

Agenda

Advisory Committee on Rules of Civil Procedure

January 22, 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
Recodification of Code of Judicial Administration into Rules of Civil Procedure	Cullen Battle
Small Claims Rules	Tim Shea

Meeting Schedule

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, December 18, 2002
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, David W. Scofield, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Thomas R. Karrenberg, R. Scott Waterfall, Francis J. Carney, Terrie T. McIntosh, Paula Carr, W. Cullen Battle, Leslie W. Slaugh, Virginia S. Smith, Honorable Lyle R. Anderson

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Janet H. Smith, Glenn C. Hanni, Todd M. Shaughnessy, Thomas R. Lee, James T. Blanch, Debora Threedy

GUESTS: Richard Carling, Esq.

I. WELCOME AND APPROVAL OF MINUTES

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the October 23, 2002 meeting were reviewed and approved.

II. PROPOSED RULES 74 AND 75

Mr. Wikstrom introduced and welcomed guest Richard Carling. Mr. Carling has been invited to the meeting to provide the Committee with perspective regarding several issues that were discussed at the last meeting, and to respond to the Committee's questions on those issues. The issues concerned Rule 4-505 and Rule 4-505.1 of the Code of Judicial Administration, which the Committee has incorporated into proposed Rules 74 and 75. Discussion at the November 20, 2002 meeting had brought to light some concerns about the reference in proposed Rule 74 to Rule 5.4 of the Rules of Professional Conduct (fee-sharing), and about whether to retain fee schedules in proposed Rule 75. Mr. Carling, who was involved in the original implementation of Rule 4-505 and Rule 4-505.1, responded to questions from Committee members and provided perspective on the historical issues behind portions of those Rules.

After the discussion with Mr. Carling, Mr. Wikstrom suggested changing the word "reasonable" to "extraordinary," and "shall" to "may" in the language in BOLD in proposed Rule 74 at subpart (4). Tim Shea commented that Judge Roger Livingston believes the reference to Rule of Professional Conduct 54 and the requirement that attorneys certify there has been no fee-sharing, should be retained as part of proposed Rule 74. It was agreed that the Rule 54 reference should be retained, and that the requirement of certification on fee-sharing should be retained. It

was agreed that the Rule 5.4 reference should be retained, and that the requirement of certification on fee-sharing should be retained.

A motion was made to do the following:

(1) change the language in proposed Rule 74 **from** “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 AS SHALL BE ESTABLISHED BY AFFIDAVIT” **to** “IT IS FURTHER ORDERED THAT THIS JUDGMENT MAY BE AUGMENTED IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEY’S FEES EXPENDED IN EXTRAORDINARY COLLECTION EFFORTS AS APPROVED BY THE COURT”;

(2) delete “in accordance with the schedule approved by the Judicial Council,” which had been added to proposed Rule 75 at subpart (a);

(3) retain in proposed Rule 75 the fee schedule presently contained in Rule 505.01, except to change the final category of fees **from** “4500.01--5000,” **to** “\$4500.01 or more.”

The Motion was seconded by Judge Anthony Quinn, and approved unanimously.

There then was discussion about items that might be included in committee notes to proposed Rules 74 and 75. Mr. Shea posed a question as to whether the language of proposed Rule 75 at lines 7-11¹ should be part of the Rule, or whether it should be included in a committee note. Judge Anthony Schofield commented that he thinks the committee notes should include comments about “reasonableness,” and should clarify that attorneys’ fees include such things as supp orders, etc. Thomas Karrenberg suggested that Mr. Shea draft a sentence or two on the meaning of “extraordinary” for a committee note for proposed Rule 74.

There was also discussion about whether “costs” should be part of the BOLD language of proposed Rule 74. Judge Schofield moved to delete the word “costs.” Judge Anthony Quinn seconded the motion, which was approved unanimously.

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

¹This language is as follows: “Attorneys fees awarded pursuant to this rule may be augmented after judgment pursuant to Rule 74. When the court considers a motion for augmentation of attorneys 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.”

Mr. Wikstrom reported on his conversation with Judge Timothy Hanson, who had suggested that the parties be required to include a statement of the case as part of the Rule 26 discovery plan. Mr. Wikstrom told Judge Hanson about concerns expressed by Committee members, including that the statement of the case might later be used to argue that counsel had waived any matters that were not raised. Judge Hanson told Mr. Wikstrom that this was not an issue on which he had strong feelings, but he thought a statement of the case requirement might be helpful to judges in deciding how to set a schedule.

Judge Quinn commented that, in his view, judges would not likely know any more about how to schedule after reading a twenty-five word statement of the case, than they would if the parties simply stipulated to a schedule. He stated that the parties know the case better than he does as a judge, and he is not likely to second-guess them. Judge Schofield agreed that a twenty-five word statement would not help him, since he cannot know what discovery is needed. Thomas Karrenberg pointed out that Rule 16 conferences are always available, and that judges should assume that the attorneys know the case.

Mr. Wikstrom then stated that unless someone made a motion to change the rule, the Committee would move on to the next item on the agenda. No motion was made.

IV. COMMENT TO RULE 47. QUESTIONS BY JURORS

Mr. Wikstrom directed the Committee's attention to a letter to Mr. Shea from the law firm of Van Cott, Bagley, Cornwall & McCarthy, which comments on a proposed change to Rule 47 of the Rule of Civil Procedure. Van Cott expressed its "unqualified opposition" to the proposed change that would allow jurors to ask questions at trial. Van Cott also stated that it could not "think of any change that would be more disruptive of a trial," and went on to describe what types of disruptions might occur. Mr. Wikstrom stated that this was the only letter that has been received regarding this change.

Judge Lyle Anderson commented that there is a strong sentiment among judges to allow questions by jurors. He stated that he believes that it is inconceivable that cases are always so well-presented that jurors would not have questions.

Mr. Wikstrom stated that if he heard no motion to delete the reference to jurors being allowed to ask questions, he would move on to the next issue. No motion was made.

V. RULE 68. OFFERS OF JUDGMENT

The Committee discussed offers of judgment in the context of Rule 68. Frank Carney commented that the proposed change would allow the plaintiff to receive costs, but that a prevailing plaintiff already receives costs. Mr. Carney also stated that he believes that changing the rule would be a massive change and also a substantive change. Leslie Slaugh responded that he believes that this is properly done through a rule, but does not believe that changing the rule as proposed would be a good idea. Mr. Karrenberg stated that the proposed change would change the American rule. Mr. Wikstrom stated that he does not believe that many defendants use the rule even now, because the stakes are so low.

After discussion, the consensus of the Committee was that this change was neither needed nor desirable.

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

The Committee resumed its discussion of the recodification of the Code of Judicial Administration into the Rules of Civil Procedure.

a. Proposed Rule 72

Referring to proposed Rule 72, Cullen Battle stated that he believes more work needs to be done, and suggested looking to the comparable Federal Rules of Civil Procedure for assistance. He asked that discussion about this rule be continued until a later time to allow more work to be done before the entire Committee reviews the proposed rule and makes its comments.

Comments were made that the memorandum submitted by James Blanch for today's meeting likewise suggests looking to the Local Federal Rules of Civil Procedure as a starting point for work on revising the Utah Rules. Judge Anderson stated that although he likes the Local Federal Rule, he believes there are reasons that federal litigation requires and allows more extensive time limits for briefing.

After discussion, the Committee reached a consensus that the starting point for additional work on proposed Rule 72 would be examining the Local Federal Rules.

b. Rule 76--Withdrawal of Counsel

The Committee discussed proposed Rule 76 (withdrawal of counsel). Mr. Wikstrom observed that he is not sure why we would want to change the rule, and Mr. Karrenberg agreed. Mr. Wikstrom also suggested keeping the language that has been stricken in what was previously subpart (5).

The Committee discussed whether both the old and new attorneys should have to file a notice of substitution of counsel, and whether the client's signature should be required. Mr. Wikstrom stated that he thinks there should be a way to substitute counsel even if there is a motion pending. Mr. Slauch suggested reversing the order of the sentences in subpart (a).

It was agreed that "in a court" should be stricken from new subpart (b), so that the language reads "informing the client of the responsibility to appear or appoint counsel."

c. Rule 73--Property Bonds

Mr. Carney stated that the phrase "civil proceedings" has been deleted from proposed Rule 73. The Committee agreed there is no problem with deleting this.

Mr. Wikstrom asked who should be responsible for recording the bond (*see* p. 29, line 18, subpart (b)), and asked why the property owner should be required to do it. Judge Schofield stated that the language could be changed to read that the bond is not approved until it is recorded, rather than requiring the property owner to record the bond. It was agreed that making this change was appropriate.

Mr. Slaugh suggested deleting the first line on page 29,² and the consensus was that this should be done.

Mr. Karrenberg commented that the requirement of including a property description in the bond makes a lot of work for the court. Judge Anderson responded that there is a reason why this requirement is in the rule---so that the court won't have to do it.

Mr. Wikstrom then asked Mr. Shea to contact the recorder's office to ask whether the proposed rule would satisfy their requirements.

d. Rule 4-801--Transfer of Small Claims Cases

Mr. Shea stated that Rule 4-801 appears to be administrative, and that perhaps it should remain in the Code of Judicial Administration. The consensus of the Committee was that Mr. Shea is correct.

e. Rule 100--Coordination of Cases Pending in District Court and Juvenile Court.

Mr. Wikstrom asked whether proposed Rule 100 is substantive or procedural. Mr. Shea responded that it is procedural to the extent that the parties are required to notify the court if there are cases pending in other courts. Mr. Shea also commented that a lot of work has gone into revising this rule.

Mr. Slaugh stated that there is an issue about the mechanics of the "communication" referred to at page 33, lines 26-27 (subpart (a)(3)). He also stated that line 10 on page 34 (subpart (b)(2)) should read "court on its own initiative," and not "court on its own motion."

Mr. Battle commented that this is an entirely new area and asked whether there should be a new "chapter." Mr. Shea stated that there is a big break before Rule 100, so that there is room for growth. He also stated that this is not a separate "chapter," it is only a separate "area."

There was a discussion as to where the court file should stay. Judge Schofield commented that he hates to see "portions" of the court file removed, and Paula Carr agreed that the clerks do not want a file taken apart.

After additional discussion and reading of the rule, it was agreed that it should remain in the Code of Judicial Administration.

²This line reads "be prepared by an owner of record or counsel."

f. Rule 101–Uniform Custody Evaluations

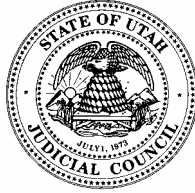
Mr. Battle commented that Rule 101 also seems to be substantive and not procedural, although part of the rule may be procedural. Terrie McIntosh agreed, and stated that the rule seems to be something that should be statutory. Mr. Shea commented that the Committee on Children and Family Law put this proposed rule together, and that there is no statute that regulates child custody evaluations. Judge Schofield suggested that the Committee recommend that someone suggest this issue to the legislature for its action.

Mr. Slaugh stated that his problem with the rule is that he questions whether the Committee can impose specific licensure requirements because this is really an expert witness question. Judge Schofield responded that it is helpful to judges to have something to point to that sets minimum qualifications.

Mr. Wikstrom asked Mr. Shea to check with DOPL about its minimum licensing requirements.

VII. 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, January 22, 2003, at the Administrative Office of the Courts.



Administrative Office of the Courts

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

MEMORANDUM

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

To: Civil Procedures Committee
From: Tim Shea *Shea*
Date: January 14, 2003
Re: Recodification of CJA; Motions

Code of Judicial Administration

To save a few pages, I have omitted from these materials, the following rules, all of which, with the exception of Rule 4-501, the committee has tentatively agreed to recommend for repeal:

Rule 4-102. Law and motion calendar.
Rule 4-105. Continuances in special circumstances.
Rule 4-107. Consolidation of cases.
Rule 4-501. Motions.
Rule 4-503. Requests for jury instructions.
Rule 4-504. Written orders, judgments and decrees.
Rule 4-507. Disposition of funds on trustee's sale.
Rule 4-508. Unpublished opinions.
Rule 4-802. Motion to reinstate small claims proceedings.
Rule 4-803. Trials de novo in small claims cases.

The committee has tentatively agreed to amendments to the following rules, which are attached:

Rule 73. Property bonds. (There has been no response to my inquiry regarding recording a bond with the county recorder.)
Rule 74. Attorney fees affidavits.
Rule 75. Awards of attorney fees in default judgments.
Rule 76. Withdrawal of counsel.

I have removed the following, which the Committee agreed should remain in the Code of Judicial Administration:

Rule 4-801. Transfer of small claims cases. (There is a minor amendment as part of the small claims changes.)
Rule 4-901. Coordination of cases pending in district court and juvenile court.

The Committee left off with discussion of Rule 101 (4-905). The Committee recommended that licenses of other states equivalent to those required by the rule be recognized. The Policy and Planning Committee of the Judicial Council concurred in that further change.

The Committee has not yet considered the remaining rules.

Motions

Cullen, Fran and I have compared Rule 4-501 with the local federal rules on motions and motions for summary judgment, and we recommend that the requirements for motions be incorporated into URCP 7 (beginning on page 45) rather than a separate rule as earlier proposed.

We propose select provisions from the current Rule 4-501 and provisions from the local federal rules. In some of these areas, the Committee may want to consider alternatives. We have noted the following areas, but there may be others:

1. The federal rule has a list of motions for which no memorandum is required: to extend time; to continue a hearing; to appoint a guardian ad litem; to substitute parties; to refer to ADR; to conduct a settlement conference; and to approve stipulations. The state rule excepts only uncontested and ex parte motions. We propose using the state rule for its simplicity.
2. The federal rule differentiates between the time in which to file a memorandum in a motion for summary judgment (30 days for the opposition memorandum and 15 days for the reply) and the time in which to file a memorandum in any other motion (15 days for the opposition memorandum and 7 days for the reply). The state rule establishes a uniform time for all motions (10 days for the opposition memorandum and 5 days for the reply). We propose using the state rule.
3. The proposed page limits are different from both the federal rule and the state rule, but were tentatively agreed to by the Committee at an earlier meeting. The requirement that a summary accompany an over-length memorandum has been eliminated.
4. The state rule does not regulate the content of memoranda, requiring only adequate support of factual statements by reference to the record. The federal rule regulates the content of over-length memoranda. (The federal rule implies content for other memoranda by calculating the maximum page limit “exclusive of face sheet, table of contents, statements of issues and facts, and exhibits.” Rule 7-1(b)(3).) We propose applying to all memoranda the federal model for over-length memoranda. The content and order of the federal model conform to the requirements for an appellate brief. Uniformity of presentation should help opposing counsel and the judge understand the motion and arguments without interfering with style, although not all requirements will be relevant to all memoranda.
5. The state rule requires the party opposing a motion for summary judgment to restate each of the moving party’s material facts about which the opposing party claims there is a genuine issue. The federal rule requires the opposing party to state the facts (not necessarily referring

to the moving party's statement of facts) about which the opposing party claims there is a genuine issue. We propose using the state rule.

6. The federal rule contains a process by which a party can cite newly discovered precedent after briefing or after oral argument. At a minimum, this opportunity should be limited to newly decided precedent. Beyond that, we propose omitting this provision as inappropriate in a trial court setting.
7. The Committee has favored liberalizing the opportunity for hearings on motions. This draft leaves the question to the discretion of the judge, unless the motion is dispositive, in which case a hearing is required if requested. The federal rule requires a showing of good cause, which we propose to omit. This raises the procedural issue: How does one request a hearing? The federal rule does not regulate the process. The state rule is limited to dispositive motions, but requires requests for hearings to be filed at the same time as the party's principal memorandum. Whether as part of the memorandum or by separate pleading is not regulated. We propose that, if a hearing is to be requested, the request be included as part of the request to submit for decision.

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

2 **Intent:**

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

4 **Applicability:**

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

6 **Statement of the Rule:**

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

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

9 ~~(B)(1)~~ be signed by all owners of record;

10 ~~(C)(2)~~ contain the complete legal description of the property and the property tax
11 identification number;

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

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

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

16 ~~(G)(6)~~ be accompanied by a current title report, a current foreclosure report, or such other
17 information as required by the court; and

18 ~~(H)(7)~~ be accompanied by a written statement from each lienholder stating:

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

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

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

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

24 ~~(2) Each property bond accepted by the court shall be recorded (b) The bond is not effective~~
25 until recorded with the county recorder of the county ~~or counties where in which~~ the property is
26 located and proof of recording is filed with the court.

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

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

30 **Intent:**

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

1 Applicability:

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

3 Statement of the Rule:

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

6 (1) the legal basis for the award;

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

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

13 (3) factors showing the reasonableness of the fees.

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

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

23 ~~“AND IT IS FURTHER ORDERED THAT THIS JUDGMENT SHALL MAY BE~~
24 ~~AUGMENTED IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEY'S FEES~~
25 ~~EXPENDED IN COLLECTING SAID JUDGMENT BY EXECUTION OR OTHERWISE AS~~
26 ~~SHALL BE ESTABLISHED BY AFFIDAVIT APPROVED BY THE COURT FOR~~
27 EXTRAORDINARY COLLECTION EFFORTS.”³

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

³ Advisory Committee Note: Judges should limit augmentation to circumstances requiring extraordinary attorney time. The court should consider whether the attorney fees included in the judgment are sufficient to cover the collection efforts, taking into account the attorney time prior to entry of judgment.

~~Rule 4-505.01. 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) 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 as follows:~~

~~(a) No affidavit for attorney fees is required for an award of attorney fees pursuant to this rule. If a party requests attorney fees pursuant to this rule, the party shall state in the complaint the amount of attorney fees allowed by this rule. If a statute is the basis for the attorney fees, the party shall cite to the statute in the complaint. If a contract is the basis for the attorney fees, the party shall attach a copy of the contract to the complaint.~~

~~(b) The following is a schedule of reasonable attorney fees for prosecuting or defending an action, including proceedings for collecting a judgment:~~

Principal Amount of Damages, Exclusive of Costs and Interest,		Attorney Fees	
Between	and:	Allowed	
\$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
	5,000.00	
4,500.01	<u>or more</u>	775.00

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

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

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

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

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

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

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

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

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

23 **Intent:**

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

25 **Applicability:**

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

3 ~~Statement of the Rule:~~

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

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

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

20 ~~(4)(b)~~ If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or
21 is removed from the case by the court, opposing counsel shall serve a Notice to Appear or
22 Appoint Counsel on the unrepresented ~~client party.~~ ~~The Notice to Appear or Appoint Counsel~~
23 ~~must inform the unrepresented client informing the party~~ of the responsibility to appear ~~in a court~~
24 ~~personally~~ or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed
25 with the court. No further proceedings shall be held in the case until 20 days ~~have elapsed from~~
26 ~~after~~ filing ~~of~~ the Notice to Appear or Appoint Counsel unless the ~~client of the withdrawing~~
27 ~~attorney unrepresented party~~ waives the time requirement or unless otherwise ordered by the
28 court.

29 ~~(5)(c)~~ Substitution of counsel. An attorney may replace the ~~current~~ counsel of record by
30 filing and serving a notice of substitution of counsel ~~signed by former counsel, new counsel and~~
31 ~~the client.~~ ~~Filing a substitution of counsel enters the appearance of new counsel of record and~~

1 ~~effectuates the withdrawal of the attorney being replaced. Where a request for a delay of~~
2 ~~proceedings is not made, substitution of counsel does not require the approval of the court.~~
3 ~~Where new counsel requests a delay of proceedings, substitution of counsel requires the approval~~
4 ~~of the court as provided in this rule. New counsel shall certify in the notice of substitution that~~
5 ~~the appearance is subject to scheduled hearings and existing deadlines or shall file a motion~~
6 ~~requesting a continuance or an enlargement of time.~~

7 **Rule 4-905. Rule 101. Domestic pretrial conferences and orders.**

8 **Intent:**

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

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

12 **Applicability:**

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

14 **Statement of the Rule:**

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

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

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

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

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

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

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

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

31 **Rule 4-911. Rule 102. Motion and order for payment of costs and fees.**

1 ~~Intent:~~

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

4 ~~Applicability:~~

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

6 ~~Statement of the Rule:~~

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

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

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

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

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

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

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

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

19 and

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

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

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

30 ~~Rule 4-912. Rule 103. Child support worksheets.~~

31 ~~Intent:~~

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

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

5 ~~Applicability:~~

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

8 ~~Statement of the Rule:~~

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

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

14 ~~(A) If the information on the worksheet is not electronically transferred to the Administrative~~
15 ~~Office by the filing party, that party shall (a) When filing a child support worksheet required by~~
16 ~~§78-45-7.3, a party shall:~~

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

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

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

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

27 ~~**Rule 4-913. Rule 104. Divorce decree upon affidavit.**~~

28 ~~Intent:~~

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

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

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

5 ~~Applicability:~~

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

7 ~~Statement of the Rule:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 | ~~(D)~~(4) as required by § 78-45-7.5,

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

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

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

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

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

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

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

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

27 | ~~(5) (d)~~ The party applying for entry of the decree or counsel on behalf of the party shall file
28 | with the affidavit and accompanying documents a "notice to submit" that shall identify each
29 | document or statement required by this rule and note whether the document or statement is being
30 | filed concurrent with the notice to submit. If the document or statement is not being filed
31 | concurrently, the notice to submit shall state that the document or statement has already been

1 filed with the court or shall explain why the document or statement is not required in the
2 application of this rule to the facts of the particular case. The Administrative Office of the Courts
3 shall develop a notice to submit form that may be used.

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

6 **Rule 6-401. Domestic relations commissioners.**

7 Intent:

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

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

12 Applicability:

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

15 Statement of the Rule:

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

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

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

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

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

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

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

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

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

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

11 (I) Issue temporary or ex parte orders;

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

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

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

23 (A) Review all pleadings in each case;

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

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

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

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

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

8 ~~(5) Judicial review. Cases not resolved at the settlement or pretrial conference shall be set for~~
9 ~~trial on all issues not resolved. All other matters shall be reviewed in accordance with Rule~~
10 ~~4-501.~~

11 ~~(6)~~(4) Prohibitions.

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

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

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

16 ~~Intent:~~

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

19 ~~Applicability:~~

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

21 ~~Statement of the Rule:~~

22 ~~(1) Proceedings on the merits of a divorce action shall not be heard by the district courts~~
23 ~~unless 90 days have elapsed from the time the petition was filed or unless the Court finds that~~
24 ~~there is good cause for shortening or eliminating the waiting period and enters a formal order to~~
25 ~~that effect prior to the hearing date.⁵~~

26 ~~(2)~~ Application for a hearing less than 90 days from the date the petition was filed shall be
27 made by motion and accompanied by an affidavit setting forth the factual matters constituting
28 good cause. The affidavit shall also include the date on which the petition for divorce was filed.

⁵ Governed by §30-3-18.

1 ~~The motion and supporting affidavit(s) shall be served on the opposing party at least five days~~
2 ~~prior to the scheduled hearing unless the party is in default.~~⁶

3 ~~(3) In the event the Court finds that there is good cause for hearing in less than 90 days from~~
4 ~~the filing of the petition, the facts constituting such cause shall be included in the findings of fact~~
5 ~~and presented to the Court for signature.~~⁷

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

7 **Intent:**

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

9 **Applicability:**

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

11 **Statement of the Rule:**

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

17 ~~(2) The responding party shall serve the reply within twenty days after service of the~~
18 ~~petition.~~⁸ ~~Either party may file a certificate of readiness for trial.~~⁹ ~~Upon filing of the certificate,~~
19 ~~the matter shall be referred to the domestic relations commissioner prior to trial, or in those~~
20 ~~districts where there is not a domestic relations commissioner, placed on the trial calendar.~~¹⁰

21 ~~(3) No petition for modification shall be placed on a law and motion or order to show cause~~
22 ~~calendar without the consent of the commissioner or the district judge.~~¹¹

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

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

⁶ Governed by URCP 6(d).

⁷ Governed by §30-3-18.

⁸ Governed by URCP 12(a)

⁹ 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.

¹⁰ Governed by CJA 6-401, which is not proposed for incorporation in the URCP.

¹¹ Goes without saying.

1 ~~Intent:~~

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

4 ~~Applicability:~~

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

6 ~~Statement of the Rule:~~

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

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

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

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

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

28 ~~(6) Upon receipt of the formal petition, filing fee, and supporting documents, the (f) The~~
29 court shall set the matter for hearing. ~~The court shall and~~ give notice of the hearing ~~date and~~
30 ~~time~~ to the placement agency or the attorney who handled the private placement. The notice shall

1 advise the placement agency or the attorney of the petition and request their attendance at the
2 hearing or their written response to the petition.

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

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

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

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

19 ~~Intent:~~

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

21 ~~Applicability:~~

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

23 ~~Statement of the Rule:~~

24 ~~(1) In adoption cases, the petitioner(s) shall, sixty days or more prior to the hearing on the~~
25 ~~adoption, unless such period is waived by the judge, file with the court a motion and order either~~
26 ~~requesting that the Division of Family Services verify the petition and conduct an investigation~~
27 ~~into the adoption or waiving the investigation.~~¹³

¹² 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.

¹³ 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.

1 ~~(2) If a motion is filed to waive the investigation, an affidavit shall be filed by the~~
2 ~~petitioner(s) setting forth A petition¹⁴ for adoption shall contain~~ the following information
3 pertaining to the petitioner(s):

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

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

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

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

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

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

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

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

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

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

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

15 **~~Rule 6-501. Attorney's fees.~~**¹⁵

16 **~~Intent:~~**

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

20 **~~Applicability:~~**

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

24 **~~Statement of the Rule:~~**

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

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

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

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

¹⁴ Without a waiver of the investigation, this information, if it is needed will have to be part of the petition.

¹⁵ 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 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.¹⁶

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;~~
- ~~(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~~

¹⁶ Integrate into 4-505.

~~(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:¹⁷~~

~~THIS IS A REPORT OF _____, GUARDIAN FOR
_____, A WARD. THIS REPORT HAS BEEN FILED WITH THE

_____ DISTRICT COURT FOR _____ COUNTY. IF YOU HAVE~~

¹⁷ The form should be removed from the rule and published with other forms.

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

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

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

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

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

16 ~~4. The ward is living at: _____.~~

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

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

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

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

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

~~(iv) 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) 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:¹⁸~~

~~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 _____, ____.~~

~~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.~~

¹⁸ The form should be removed from the rule and published with other forms.

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

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

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

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

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

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

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

20 ~~(A)(1)~~ Each corporate guardian shall prepare a report and accounting ~~in the form set forth in~~
21 ~~paragraph (1)(A)(i) above~~¹⁹.

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

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

28 ~~(+)(C)~~ If an interested person objects to the report and accounting within fourteen days or if
29 the court orders a formal hearing sua sponte, the clerk of the court shall set a date and time for
30 hearing the guardian's report and accounting and shall send a notice of the date and time for

¹⁹ Form will not be part of the rule.

1 hearing to each interested person (including the ward) and to the guardian and the guardian's
2 attorney.

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

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

8 ~~(3)(c)~~ Summary of account. Every accounting shall include a Summary of Account ~~in the~~
9 ~~following form:~~²⁰

10 ~~SUMMARY OF ACCOUNT~~

11 ~~Accounting Period from _____, _____ to _____, _____~~

12 ~~1. Assets on hand at end of Last~~

13 ~~Accounting Period. Schedule 1 attached. _____~~

14 ~~(Value at fair market value on~~
15 ~~last day of Accounting Period.)~~

16 ~~2. Receipts during accounting period~~

17 ~~Include only amounts received from~~
18 ~~sale of assets in excess of value~~

19 ~~See Schedule 2. _____~~

20 ~~3. Total assets and receipts _____~~

21 ~~4. Disbursements~~

22 ~~Schedule 3 _____~~

23 ~~5. Losses on sales~~

24 ~~Schedule 4 _____~~

25 ~~6. Total disbursements and losses on~~
26 ~~sales _____~~

27 ~~7. Total assets on hand at end of~~
28 ~~this Accounting Period~~

29 ~~(line 3 less line 6) _____~~

30 ~~(Value at fair market value on~~

²⁰ The form should be removed from the rule and published with other forms

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

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

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

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

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

6 | **Intent:**

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

9 | **Applicability:**

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

12 | **Statement of the Rule:**

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

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

24 | ~~(i) The accounting shall be in the following form:~~²¹

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

²¹ The form should be removed from the rule and published with other forms

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

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

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

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

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

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

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

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

22 ~~(i) The accounting shall be in the following form:²²~~

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

²² The form should be removed from the rule and published with other forms

~~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.~~

~~(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

1 period citing this rule and the court's order as explanation for the conservator's failure to file an
2 accounting.

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

4 ~~(A)(1)~~ Each corporate conservator shall prepare an accounting ~~in the form set forth in~~
5 ~~paragraph (1)(B)(i) above.~~²³

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

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

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

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

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

22 ~~(3)(c)~~ Summary of account. Every accounting shall include a Summary of Account ~~in the~~
23 ~~following form:~~²⁴

24 ~~SUMMARY OF ACCOUNT~~

25 ~~Accounting Period from _____, _____ to _____, _____~~

26 ~~1. Assets on hand at end of Last~~

27 ~~Accounting Period. Schedule 1 attached. _____~~

28 ~~(Value at fair market value on~~

29 ~~last day of Accounting Period)~~

²³ The form should be removed from the rule and published with other forms.

²⁴ The form should be removed from the rule and published with other forms.

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

1 ~~8. Total assets on hand~~
2 ~~at end of this Accounting Period~~
3 ~~(Value at fair market value on~~
4 ~~last day of Accounting Period)~~
5 ~~(This must equal line 7)~~

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

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

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

20 ~~Intent:~~

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

23 ~~Applicability:~~

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

25 ~~Statement of the Rule:~~

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

1 | ~~(2)(b)~~ An accounting substantially conforming to the Uniform Fiduciary Accounting
2 Principles and accompanying Model Account Formats published as the Fiduciary Accounting
3 Guide, 1990 Revision by ALI-ABA, as revised and republished,²⁵ is acceptable as to content and
4 format for an accounting filed under the Utah Uniform Probate Code. An accounting
5 substantially conforming to the Fiduciary Accounting Guide is acceptable as to content and
6 format for an accounting filed under § 75-5-312 provided the accounting reports, as required by
7 statute:

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

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

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

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

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

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

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

20 | (a) Service: When required.

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

26 | (2) No service need be made on parties in default for failure to appear except as provided in
27 Rule 55(a)(2)(default proceedings). Pleadings asserting new or additional claims for relief
28 against a party in default shall be served in the manner provided for service of summons in Rule
29 4.

²⁵ Out of print.

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

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

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

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

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

22 (2) Unless otherwise directed by the court:

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

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

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

28 (c) Service: Numerous defendants. In any action in which there is an unusually large number
29 of defendants, the court, upon motion or of its own initiative, may order that service of the
30 pleadings of the defendants and replies thereto need not be made as between the defendants and
31 that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense

1 contained therein shall be deemed to be denied or avoided by all other parties and that the filing
2 of any such pleading and service thereof upon the plaintiff constitutes due notice of it to the
3 parties. A copy of every such order shall be served upon the parties in such manner and form as
4 the court directs.

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

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

14 **Rule 6. Time**

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

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

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

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

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

20 **Rule 7. Pleadings allowed; ~~form of motions, memoranda, hearings, orders, objection to~~**
21 **commissioner's order.**

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

28 ~~(b) Motions, orders and other papers.~~

29 ~~(1) Motions. An application to the court for an order shall be by motion which, unless made~~
30 ~~during a hearing or trial, shall be made in writing, shall state with particularity the grounds~~

1 ~~therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if~~
2 ~~the motion is stated in a written notice of the hearing of the motion.~~

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

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

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

16 ~~(e) Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a~~
17 ~~pleading shall not be used.~~

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

21 ~~(c) Memoranda.~~

22 ~~(1) Memoranda required, exceptions, filing times. All motions, except uncontested or ex~~
23 ~~parte motions, shall be accompanied by a memorandum of points and authorities. Within ten~~
24 ~~days after service of the motion and supporting memorandum, the party opposing the motion~~
25 ~~shall file a memorandum of points and authorities. Within five days after service of the~~
26 ~~memorandum in opposition, the moving party may file a reply memorandum, which shall be~~
27 ~~limited to rebuttal of matters raised in the memorandum opposing the motion. No other~~
28 ~~memoranda will be considered without leave of court.~~

29 ~~(2) Length. Memoranda shall not exceed the following pages of argument without leave of~~
30 ~~the court:~~

1 (A) principal memorandum supporting or opposing a motion other than a motion for
2 summary judgment: 10 pages;

3 (B) principal memorandum supporting or opposing a motion for summary judgment: 25
4 pages;

5 (C) reply to memorandum opposing a motion other than a motion for summary judgment: 5
6 pages; and

7 (D) reply to memorandum opposing a motion for summary judgment: 10 pages.

8 The court may permit a party to file an over-length memorandum upon ex parte application and a
9 showing of good cause.

10 (3) Content: Memoranda shall conform to Rule 10 and shall contain under appropriate
11 headings and in the order indicated:

12 (A) a table of contents, with page references, listing the titles of each section and subsection;

13 (B) a statement of the issues related to the relief sought;

14 (C) a concise statement of facts, supported by citation with particularity to relevant
15 supporting documents, such as affidavits or discovery materials;

16 (D) argument, preceded by a summary, with citations, in the same format as a brief on
17 appeal, to authorities and parts of the record relied on;

18 (E) a short conclusion stating the relief sought; and

19 (F) attached to the memorandum exhibits of relevant portions of documents cited in the
20 memorandum, such as affidavits or discovery materials.

21 A party may attach to a principal memorandum a proposed order with findings of fact and
22 conclusions of law.

23 (d) Motions for summary judgment. A memorandum supporting or opposing a motion for
24 summary judgment shall comply with the following additional requirements.

25 (1) In the statement of facts, each fact shall be separately stated and numbered. The moving
26 party shall state each fact as to which the party contends no genuine issue exists. The opposing
27 party shall state each fact as to which the party contends a genuine issue of fact exists and, if
28 applicable, the number of the moving party's fact that is disputed.

29 (2) To controvert a material fact stated by the moving party, the opposing memorandum
30 shall include a verbatim restatement of each of the moving party's facts as to which the
31 responding party claims a genuine issue exists followed by a concise statement of material facts

1 supporting the responding party's claim. The moving party's statement of a material fact is
2 deemed admitted for the purpose of summary judgment unless controverted by the responding
3 party.

4 (e) Request to submit for decision. When briefing is complete, either party may file a request
5 to submit the motion for decision. The request shall be a separate pleading captioned "Request to
6 Submit for Decision." The request to submit for decision shall state the date on which the motion
7 was served, the date the opposing memorandum, if any, was served, the date the reply
8 memorandum, if any, was served, and whether a hearing is requested. If no party files a request,
9 the motion will not be submitted for decision.²⁶

10 (f) Hearings. The court may allow a hearing on any motion. The court shall grant a request
11 for a hearing on a motion that would dispose of the action or any claim in the action unless the
12 court finds that the motion or opposition to the motion is frivolous or the issue has been
13 authoritatively decided.

14 (g) Orders.

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

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

26 (h) Objection to court commissioner's order. A recommended order of a court commissioner
27 is the order of the court until modified by the court. A party may object to the recommended
28 order of a court commissioner by filing an objection in the same manner as filing a motion

²⁶ Advisory Committee Note. The practice for courtesy copies varies by judge and so is not regulated by rule. Each party should 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.

1 | within ten days after the recommended order is entered. A party may respond to the objection in
2 | the same manner as responding to a motion. The objection shall be determined a judge.

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

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

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

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

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

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

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

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

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

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

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

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

22 (j) Libel and slander.

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

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

1 (k) If a complaint seeks judgment on a written obligation to pay money and a judgment has
2 previously been rendered upon the same written obligation, plaintiff shall describe the judgment
3 in detail in the complaint or attach a copy of the judgment to the complaint.²⁷

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

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

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

12 (2) If a motion to consolidate is granted, the case number of the first case filed shall be used
13 for all subsequent papers filed. If a motion to consolidate is granted, the case shall be heard by
14 the judge assigned to the first case filed, except that for good cause the presiding judge may
15 assign the case to another judge.²⁸

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

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

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

²⁷ From CJA 4-504(8).

²⁸ From CJA 4-107.

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

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

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

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

26 **Rule 54. Judgments; costs.**

27 (a) Definition; form. "Judgment" as used in these rules includes a decree and any order from
28 which an appeal lies. A judgment need not contain a recital of pleadings, the report of a master,
29 or the record of prior proceedings. Judgments shall state whether they are entered upon trial,
30 stipulation, motion or the court's initiative; and, unless otherwise directed by the court, a
31 judgment shall not include any matter by reference.

1 (b) Judgment upon multiple claims and/or involving multiple parties. When more than one
2 claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or
3 third-party claim, and/or when multiple parties are involved, the court may direct the entry of a
4 final judgment as to one or more but fewer than all of the claims or parties only upon an express
5 determination by the court that there is no just reason for delay and upon an express direction for
6 the entry of judgment. In the absence of such determination and direction, any order or other
7 form of decision, however designated, which adjudicates fewer than all the claims or the rights
8 and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or
9 parties, and the order or other form of decision is subject to revision at any time before the entry
10 of judgment adjudicating all the claims and the rights and liabilities of all the parties.

11 (c) Demand for judgment.

12 (1) Generally. Except as to a party against whom a judgment is entered by default, every final
13 judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if
14 the party has not demanded such relief in his pleadings. It may be given for or against one or
15 more of several claimants; and it may, when the justice of the case requires it, determine the
16 ultimate rights of the parties on each side as between or among themselves.

17 (2) Judgment by default. A judgment by default shall not be different in kind from, or exceed
18 in amount, that specifically prayed for in the demand for judgment.

19 (d) Costs.

20 (1) To whom awarded. Except when express provision therefor is made either in a statute of
21 this state or in these rules, costs shall be allowed as of course to the prevailing party unless the
22 court otherwise directs; provided, however, where an appeal or other proceeding for review is
23 taken, costs of the action, other than costs in connection with such appeal or other proceeding for
24 review, shall abide the final determination of the cause. Costs against the state of Utah, its
25 officers and agencies shall be imposed only to the extent permitted by law.

26 (2) How assessed. The party who claims his costs must within five days after the entry of
27 judgment serve upon the adverse party against whom costs are claimed, a copy of a
28 memorandum of the items of his costs and necessary disbursements in the action, and file with
29 the court a like memorandum thereof duly verified stating that to affiant's knowledge the items
30 are correct, and that the disbursements have been necessarily incurred in the action or
31 proceeding. A party dissatisfied with the costs claimed may, within seven days after service of

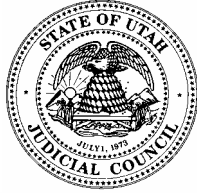
1 the memorandum of costs, file a motion to have the bill of costs taxed by the court in which the
2 judgment was rendered.

3 A memorandum of costs served and filed after the verdict, or at the time of or subsequent to
4 the service and filing of the findings of fact and conclusions of law, but before the entry of
5 judgment, shall nevertheless be considered as served and filed on the date judgment is entered.

6 ~~(3)~~ [Deleted.]

7 ~~(4)~~ [Deleted.]

8 (e) Interest and costs to be included in the judgment. The clerk must include in any judgment
9 signed by him any interest on the verdict or decision from the time it was rendered, and the costs,
10 if the same have been taxed or ascertained. The clerk must, within two days after the costs have
11 been taxed or ascertained, in any case where not included in the judgment, insert the amount
12 thereof in a blank left in the judgment for that purpose, and make a similar notation thereof in the
13 register of actions and in the judgment docket.



Administrative Office of the Courts

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

MEMORANDUM

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

To: Civil Procedures Committee
From: Tim Shea *TS*
Date: January 14, 2003
Re: Small Claims Amendments

When the new small claims rules and forms were first published about 18 months ago, I began receiving, almost immediately, inquiries about amendments. At that time I asked the clerks and others to live with the new rules for a while to gain experience with what worked and what didn't. Now that we have had about that experience, I have been working with a group of district court and justice court clerks to revisit all of the small claims procedures.

Statutes. The work group has recommended an amendment to §78-6-10 (not included) that will change the time to appeal from the current 10 days from notice of judgment to 30 days from entry of judgment. In this regard, appeals in small claims cases will be the same as in civil cases. The Judicial Council has endorsed the change in the statute, and it will be presented at the 2003 legislative general session.

Rules. The work group has developed several rule amendments, which are summarized below. In general we wanted to have the rules operate as rules, not as introductions to the forms and not as explanations, instructions or definitions. Such matters are better dealt with in the instructions. The rules, forms and instructions have been vetted by the Board of District Court Judges, the Board of Justice Court Judges, the Trial Court Executives, the Clerks of Court, and select small claims judges pro tempore. The item generating the most disagreement is the change to Rule 4, regarding counter affidavits, summarized in item 7, below.

1. Repeal 4-802 and 4-803 and incorporate their content into Rule of Small Claims Procedures 10 and 12, respectively, as needed.
2. Eliminate the reference to particular forms in the rules.
3. Eliminate quoted text, the purpose of which was not always clear. Use terms common to civil procedures. The instructions provide some basic definitions.
4. Standardize with the Utah Rules of Civil Procedure: calculating time and calculating business and calendar days.
5. Provide a general sanction authority.
6. Provide a general requirement to serve all papers on the other party.
7. Prohibit counter affidavits over \$5,000. If a defendant has a claim against the plaintiff that exceeds \$5,000, defendant will have to file it as a civil complaint (as plaintiff) in

district court. See *Faux v. Mickelson*, 725 P.2d 1372 (Utah 1986), holding that, under small claims statutes (§78-6-1(3)), counterclaims are permissive rather than mandatory and may be pursued by separate litigation. This approach is endorsed by the Board of District Court Judges and opposed by the Board of Justice Court Judges.

8. Standardize with the URCP: dismissals presumed without prejudice.
9. Shorten the time to set aside a dismissal or default judgment to 15 days rather than 30. (In conjunction with extending the time to appeal to 30 days.)
10. Standardize with the URCP: time to appeal runs from denial of motion to set aside dismissal or default judgment if one is filed.
11. Clarify circumstances under which the debtor can file a satisfaction of judgment.

Encl. Proposed amendments to Rules of Small Claims Procedures
Faux v. Mickelson, 725 P.2d 1372 (Utah 1986)

1 **Rule 1. ~~Scope, purpose, and forms~~ General provisions.**

2 (a) These rules constitute the “simplified rules of procedure and evidence” in small claims
3 cases required by Utah Code Section 78-6-1 and shall be referred to as the Rules of Small Claims
4 Procedure. They are to be interpreted to carry out the statutory purpose of small claims cases,
5 dispensing speedy justice between the parties.

6 (b) These rules apply to ~~the initial trial and any appeal under Rule 12 of all actions pursued as~~
7 ~~a small claims actions~~ under Utah Code Section 78-6-1 et. seq., including the trial de novo.

8 (c) ~~If the Supreme Court has approved a form for use in small claims actions, parties must~~
9 ~~file documents substantially similar in form to the approved form. Parties must file documents~~
10 substantially similar to forms approved by the Supreme Court.

11 (d) If the time designated in these rules is 10 or fewer days, the reference is to business days,
12 excluding intervening Saturdays, Sundays and holidays. If the time designated is 11 or more
13 days, the reference is to calendar days. The day from which the time begins to run is not
14 included. The last day of the period is included. If the last day is a Saturday, Sunday or holiday,
15 the time expires on the next business day.

16 (e) By presenting any pleading or other paper a party is certifying that: it is not being
17 presented for an improper purpose; the legal contentions are supported by existing law or by an
18 argument for a change in the law; and the factual contentions are supported by evidence. If the
19 court determines that this certification has been violated, the court may impose an appropriate
20 sanction upon the attorney or party.

21 **Rule 2. Beginning the case.**

22 (a) A case is begun by plaintiff filing ~~a Small Claims Affidavit (Form A)~~ with the clerk of the
23 court either:

24 (1) an affidavit stating facts showing the right to recover money from defendant; or

25 (2) an interpleader affidavit showing that plaintiff is holding money claimed by two or more
26 defendants.

27 (b) The affidavit qualifies as a complaint under Section 78-27-25.

28 (b)-(c) Unless waived upon filing an Affidavit of Impecuniosity, the appropriate filing fee
29 must accompany the Affidavit.

30 (e)-(d) A separate form of Affidavit (Form C) is available for an “interpleader action”
31 action in which plaintiff is holding money that is claimed by two or more other parties. In an

1 interpleader action, plaintiff must pay the money into the court at the time of filing the Affidavit
2 or acknowledge that it will pay the money to whomever the court directs.

3 (e) Upon filing the affidavit, the clerk of the court shall schedule the trial and issue the
4 summons for the defendant to appear.

5 Rule 3. Service of the affidavit and summons.

6 (a) After filing the Affidavit and receiving a trial date, plaintiff must serve the affidavit and
7 summons on defendant. To serve the affidavit and summons, plaintiff must either:

8 (1) have the affidavit and summons served on defendant by a sheriff's department, constable,
9 or person regularly engaged in the business of serving process and pay for that service; or

10 (2) have the affidavit and summons delivered to defendant by a method of mail or
11 commercial courier service that requires defendant to sign a document indicating receipt and
12 provides for return of that document to plaintiff.

13 (b) The affidavit and summons must be served at least thirty ~~calendar~~ days before the trial
14 date. Service by mail or commercial courier service is complete on the date the receipt is signed
15 by defendant.

16 (c) Proof of service of the affidavit and summons must be filed with the court no later than
17 ten ~~calendar~~ days after service. If service is by mail or commercial courier service, plaintiff must
18 file a Proof of Service (~~Form D~~). If service is by a sheriff, constable, or person regularly engaged
19 in the business of serving process, proof of service must be filed by the person completing the
20 service.

21 (d) Each party shall serve on all other parties a copy of all documents filed with the court
22 other than the counter affidavit. Each party shall serve on all other parties all documents as
23 ordered by the court. Service of all papers other than the affidavit and counter affidavit may be
24 by first class mail at the other party's last known address. The party mailing the papers shall file
25 proof of mailing with the court no later than 10 days after service. If the papers are returned to
26 the party serving them as undeliverable, the party shall file the returned envelope with the court.

27 **Rule 4. Counter affidavit.**

28 (a) ~~If defendant claims plaintiff owes defendant money, defendant~~ Defendant may file with
29 the clerk of the court a counter affidavit stating facts showing the right to recover money from
30 plaintiff.

1 (b) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must
2 accompany the counter affidavit ~~(Form B)~~.

3 (c) Any counter affidavit must be filed at least fifteen ~~calendar~~ days before the trial. The
4 ~~court~~ clerk of the court will mail a copy of the counter affidavit and summons to plaintiff at the
5 address provided by plaintiff on the affidavit.

6 ~~(d) In a case filed in district court, if the counter affidavit alleges that plaintiff owes~~
7 ~~defendant more than the monetary limit for small claims procedures, the entire case will proceed~~
8 ~~as a regular civil case.~~

9 ~~(e) In a case filed in justice court, if the counter affidavit alleges that plaintiff owes defendant~~
10 ~~more than the monetary limit for small claims procedures, the entire case must be transferred to~~
11 ~~district court and will proceed as a regular civil case.~~

12 ~~(f) Defendant must pay both parties' additional filing fees imposed as a result of the case~~
13 ~~proceeding as a regular civil case. If necessary, defendant must arrange for transfer of the case.~~

14 (d) A counter affidavit for more than the monetary limit for small claims actions may not be
15 filed under these rules.

16 **Rule 5. No answer required.**

17 No answer is required to an affidavit or counter affidavit. All allegations are deemed denied.

18 **Rule 6. Pretrial.**

19 (a) No ~~formal~~ discovery may be conducted ~~but the parties are urged to exchange information~~
20 ~~prior to the trial.~~

21 (b) Written motions and responses may be filed prior to trial. Motions may be made orally or
22 in writing at the beginning of the trial. ~~No motions will be heard prior to trial.~~

23 (c) One ~~postponement continuance~~ of the trial date (~~"continuance"~~) per side may be granted
24 by the ~~court~~ clerk of the court. To request a continuance, a party must file a request motion for
25 continuance ~~(Form E)~~ with the court at least five days before trial. The clerk will give notice to
26 the other party. ~~A Request for Continuance must be received by the court at least five calendar~~
27 ~~days before trial.~~ A continuance for more than forty-five ~~calendar~~ days may be granted only by
28 the judge. The court may require the party requesting the continuance to pay the costs incurred
29 by the other party.

30 **Rule 7. Trial.**

1 (a) All parties must bring to the trial all documents related to the controversy regardless of
2 whose position they support. ~~Possible documents include medical bills, damage estimates,~~
3 ~~receipts, rental agreements, leases, correspondence, and any contracts on which the case is based.~~

4 (b) Parties may have witnesses testify at trial and bring documents. To require attendance by
5 a witness who will not attend voluntarily, a party must “subpoena” the witness. The clerk of the
6 court or a party’s attorney may issue a subpoena pursuant to Utah Rule of Civil Procedure 45.
7 The party requesting the subpoena is responsible for service of the subpoena and payment of any
8 fees. A subpoena must be served at least five ~~ealendar~~ days prior to trial.

9 (c) The judge will conduct the trial and question the witnesses. The trial will be conducted in
10 such a way as to give all parties a reasonable opportunity to present their positions. The judge
11 may allow parties or their counsel to question witnesses.

12 (d) The judge may receive the type of evidence commonly relied upon by reasonably prudent
13 persons in the conduct of their business affairs. The rules of evidence shall not be applied
14 strictly. The judge may allow hearsay that is probative, trustworthy and credible. Irrelevant or
15 unduly repetitious evidence shall be excluded.

16 (e) After trial, the judge shall decide the case and direct the entry of judgment. No written
17 findings are required. ~~The small claims judgment (Form F or G) with the notice of Entry of~~
18 ~~judgment completed shall be provided to each party by the court if all parties are present at trial~~
19 ~~or by the prevailing party if fewer than all parties are present. The clerk of the court will serve all~~
20 ~~parties present with a copy of the judgment.~~

21 (f) ~~Filing fees and costs~~ Costs will be awarded to the prevailing party and to plaintiff in an
22 interpleader action unless the judge otherwise orders.

23 **Rule 8. Dismissal.**

24 (a) Except in interpleader cases, if plaintiff fails to appear at the time set for trial, plaintiff’s
25 claim will be dismissed ~~with prejudice unless the judge otherwise orders.~~

26 (b) If defendant has filed a counter affidavit and fails to appear at the time set for trial,
27 defendant’s claim will be dismissed ~~with prejudice unless the judge otherwise orders.~~

28 ~~(c) The prevailing party shall send all other parties a copy of the small claims judgment~~
29 ~~(Form F or G) with the notice of entry of judgment completed and file the completed copy with~~
30 ~~the court.~~

31 (c) At any time before trial, either party may move to dismiss that party’s claim.

1 (d) Dismissal is without prejudice unless the judge otherwise orders. The appearing party
2 shall serve the order of dismissal on the non-appearing party.

3 **Rule 9. Default judgment.**

4 (a) If defendant fails to appear at the time set for trial, the court may grant plaintiff judgment
5 in an amount not to exceed the amount requested in plaintiff's affidavit.

6 (b) If defendant has filed a counter affidavit and plaintiff fails to appear at the time set for
7 trial, the court may grant defendant judgment in an amount not to exceed the amount requested
8 in defendant's counter affidavit.

9 ~~(c) Any party granted a default judgment shall promptly send a copy of a completed Notice~~
10 ~~of Default judgment (Form H) to the other party and file the original with the court. The~~
11 ~~appearing party shall serve the default judgment on the non-appearing party.~~

12 (d) In an interpleader action, if a defendant fails to appear, a default judgment may be entered
13 against the non-appearing defendant.

14 **Rule 10. Set aside of default judgments and dismissals.**

15 (a) ~~Within thirty calendar days from the mailing of the notice of default judgment or the date~~
16 ~~of dismissal, a~~ party may request that the default judgment or dismissal be set aside by filing a
17 ~~request-motion~~ to set aside ~~judgment (Form I) within 15 days after entry of the judgment or~~
18 ~~dismissal~~. If the court receives a timely ~~request-motion~~ to set aside the default judgment or
19 dismissal and good cause is shown, the court may grant the ~~request-motion~~ and reschedule a trial.
20 The court may require the ~~requesting-moving party's payment of to pay~~ the costs incurred by the
21 other party ~~in obtaining the default judgment or dismissal~~.

22 (b) The ~~thirty-day~~ period for ~~requesting the moving to~~ set aside ~~of~~ a default judgment or
23 dismissal may be extended by the court for good cause if the ~~request-motion~~ is made in a
24 reasonable time.

25 **Rule 11. Collection of judgments.**

26 (a) Judgments may be collected under the Utah Rules of Civil Procedure.

27 ~~(b) Upon full payment of the judgment including post-judgment costs and interest, the~~
28 ~~prevailing party shall promptly file a satisfaction of judgment (Form J) with the court.~~

29 ~~(c) The court may enter a Satisfaction of Judgment at the request of a party after ten calendar~~
30 ~~days notice to all parties. (b) Upon payment in full of the judgment, including post-judgment~~
31 ~~costs and interest, the judgment creditor shall file a satisfaction of judgment with the court. Upon~~

1 receipt of a satisfaction of judgment from the judgment creditor, the clerk of the court shall enter
2 the satisfaction upon the docket. The judgment debtor may file a satisfaction of judgment and
3 proof of payment. The court may conduct a hearing. If the judgment creditor fails to object
4 within 10 days after notice, the court may order the judgment satisfied.

5 (c) If the judgment creditor is unavailable to accept payment of the judgment, the judgment
6 debtor may pay the amount of the judgment into court and serve the creditor with notice of
7 payment in the manner directed by the court as most likely to give the creditor actual notice,
8 which may include publication. After 30 days after final notice, the debtor may file a satisfaction
9 of judgment and the court may conduct a hearing. The court will hold the money in trust for the
10 creditor for the period required by state law. If not claimed by the judgment creditor, the clerk of
11 the court shall transfer the money to the Unclaimed Property Division of the Office of the State
12 Treasurer.

13 **Rule 12. Appeals.**

14 (a) Either party may appeal a small claims judgment within ~~ten business~~ 30 days (not
15 counting weekends and holidays) of receipt of notice of after entry of judgment or after denial of
16 a motion to set aside, whichever is later.

17 (b) To appeal, the appealing party must file a notice of appeal (~~Form K~~) in the court issuing
18 the judgment ~~and mail a copy to each party. The~~ Unless waived upon filing an affidavit of
19 impecuniosity, the appropriate fee must accompany the notice of appeal.

20 (c) On appeal, a new trial will be held (~~“trial de novo”~~) in accordance with the procedures of
21 small claims actions.

22 (d) The district court shall issue all further orders governing the case. The trial de novo of a
23 justice court adjudication shall be heard in the district court nearest to and in the same county as
24 the justice court from which the appeal is taken. The trial de novo of the small claims department
25 of the district court shall be held at the same district court.

26 (e) A judgment debtor may stay the judgment during appeal by posting a supersedeas bond
27 with the district court. The stay shall continue until entry of the final order or judgment of the
28 district court.

29 (f) Within ten days after filing the notice of appeal, the justice court shall transmit to the
30 district court the notice of appeal, the district court fees, a certified copy of the docket or register
31 of actions, and the original of all papers filed in the case.

1 (g) Upon the entry of the judgment or final order of the district court, the clerk of the district
2 court shall transmit to the justice court which rendered the original judgment notice of the
3 manner of disposition of the case.

4 **Rule 4-801. Transfer of small claims cases.**

5 Intent:

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

7 Applicability:

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

9 Statement of the Rule:

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

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

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

Tina FAUX and Patrick Nacey, Plaintiffs and Appellants, v. Susan MICKELSEN, Defendant and Respondent
725 P.2d 1372; 42 Utah Adv. Rep. 24; 1986 Utah LEXIS 879
No. 20347
September 23, 1986, Filed
Supreme Court of Utah

Counsel

Wendell P. Ables, for Plaintiffs.

LeRoy S. Axland, Craig W. Anderson, for Defendant.

Opinion by: PER CURIAM

{725 P.2d 1373} Plaintiffs Faux and Nacey appeal from an order of the district court dismissing their appeal and affirming the judgment of the circuit court. This cause arose from a landlord-tenant dispute. Defendant Mickelsen brought suit in the small claims court, fifth circuit, to recover past due rent, utilities, and costs for cleaning and repair. Faux and Nacey appeared with counsel, but brought no counterclaim against Mickelsen and executed no counter-affidavits. Judgment was entered in favor of Mickelsen. Faux and Nacey did not appeal within the five days provided by statute.

Several weeks later, Faux and Nacey filed the instant suit in the Fifth Circuit Court charging Mickelsen with wrongful ejection, willful exclusion, distraint, and conversion. Mickelsen brought a motion to dismiss, and the circuit court granted her summary judgment. Faux and Nacey appealed to the district court, which dismissed their appeal and affirmed the judgment of the circuit court. The district court's order was based on two findings: (1) Faux and Nacey had failed to properly remove the action originally filed in the small claims court to the circuit court, as required by Rule 13 (k) of the Rules of Civil Procedure. (2) Their claim arose out of the same transaction or occurrence that was the subject matter of Mickelsen's claim in the small claims court and was therefore barred by Rule 13 (a) and the doctrine of res judicata.

Faux and Nacey appeal on the grounds that section 78-6-2.5 of the Judicial Code conflicts with Rule 13 (a) and (k) of the Rules of Civil Procedure and that the district court's affirmance of the circuit court judgment operated to deny them due process of law and access to the courts and {725 P.2d 1374} constituted lack of uniform operation of laws under the Utah Constitution. We recognize jurisdiction over this constitutional issue under U.C.A., 1953, § 78-3-5 (Supp. 1985).

The Small Claims Courts Act (the Act) was established by the legislature to make it possible to dispose of certain actions in an informal manner from their inception to their end with the sole object of dispensing speedy justice between the parties. U.C.A., 1953, § 78-6-8 ; Tuttle v. Highland Dairyman's Association, 10 Utah 2d 195, 350 P.2d 616 (1960); accord Liedtke v. Schettler, 649 P.2d 80 (Utah 1982).

The small claims court is totally a creature of statute. Larson Ford Sales, Inc. v. Silver, 551 P.2d 233 (Utah), appeal dismissed, 429 U.S. 909, 50 L. Ed. 2d 277, 97 S. Ct. 299 (1976). Its jurisdiction is not exclusive and is limited to the recovery of money up to \$1,000. § 78-6-1(1)(a). Inasmuch as it is a department created in the circuit courts and justice's courts, the rules of

practice and civil procedure apply to it, with certain exceptions. Section 78-4-29 provides in pertinent part: "The rules of civil procedure shall apply to actions commenced in circuit court except insofar as these rules are by their nature clearly inapplicable to circuit courts or proceedings therein." See also Utah R. Civ. P. 81(c) for similar language, and *Hume v. Small Claims Court of Murray City*, 590 P.2d 309 (Utah 1979). Examples of exceptions are the dispensation with formal pleadings to initiate an action, § 78-6-8, the acceleration of the trial setting, § 78-6-3, and the discretion of the small claims courts to remove all but the initial claim from the court's calendar where multiple claims are filed, § 78-6-1(3).

The question here raised is whether section 78-6-2.5 embodies such an exception. Faux and Nacey claim that counterclaims compulsive by definition under Rule 13 (a) are treated as permissive in nature under the Act. Mickelsen asserts that Rules 13 (a) and (k) mandate the joinder of the counterclaim and removal of the case to the circuit court. She does not discuss the disparate language of the section. We resolve this seeming conflict on statutory grounds and therefore do not reach the constitutional objections raised.

U.C.A., 1953, § 78-6-2.5 (1977 ed., Cum. Supp. 1986) provides in pertinent part:

Counterclaims authorized--Form of counter-affidavit.

Counter actions may also be maintained in small claims court if the actions arise out of the transaction or occurrence that is the subject matter of the opposing party's claim and when the party maintaining the counter action executes an affidavit setting forth the nature and the basis of the counterclaim.

(Emphasis added.) Under the Rules of Civil Procedure, Rule 13 (a) compels a counterclaim ("a pleading shall state as a counterclaim . . .") "if it arises out of the transaction or occurrence that is the subject-matter of the opposing party's claim," and Rule 13 (b) merely permits ("a pleading may state as a counterclaim . . .") such a claim if it does not arise out of the same transaction or occurrence. Compared to the language of the statute just cited, the divergence of the statute from the rules is apparent. A counterclaim under the former is authorized but not compelled. It may, but need not, be brought by the opposing party. Moreover, it is only authorized to the extent that the claim arises out of the same transaction, and no like authority is granted for counterclaims on unrelated claims.

We have long adhered to the well-established principle of statutory construction that "[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another." *Brickyard Homeowners Association Management Committee v. Gibbons Realty Co.*, 668 P.2d 535, 538 (Utah 1983).

Within those guidelines, it becomes our duty to direct the focus of our inquiry not on the seeming disparity between the statute in question and the Rules of Civil Procedure, as Mickelsen would urge us, but on {725 P.2d 1375} the internal consistency and overall harmony between this section and others found in the Act.

From the assumption that the law maker has a definite purpose in every enactment proceeds the cardinal rule that the general purpose, intent or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object, and if the language is susceptible of two constructions, one which will carry out and the other defeat such manifest object, it should receive the former construction.

2A Sutherland's Statutory Construction § 46.05 (4th ed.).

The general purpose, as just stated, of the Act is to dispose of minor money disputes by dispensing speedy justice between the parties. To carry out that manifest object, section 78-6-2.5 must be interpreted to merely permit the simultaneous resolution of related counterclaims. "In certain instances, the word 'may' has the effect of 'must,' but, ordinarily, the use of the permissive term carries no mandate." 2A Sutherland § 57.03. Faux and Nacey's counterclaim consisted of several causes of action and alleged damages in excess of the small claims court's jurisdiction. Under Mickelsen's interpretation of the statute, they were compelled to bring their counterclaim and to remove the entire case to the circuit court for trial and adjudication. We believe that such a procedure would have the effect of defeating the purpose of the Act to dispense speedy justice to Mickelsen on a simple money judgment. Both the intent and the meaning of the statute permit no such construction.

Furthermore, the language of Rule 13 (k) does not lend itself to the interpretation suggested by Mickelsen and the district court. A counterclaimant must remove a case that exceeds the jurisdictional amount of the circuit court and have the action certified to the district court. There is no like provision calling for a similar removal from the small claims department within the circuit court to the circuit court. Instead, as we read the Act, the small claims court's procedural parameters are expressly altered to fit the accelerated process, and the Rules of Civil Procedure have been circumvented where expedient. For example, under section 78-6-1(3) multiple claims may be removed in the discretion of the clerk or the judge, leaving only the initial claim. Under Rule 18 of the Rules of Civil Procedure, joinder of claims is permitted.

We conclude that the meaning of section 78-6-2.5 is clear and not in conflict with the Rules of Civil Procedure. Within the limited jurisdiction of the small claims court, a defendant is not compelled to bring a counterclaim though it may arise from the same transaction or occurrence as the subject matter sued on. It follows that Faux and Nacey here had no duty to remove the small claims court matter to the circuit court in order to pursue a counterclaim to Mickelsen's complaint and that their action was not barred by the doctrine of res judicata.

The case is remanded to the circuit court for a trial on the merits.