents and shall not include any matters by reference unless otherwise directed by the court. Orders not constituting judgments or decrees may be made a part of the documents containing the stipulation or motion upon which the order is based.~~[22]

~~(7) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless the stipulation is in writing, signed by the attorneys of record for the respective parties and filed with the clerk or the stipulation was made on the record.~~[23]

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

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17 Integrated into 4-501.
18 Integrated into 4-501.
19 Does the court care how long between stipulation and order?
20 Integrated into 4-501.
21 Governed by §78-22-1.5.
22 Integrated into 4-501.
23 Conflicts with ¶(9).

~~plaintiff's counsel shall attach to the new complaint a copy of all previous judgments based upon the same written obligation.~~[24]

~~(9) Nothing in this rule shall be construed to limit the power of any court, upon a proper showing, to enforce a settlement agreement or any other agreement which has not been reduced to writing.~~[25]

~~Rule 4-505.~~ Rule 74. Attorney fees affidavits.

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

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

~~the nature of the work performed by the attorney, the number of hours spent to prosecute the claim to judgment, or the time spent in pursuing the matter to the stage for which attorney fees are claimed, and affirm the reasonableness of the fees for comparable legal services.~~

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

(3) factors showing the reasonableness of the fees.

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

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[24] 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.

[25] Conflicts with ¶(7).

~~(4)~~(c) If judgment is ~~being taken by default~~ for a principal sum ~~which it is expected~~ that will require considerable additional work to collect, and if the judgment creditor is entitled to attorney fees, the court may order attorney fees to be augmented by including the following ~~phrase may be included~~ in the judgment ~~after an award consistent with the time spent to the point of default judgment, to cover additional fees incurred in pursuit of collection~~:

"~~AND~~ IT IS FURTHER ORDERED THAT THIS JUDGMENT SHALL BE AUGMENTED IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEY'S FEES EXPENDED IN COLLECTING SAID JUDGMENT ~~BY EXECUTION OR OTHERWISE~~ AS SHALL BE ESTABLISHED BY AFFIDAVIT."[26]

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

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

~~Intent:~~

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

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1)~~(a) When reasonable attorney fees are provided for by contract or statute and the claimant elects to seek an award of attorney fees pursuant to this rule, such fees shall be computed in 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~~

[26] Is this needed?

~~$0.00~~	~~$700.00~~	~~$150.00~~
~~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~~

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

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

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

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

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

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

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

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

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

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1) Withdrawal requiring court approval. Consistent with the Rules of Professional Conduct, an attorney may withdraw as counsel of record only upon approval of the court when~~ (a) An attorney may withdraw as counsel of record by filing with the court and serving on all parties notice of withdrawal and the address of the attorney's client. If a motion ~~has been filed and the court has not issued an order on the motion or after~~ is pending or a certificate of readiness for trial has been filed~~. Under these circumstances~~, an attorney may not withdraw except upon motion and order of the court.

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

~~(3) If an attorney withdraws as counsel of record, the withdrawing attorney must serve written notice of the withdrawal upon the client of the withdrawing attorney and upon all other parties not in default. A certificate of service must be filed with the court. If a trial date has been set, the notice of withdrawal shall include a notification of the trial date.~~

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

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

~~(5) Substitution of counsel. An attorney may replace the current counsel of record by filing and serving~~ [27] ~~a notice of substitution of counsel. Filing a substitution of counsel enters the appearance of new counsel of record and effectuates the withdrawal of the attorney being replaced. Where a request for a delay of proceedings is not made, substitution of counsel does not require the approval of the court. Where new counsel requests a delay of proceedings, substitution of counsel requires the approval of the court as provided in this rule.~~

(c) Appearance of counsel. After a party's attorney has withdrawn as counsel of record, the party's new attorney shall file a notice of appearance. The new attorney is subject to existing orders and scheduled hearings unless otherwise ordered by the court.

~~**Rule 4-507. Disposition of funds on trustee's sale.**~~[28]

~~Intent:~~

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

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

[27] Governed by URCP 5(a).
[28] Governed by §57-1-29.

~~(2) Any claimant may then file a petition for adjudication of priority to these funds and request a hearing before the court. The petitioner requesting the hearing shall give notice of the hearing to all claimants listed in the trustee's affidavit of deposit and any others known to the petitioner. All persons having or claiming an interest must appear and assert their claim or be barred thereafter.~~

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

~~Rule 4-508. Unpublished opinions.~~[29]

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

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

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

~~Rule 4-509.~~ Rule 73. Property bonds.

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

[29] Contrary to *Grand County v. Rogers*, 2002 UT 25.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 4-801. Transfer of small claims cases.[30]

~~Intent:~~

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

~~Applicability:~~

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

[30] 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.

~~Statement of the Rule:~~

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

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

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

~~Rule 4-802. Motion to reinstate small claims proceedings.~~[31]

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

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

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

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

~~Rule 4-803. Trials de novo in small claims cases.~~[32]

[31] Governed by Rule of Small Claims Procedures 10.

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1) General provisions.~~

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

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

~~(2) Small claims appeals.~~

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

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

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

~~(D) Fees. At the time of filing the notice of appeal, the appellant must deposit into court issuing the judgment the fees established under Utah Code Ann. Section 21-1-5 and Section~~

[32] 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.

~~78-6-14. The payment of the filing fee is necessary for conferring jurisdiction upon the district court. Payment of filing fees may be waived upon filing of an affidavit of impecuniosity pursuant to Utah Code Ann. Section 21-7-3.~~

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

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

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

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

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

~~Intent:~~

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

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

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

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

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

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

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

~~(C) The notice shall be filed with a party's initial pleading or as soon as practicable after becoming aware of the other pending case. The notice shall include the case caption, file number and name of the judge or commissioner in the other case.~~[33]

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

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

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

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

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

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

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

[33] Criminal and delinquency cases only.

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

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

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

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

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

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

~~Rule 4-902.~~ Rule 110. Certification of district court cases to juvenile court.

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1) Pursuant to §78-3a-105(3), the district court shall certify to the juvenile court for determination the question of child custody, support or parent-time regarding a minor who is the subject of a petition pending in juvenile court or over whom the juvenile court has continuing jurisdiction.~~[34]

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

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

~~Rule 4-903.~~ Rule 101. Uniform custody evaluations.[35]

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

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

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

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

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34 Governed by §78-3a-105.

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

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

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

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

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

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

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

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

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

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

(3) assign responsibility for payment;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Rule 4-905.~~ Rule 102. Domestic pretrial conferences and orders.

~~Intent:~~

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

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1)~~(a) ~~Court commissioners~~ In the judicial districts with a court commissioner, a court commissioner shall conduct the pretrial conference~~s~~ in all contested matters seeking divorce, annulment, paternity or modification of a decree of divorce.

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

~~(3)~~(c) Following the pretrial conference, the commissioner shall ~~issue a pretrial order~~ recommend a settlement plan which shall include:

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

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

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

~~(4)~~(d) The commissioner may designate one of the parties' counsel to ~~reduce the pretrial order to writing pursuant to Rule 4-504~~ prepare a written settlement plan.

(5) ~~The disputed issues identified in the pretrial order shall remain at issue for purposes of trial.~~ Issues not resolved at the pretrial conference shall be set for trial.

~~Rule 4-911.~~ Rule 103. Motion and order for payment of costs and fees.

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

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

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

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

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

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

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

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

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

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

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

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

~~Intent:~~

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

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

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

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

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

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

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

~~(4) The Administrative Office shall compile the data contained on the worksheet and shall annually provide a report to the Child Support Guidelines Advisory Committee regarding the compiled data.~~[36]

~~Rule 4-913.~~ Rule 105. Divorce decree upon affidavit.

~~Intent:~~

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

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1)~~(a) A party in a divorce case may apply for ~~a default judgment in accordance with the Utah Rules of Civil Procedure if~~ entry of a decree without a hearing in cases in which the opposing party fails to make a timely appearance after service of process or other appropriate notice, waives notice, stipulates to the withdrawal of the answer, or stipulates to the entry of the decree or entry of default. An affidavit in support of the decree shall accompany the application ~~for default~~. The affidavit shall contain evidence sufficient to support necessary findings of fact and a final judgment by stating that:

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

~~(i)~~ a resident of ~~Utah~~ the county in which the action was filed for at least three months immediately prior to the commencement of the action and

[36] ¶4 is administrative. It appears to be a self imposed requirement. I find nothing in state or federal statutes requiring the annual report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 6-401. Domestic relations commissioners.

Intent:

To identify the types of cases and matters which commissioners are authorized to hear, to identify the types of relief which commissioners may recommend and to identify the types of final orders which may be issued by commissioners.

To establish a procedure for judicial review of commissioners' decisions.

Applicability:

This rule shall govern all domestic relations court commissioners serving in the District Courts.

Statement of the Rule:

(1) Types of cases and matters. All domestic relations matters filed in the district court in counties where court commissioners are appointed and serving, including all divorce, annulment, paternity and spouse abuse matters, orders to show cause, scheduling and settlement conferences, petitions to modify divorce decrees, scheduling conferences, and all other applications for relief, shall be referred to the commissioner upon filing with the clerk of the court unless otherwise ordered by the Presiding Judge of the District.

(2) Authority of court commissioner. Court commissioners shall have the following authority:

(A) Upon notice, require the personal appearance of parties and their counsel;

(B) Require the filing of financial disclosure statements and proposed settlement forms by the parties;

(C) Obtain child custody evaluations from the Division of Family Services pursuant to Utah Code Ann. Section 62A-4-106, or through the private sector;

(D) Make recommendations to the court regarding any issue, including a recommendation for entry of final judgment, in domestic relations or spouse abuse cases at any stage of the proceedings;

(E) Require counsel to file with the initial or responsive pleading, a certificate based upon the facts available at that time, stating whether there is a legal action pending or previously adjudicated in a district or juvenile court of any state regarding the minor child(ren) in the current case;

(F) At the commissioner's discretion, and after notice to all parties or their counsel, conduct evidentiary hearings consistent with paragraph (3)(C) below;

(G) Impose sanctions against any party who fails to comply with the commissioner's requirements of attendance or production of discovery;

(H) Impose sanctions against any person who acts contemptuously under Utah Code Ann. Section 78-32-10;

(I) Issue temporary or ex parte orders;

(J) Conduct settlement conferences with the parties and their counsel for the purpose of facilitating settlement of any or all issues in a domestic relations case. Issues which cannot be agreed upon by the parties at the settlement conference shall be certified to the district court for trial; and

(K) Conduct pretrial conferences with the parties and their counsel on all domestic relations matters unless otherwise ordered by the presiding judge. The commissioner shall make recommendations on all issues under consideration at the pretrial and submit those recommendations to the district court.

(3) Duties of court commissioner. Under the general supervision of the presiding judge, the court commissioner has the following duties prior to any domestic matter being heard by the district court:

(A) Review all pleadings in each case;

(B) Certify those cases directly to the district court that appear to require a hearing before the district court judge;

(C) Except in cases previously certified to the district court, conduct hearings with parties and their counsel for the purpose of submitting recommendations to the parties and the court;

(D) Coordinate information with the juvenile court regarding previous or pending proceedings involving children of the parties; and

(E) Refer appropriate cases to mediation programs if available.

~~(4) Objections. With the exception of pre-trial orders, the commissioner's recommendation is the order of the court until modified by the court. Any party objecting to the recommended order shall file a written objection to the recommendation with the clerk of the court and serve copies on the commissioner's office and opposing counsel. Objections shall be filed within ten days of the date the recommendation was made in open court or if taken under advisement, ten days after the date of the subsequent written recommendation made by the commissioner. Objections shall be to specific recommendations and shall set forth reasons for each objection.~~

~~(5) Judicial review. Cases not resolved at the settlement or pretrial conference shall be set for trial on all issues not resolved. All other matters shall be reviewed in accordance with Rule 4-501.~~

~~(6)~~(4) Prohibitions.

(A) Commissioners shall not make final adjudications of domestic relations matters.

(B) Commissioners shall not serve as pro tempore judges in any matter, except as provided by Rule of the Supreme Court.

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

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1) Proceedings on the merits of a divorce action shall not be heard by the district courts unless 90 days have elapsed from the time the petition was filed or unless the Court finds that there is good cause for shortening or eliminating the waiting period and enters a formal order to that effect prior to the hearing date.~~[37]

~~(2)~~ Application for a hearing less than 90 days from the date the petition was filed shall be made by motion and accompanied by an affidavit setting forth the factual matters constituting good cause. The affidavit shall also include the date on which the petition for divorce was filed. ~~The motion and supporting affidavit(s) shall be served on the opposing party at least five days prior to the scheduled hearing unless the party is in default.~~[38]

~~(3) In the event the Court finds that there is good cause for hearing in less than 90 days from the filing of the petition, the facts constituting such cause shall be included in the findings of fact and presented to the Court for signature.~~[39]

~~Rule 6-404.~~ Rule 107. Modification of divorce decrees.

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37 Governed by §30-3-18.

38 Governed by URCP 6(d).

39 Governed by §30-3-18.

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

~~(2) The responding party shall serve the reply within twenty days after service of the petition.~~[40] ~~Either party may file a certificate of readiness for trial.~~[41] ~~Upon filing of the certificate, the matter shall be referred to the domestic relations commissioner prior to trial, or in those districts where there is not a domestic relations commissioner, placed on the trial calendar.~~[42]

~~(3) No petition for modification shall be placed on a law and motion or order to show cause calendar without the consent of the commissioner or the district judge.~~[43]

A party may seek modification of a divorce decree by a petition to modify filed and served in the same manner as an original proceeding.

~~Rule 6-406.~~ Rule 108. Opening sealed adoption files.

~~Intent:~~

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

~~Applicability:~~

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

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[40] Governed by URCP 12(a)

[41] 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 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.

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

[43] Goes without saying.

~~Statement of the Rule:~~

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

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

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

~~(4) In cases where~~ (d) If the petitioner is seeking specific medical information to aid in the preservation of the health of the petitioner, the petitioner ~~must contact~~ shall request from the Bureau of Vital Statistics and the adoption agency involved in the placement (if applicable) ~~and make a request for~~ all non-identifying information regarding the birth parents and other relatives. The petition must be accompanied by a letter from a licensed physician stating what the need is and whether the information is necessary for the preservation of the health of the petitioner.

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

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

~~(7)~~(g) After a hearing, the court shall make ~~specific~~ findings of fact that good cause exists and ~~that the adoption records shall be opened to petitioner. The findings shall~~ address ~~such issues~~

~~as~~ whether the birth parents should be notified of the petition and given the opportunity to respond, and, if it is not possible to contact the birth parents, why the adoptee's need to know overrides the duty of confidentiality owed to the birth parents.[44]

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

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

~~Rule 6-407.~~ Rule 109. Adoptions.

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

~~(1) In adoption cases, the petitioner(s) shall, sixty days or more prior to the hearing on the adoption, unless such period is waived by the judge, file with the court a motion and order either requesting that the Division of Family Services verify the petition and conduct an investigation into the adoption or waiving the investigation.~~[45]

[44] 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.

[45] 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.

~~(2) If a motion is filed to waive the investigation, an affidavit shall be filed by the petitioner(s) setting forth~~ A petition[46] for adoption shall contain the following information pertaining to the petitioner~~(s)~~:

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

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

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

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

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

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

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

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

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

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

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

~~**Rule 6-501. Attorney's fees.**~~[47]

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

~~(A) the time and labor required;~~

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

47 Integrate into 4-505.

~~(B) the novelty and difficulty of the questions involved;~~

~~(C) the skill requisite to perform the legal services properly;~~

~~(D) whether acceptance of this assignment precluded other employment by the attorney;~~

~~(E) the amounts involved and the results obtained;~~

~~(F) the time limitations imposed by the personal representative or the circumstances;~~

~~(G) the experience, reputation, and ability of the lawyers performing the services; and~~

~~(H) whether any part of the representation was done for a contingent fee.~~

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

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

~~Rule 6-502. Attorney's fees in conservatorships.~~[48]

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

~~(A) the time and labor required;~~

~~(B) the novelty and difficulty of the questions involved;~~

~~(C) the skill requisite to perform the legal services properly;~~

[48] Integrate into 4-505.

~~(D) whether acceptance of this assignment precluded other employment by the attorney;~~

~~(E) the amounts involved and the results obtained;~~

~~(F) the time limitations imposed by the conservator or the circumstances;~~

~~(G) the experience, reputation, and ability of the lawyers performing the services; and~~

~~(H) whether any part of the representation was done for a contingent fee.~~

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

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

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

~~Intent:~~

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

~~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:~~[49]

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.

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

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

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

4. The ward is living at: _____ .

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

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

[49] The form should be removed from the rule and published with other forms.

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

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

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

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

~~(B)~~(2) Each individual guardian who possesses or controls the property of a ward valued at less than $50,000 shall prepare a 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 HAVE FOURTEEN DAYS FROM THE DATE OF THIS REPORT TO FILE AN OBJECTION WITH THE _____ DISTRICT COURT. IF YOU FAIL 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 APPEAR BEFORE THE DISTRICT COURT JUDGE AND MAKE ANY POINTS YOU WISH TO MAKE.

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

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

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

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

4. The ward is living at: _____ .

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

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

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

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

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

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

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

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

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

~~(A)~~(1) Each corporate guardian shall prepare a report and accounting ~~in the form set forth in paragraph (1)(A)(i) above~~[51].

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

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

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

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

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

~~(3)~~(c) Summary of account. Every accounting shall include a Summary of Account ~~in the following form:~~[52]

SUMMARY OF ACCOUNT

Accounting Period from _____ , ____ to _____ , ____

1. Assets on hand at end of Last
Accounting Period. Schedule 1 attached. _____
(Value at fair market value on
last day of Accounting Period.)

2. Receipts during accounting period

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[51] Form will not be part of the rule.

[52] The form should be removed from the rule and published with other forms

Include only amounts received from
sale of assets in excess of value
See Schedule 2. _____
3. Total assets and receipts _____
4. Disbursements
Schedule 3 _____
5. Losses on sales
Schedule 4 _____
6. Total disbursements and losses on
sales _____
7. Total assets on hand at end of
this Accounting Period
(line 3 less line 6) _____
(Value at fair market value on
last day of Accounting Period)
Total assets by type:
Cash
Schedule 5 _____
Bonds
Schedule 6 _____
(Value at fair market value on
last day of Accounting Period)
Realty
Schedule 7 _____
(Value at fair market value on
last day of Accounting Period)
Other property
Schedule 8 _____
(Value at fair market value on

last day of Accounting Period)

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

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

(This must equal line 7)

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

~~(5)~~(e) Court orders restricting access to property. For purposes of this rule, if some or all of the ward's property cannot be used by the guardian except pursuant to a court order and if no court order has been entered during the accounting period allowing the guardian to use that property, then the guardian does not have possession or control of that property. In addition, for purposes of paragraph ~~(1) of this rule~~ (a), when determining the value of the ward's property pursuant to this rule, the guardian shall not include the value of the ward's residence; however, the guardian shall account for income from and expenses on the ward's residence, where applicable.

~~Rule 6-504.~~ Rule 91. Annual accounting of conservator.

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

~~(A)~~(1) Each individual conservator who administers an estate for a protected person valued at $50,000 or more shall file with the court an annual accounting and a formal petition seeking approval of the 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 conservator's accounting. The conservator shall also file a copy of the petition 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 conservator to prepare the notice, the conservator shall prepare the notice and file the original notice with the court. The conservator shall also file one copy of the notice for each interested person who is to receive notice of the petition and accounting.

~~(i) The accounting shall be in the following form:~~[53]

THIS IS AN ACCOUNTING OF _____ , CONSERVATOR FOR THE ESTATE OF _____ , A PROTECTED PERSON. THIS ACCOUNTING HAS BEEN FILED WITH THE _____ DISTRICT COURT FOR _____ COUNTY. IF YOU HAVE AN OBJECTION TO THIS ACCOUNTING, 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 ACCOUNTING. YOU HAVE THE RIGHT TO APPEAR IN COURT AT THE HEARING AND TO STATE ANY OBJECTIONS YOU HAVE TO THE ACCOUNTING AT THAT TIME. IF YOU FAIL TO APPEAR AT THE HEARING OR TO OBJECT TO THIS ACCOUNTING, THE DISTRICT COURT WILL CONSIDER THE ACCOUNTING WITHOUT ANY FURTHER NOTICE TO YOU AND WITHOUT ANY OPPORTUNITY FOR YOU TO MAKE ANY POINTS YOU WISH TO MAKE.

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

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

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

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

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

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

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

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

~~(i) The accounting shall be in the following form:~~[54]

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(A)~~(1) Each corporate conservator shall prepare an accounting~~ in the form set forth in paragraph (1)(B)(i) above~~.[55]

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

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

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

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

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

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

~~(3)~~(c) Summary of account. Every accounting shall include a Summary of Account ~~in the following form:~~[56]

SUMMARY OF ACCOUNT

Accounting Period from _____ ,____ to _____ ,____

1. Assets on hand at end of Last
Accounting Period. Schedule 1 attached. _____
(Value at fair market value on
last day of Accounting Period)

2. Receipts during accounting period
Include only amounts received from
sale of assets in excess of value.
See Schedule 2 _____

3. Total assets and receipts _____

4. Disbursements

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

Schedule 3 _____

5. Losses on sales

Schedule 4 _____

6. Total disbursements and losses on sales _____

7. Total assets on hand at end of this Accounting Period (line 3 less line 6) _____

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

Total assets by type:

Cash

Schedule 5 _____

Bonds

Schedule 6 _____

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

Realty

Schedule 7 _____

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

Other property

Schedule 8 _____

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

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

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

(This must equal line 7)

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

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

~~Rule 6-505.~~ Rule 92. Fiduciary accountings.

~~Intent:~~

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

~~Applicability:~~

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

~~Statement of the Rule:~~

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

~~(2)~~(b) An accounting substantially conforming to the Uniform Fiduciary Accounting Principles and accompanying Model Account Formats published as the Fiduciary Accounting

Guide, 1990 Revision by ALI-ABA, as revised and republished,[57] is acceptable as to content and format for an accounting filed under the Utah Uniform Probate Code. An accounting substantially conforming to the Fiduciary Accounting Guide is acceptable as to content and format for an accounting filed under ' 75-5-312 provided the accounting reports, as required by statute:

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

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

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

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

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

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

Rule 5. Service and filing of pleadings and other papers.

(a) Service: When required.

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

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

[57] Out of print.

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

(b) Service: How made and by whom.

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

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

(B) Service by mail is complete upon mailing. If the paper served is notice of a hearing and if the hearing is scheduled 5 days or less from the date of service, service shall be by delivery or other method of actual notice. Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.

(2) Unless otherwise directed by the court:

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

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

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

(c) Service: Numerous defendants. In any action in which there is an unusually large number of defendants, the court, upon motion or of its own initiative, may order that service of the

pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

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

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

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time provided under subsection (e), is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit

the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

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

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

(e) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added to the end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and legal holidays shall be included in the computation of any 3-day period under this subsection, except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

Rule 7. Pleadings allowed; form of motions.

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

(b) Motions, orders and other papers.

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

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

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

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

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

Rule 9. Pleading special matters.

(a) (1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. When a party desires to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity, he shall do so by specific negative averment, which shall include such supporting particulars as are peculiarly within the pleader's knowledge,

[58] Adequately governed by URCP 10.

and on such issue the party relying on such capacity, authority, or legal existence, shall establish the same on the trial.

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

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

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

(c) Conditions precedent. In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or have occurred. A denial of performance or occurrence shall be made specifically and with particularity, and when so made the party pleading the performance or occurrence shall on the trial establish the facts showing such performance or occurrence.

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

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

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

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

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

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

(j) Libel and slander.

(1) Pleading defamatory matter. It is not necessary in an action for libel or slander to set forth any intrinsic facts showing the application to the plaintiff of the defamatory matter out of which the action arose; but it is sufficient to state generally that the same was published or spoken concerning the plaintiff. If such allegation is controverted, the party alleging such defamatory matter must establish, on the trial, that it was so published or spoken.

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

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

Rule 42. Consolidation; separate trials.

[59] From CJA 4-504(8).

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

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

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

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

Rule 51. Instructions to jury; objections.

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

(b) Interim written instructions. During the course of the trial, the court may instruct the jury on the law if the instruction will assist the jurors in comprehending the case. Prior to giving the

[60] From CJA 4-107.

written instruction, the court shall advise the parties of its intent to do so and of the content of the instruction. A party may request an interim written instruction.

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

(d) Objections to instructions. Objections to written instructions shall be made before the instructions are given to the jury. Objections to oral instructions may be made after they are given to the jury, but before the jury retires to consider its verdict. The court shall provide an opportunity to make objections outside the hearing of the jury. Unless a party objects to an instruction or the failure to give an instruction, the instruction may not be assigned as error except to avoid a manifest injustice. In objecting to the giving of an instruction, a party shall identify the matter to which the objection is made and the grounds for the objection.

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