Agenda

Advisory Committee on Rules of Civil Procedure

October 27, 2004
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
Rule 62. Cap on supersedeas bonds.	Fran Wikstrom
Rule 9. Naming persons for allocation of fault.	Tim Shea
Rule 7. Motion to reconsider.	Cullen Battle
Rule 47. Peremptory challenges for multiple parties.	Frank Carney
Rule 101. Motions before court commissioners. Rule 106. Temporary orders during modification of divorce decrees.	Tim Shea

Meeting Schedule

November 17, 2004
January 26, 2005
February 23, 2005
March 23, 2005
April 27, 2005
May 25, 2005
July 27, 2005
September 28, 2005
October 26, 2005
November 16, 2005

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, September 22, 2004
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Cullen Battle, Janet H. Smith, Terrie T. McIntosh, Leslie W. Slaugh, Virginia S. Smith, R. Scott Waterfall, James T. Blanch, Lance Long, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Honorable Lyle R. Anderson, Honorable David Nuffer

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Francis J. Carney, Paula Carr, David W. Scofield, Thomas R. Karrenberg, Todd M. Shaughnessy, Glenn C. Hanni, Debora Threedy

GUESTS: Matty Branch
Jim Olson
Gary Thorup
Keith Teel
Cap Ferry
Nancy Sechrest

I. APPROVAL OF MINUTES AND PRELIMINARY MATTERS.

Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the July 28, 2004 meeting were reviewed, and Leslie W. Slaugh moved that they be approved as submitted. The Motion was seconded by James T. Blanch, and approved unanimously.

Mr. Wikstrom reported that he met with the Supreme Court in August of 2004 to submit the proposed amended rules as approved by the Committee. He stated that the Court has approved all submitted amendments as proposed, with the exception of the proposed amendments to Rule 63.

II. CAP ON SUPERSEDEAS BONDS.

Mr. Wikstrom introduced Keith Teel, an attorney with the law firm of Covington & Burling. Mr. Teel, who works out of his firm's Washington, D.C., office, introduced himself as having been involved in virtually all appeal bond changes in recent years. Mr. Teel provided a history of his involvement in the supersedeas bond issue on behalf of his clients, major tobacco companies, including that the initial impetus for change in supersedeas bond rules came from

tobacco companies involved in product liability litigation. The first such changes were adopted in Florida in response to a product liability lawsuit where the defendant tobacco company had reason to believe that significant punitive damages might be imposed. Florida's rules at that time required a supersedeas bond of 125% of the amount of verdict, with no latitude for trial or appellate courts to decrease the amount. At the conclusion of the one-year trial, the jury awarded $145 billion in damages, which meant that the supersedeas bond would have been set at $181 billion. Mr. Teel stated that there was no way for even a major tobacco company to post that bond amount, so that the only way an appeal could have been taken would have been for the company to file for bankruptcy. However, the company did not want to file for bankruptcy for numerous reasons, including that a bankruptcy filing would disrupt the settlement that tobacco companies had entered into with certain states. Since the defendant in the Florida lawsuit had foreseen the possibility of a huge verdict, prior to the end of trial the defendant was able to approach the Florida legislature with its concerns. The result was that by the time of the verdict, the legislature had already amended its supersedeas bond requirements to limit the amount of bond to a $100 million maximum for punitive damages. This change allowed the defendant to post bond and pursue an appeal without first having to file for bankruptcy. On intermediate appeal the court reversed the judgment and decertified the class. The case is now on appeal to the Florida Supreme Court.

Mr. Teel commented that even though tobacco companies are not popular, they provide employment for thousands of employees and a bankruptcy filing would have impacted those jobs. He observed that legislators and courts are beginning to recognize that supersedeas bond rules initially did not arise in the extreme situations that now exist in litigation, *e.g*, class actions, large punitive damages verdicts. He commented that courts also appear to recognize that defendants are entitled to their day in court, and that it is contrary to that right if a defendant is forced to file for bankruptcy before it can pursue an appeal.

Mr. Teel stated that since the Florida rule changes, thirty-one states have addressed the supersedeas bond issue, and the result is a hodge-podge of changes. However, all changes have the following in common:

(1) All thirty-one states have adopted some hard cap with most of them similar to Florida's cap, *i.e.*, a cap on bond for punitive damages, although some states have imposed a broader cap .

(2) All thirty-one states have included a provision that if there is evidence that a defendant is dissipating assets, the court can impose a bond of up to the full amount of judgment.

Mr. Slaugh asked why this Committee should provide a set rule when only 1% of cases might fall into a situation such as that described. He also pointed out that Utah's Rule 62 presently gives judges discretion as to bond amount, and since an expedited motion to an appellate court on bond amount is allowed, a rule change would appear to presuppose that a judge's decision on bond will be wrong. In response, Mr. Teel stated that some of the thirty-one states that have changed their bond requirements also had an expedited appeal process to an appellate court, but defendants were still required to post bond before they could appeal the amount of bond. He pointed out that an additional problem is that judges are often reluctant to

exercise the discretion they have regarding bond amount.

A Committee member asked whether changes to supersedeas bond requirements should be by rule or by legislation. Mr. Teel stated that three states changed supersedeas bond requirements by rule, and the remaining twenty-eight states made changes through legislation. He commented that in some states it is clear that appeal bonds are creatures of statute, that in some states it is clear that they are creatures of rules, and that in some states they can be changed by legislation or by rule. The question of why this issue is before this Committee was again discussed in light of the fact that the legislature already has acted.

Mr. Slaugh commented that the purpose of any change should be to appropriately protect everyone involved. Mr. Teel admitted that the rule changes that he has proposed likely would not protect small companies. A discussion ensued concerning changes to the bond rule and small versus large companies. Mr. Slaugh then expressed concern that changing the rule would not protect plaintiffs. Mr. Teel responded that in virtually no state has the plaintiffs' bar come forward to complain about proposed changes. In fact, the Missouri plaintiffs' bar supported the changes because they felt that they would rather have good judgments against solvent companies.

Mr. Wikstrom asked whether the settlement with the states could be viewed as an executory contract that could be re-affirmed in a bankruptcy proceeding. Mr. Teel stated that in the Florida lawsuit, bond companies assessed the situation and could not reach agreement on that question. It was also asked whether the issue might be resolved by allowing a faster bond appeal process after giving judges discretion. Mr. Teel commented that in Florida there was concern that there would be an immediate execution during any bond appeal and that the company's working capital would be taken. In this context, Committee members commented that in Utah it is possible to execute on the judgment immediately after final judgment, and that a motion to appeal the bond amount is on a separate track from the actual appeal.

Mr. Teel was asked whether he believes there should be two rules, one for large companies and one for small companies. He stated that he has dealt only with large companies, and what they are interested in is certainty even if they do not like the dollar amount. He also commented that courts will always require a bond amounting to the entire judgment if the overriding principle is, as stated in present Rule 62, that the overriding interest is that of the plaintiff.

Committee members then discussed the issue of dissipation of funds if a lower bond is allowed. They also discussed whether to require a supersedeas bond for punitive damages, whether to limit the bond amount for compensatory damages, and whether a bond should be required in class actions.

After discussion, the consensus was that: (1) there presumptively should be no bond requirement for punitive damages, (2) there presumptively should NOT be a bond limit for compensatory damages, and (3) the presumptive bond limit for compensatory damages in class action lawsuits should be $25 million. Tim Shea will work on drafting a proposed amendment to Rule 62, with input from other members.

III. RULE 7: MOTION TO RECONSIDER.

Cullen Battle led a discussion of whether to adopt a proposed rule that he has drafted which would specifically provide for motions to reconsider in trial courts. He stated that he is in favor of such a rule because motions seeking reconsideration are already being filed in trial courts even though they may not be captioned as such. At the present time the non-movant must respond to these motions no matter how frivolous they are, whereas the proposed rule provides that the non-movant need not respond to a motion to reconsider unless the court so orders.

Committee members discussed general issues involving motions that are already being filed which in reality are motions to reconsider even if they are not captioned as such. A comment was made that whenever there is a rotation of judges in civil cases, the first thing new judges receive are motions to reconsider rulings made by the previous judge. Lance Long commented that he agrees that there is merit to a rule that would specifically recognize a motion to reconsider, and would specify that a response is not required except by court order.

After discussion, the members' consensus was that the proposed rule has merit. Mr. Battle agreed to work on revising the proposed rule in accord with members' comments.

IV. RULE 9: NAMING PERSONS FOR ALLOCATION OF FAULT.

Mr. Shea stated that legislation has been drafted for the 2005 General Session that would amend the Liability Reform Act, and the Supreme Court has asked the Committee to look at the issue. The amendment would: (1) provide for a 90-day time period to add defendants to a lawsuit for purposes of allocation of fault, (2) require the party requesting the addition of additional parties to provide specific information about the additional parties, and (3) allow the court to deny a request to add parties simply because it was not timely filed.

Mr. Slaugh commented that the proponent of the legislation, John Valentine, is not suggesting that the Committee do anything regarding the proposed legislation, and that he submitted it to the Committee first only to see whether the Committee would like to comment on it. Mr. Slaugh suggested that the Committee do nothing. Mr. Shea disagreed, commenting that he believes the changes that are proposed amount to a pleading rule, and that as such it is more appropriately placed in the rules than in legislation.

The Committee discussed the proposed legislative amendment, including allocation of fault and statutes of limitation, and how to establish procedures for pleading allocation of fault. Due to lack of time, it was agreed that this matter would be discussed again in a later meeting.

V. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, October 27, 2004, at the Administrative Office of the Courts.

Rule 62. Stay of proceedings to enforce a judgment.

(a) Stay upon entry of judgment. Execution or other proceedings to enforce a judgment may issue immediately upon the entry of the final judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

(b) Stay on motion for new trial or for judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) Injunction pending appeal. When an appeal is taken from an interlocutory order or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

(d) Stay upon appeal. When an appeal is taken, the appellant by giving a supersedeas bond may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

(e) Stay in favor of the state, or agency thereof. When an appeal is taken by the United States, the state of Utah, or an officer or agency of either, or by direction of any department of either, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(f) Stay in quo warranto proceedings. Where the defendant is adjudged guilty of usurping, intruding into or unlawfully holding public office, civil or military, within this state, the execution of the judgment shall not be stayed on an appeal.

(g) Power of appellate court not limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings or to suspend, modify, restore, or grant an injunction, or extraordinary relief or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(h) Stay of judgment upon multiple claims. When a court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 54(b), the court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

(i) Form of supersedeas bond; deposit in lieu of bond; waiver of bond; jurisdiction over sureties to be set forth in undertaking.

(i)(1) A supersedeas bond given under Subdivision (d) may be either a commercial bond having a surety authorized to transact insurance business under Title 31A, or a personal bond having one or more sureties who are residents of Utah having a collective net worth of at least twice the amount of the bond, exclusive of property exempt from execution. Sureties on personal bonds shall make and file an affidavit setting forth in reasonable detail the assets and liabilities of the surety.

(i)(2) Upon motion and good cause shown, the court may permit a deposit of money in court or other security to be given in lieu of giving a supersedeas bond under Subdivision (d).

(i)(3) The parties may by written stipulation waive the requirement of giving a supersedeas bond under Subdivision (d) or agree to an alternate form of security.

(i)(4) A supersedeas bond given pursuant to Subdivision (d) shall provide that each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served, and that the surety's liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

(j) Amount of supersedeas bond.

(j)(1) A court shall set the supersedeas bond in an amount that adequately protects the judgment creditor against loss or damage occasioned by the appeal and assures payment in the event the judgment is affirmed. In setting the amount, the court may consider any relevant factor, including:

(j)(1)(A) the judgment debtor’s ability to pay the judgment;

(j)(1)(B) the existence and value of security;

(j)(1)(C) the judgment debtor’s opportunity to dissipate assets;

(j)(1)(D) the judgment debtor’s likelihood of success on appeal; and

(j)(1)(E) the respective harm to the parties from setting a higher or lower amount.

(j)(2) Notwithstanding subsection (j)(1):

(j)(2)(A) the presumptive amount of a bond for compensatory damages is the amount of the compensatory damages plus costs and attorney fees, as applicable, plus 3 years of interest at the applicable interest rate;

(j)(2)(B) the bond for compensatory damages shall not exceed $25 million in an action by plaintiffs certified as a class under Rule 23 or in an action by multiple plaintiffs in which compensatory damages are not proved for each plaintiff individually; and

(j)(2)(C) no bond shall be required for punitive damages.

(j)(3) If the court permits a supersedeas bond that is less than the total amount of the judgment, the court may order one or more of the following conditions during the pendency of the appeal:

(j)(3)(A) prohibit payment of dividends;

(j)(3)(B) prohibit transfer or disposition of assets other than in the ordinary course of business;

(j)(3)(C) prohibit loans other than in the ordinary course of business;

(j)(3)(D) require the judgment debtor to abstract the judgment to all jurisdictions in which it has significant assets; and

(j)(3)(E) require the corporate officers of the judgment debtor to personally acknowledge receiving the judgment and to consent to personal jurisdiction for the purpose of enforcing the judgment.

(j)(4) Upon proof of a violation of a condition ordered under subsection (j)(3) in any action, including in a class action or multiple plaintiff action, the court may enter such orders as are necessary to protect the judgment creditor, including increasing the bond to the full presumptive amount in subsection (j)(2)(A) or requiring a bond for punitive damages.

~~(j)~~ (k) Objecting to sufficiency or amount of security. Any party whose judgment is stayed or sought to be stayed pursuant to Subdivision (d) may object to the sufficiency of the sureties on the supersedeas bond or the amount thereof, or to the sufficiency or amount of other security given to stay the judgment by filing and giving notice of such objection. The party so objecting shall be entitled to a hearing thereon upon five days notice or such shorter time as the court may order. The burden of justifying the sufficiency of the sureties or other security and the amount of

the bond or other security, shall be borne by the party seeking the stay, unless the objecting party seeks a bond greater than the presumed limits of this rule. The fact that a supersedeas bond, its surety or other security is generally permitted under this rule shall not be conclusive as to its sufficiency or amount.

Fran Wikstrom: Amend Line 69: Unless otherwise ordered by the court upon a showing of good cause by the plaintiff, no bond shall be required for punitive damages. In other words, make it presumptive rather than absolute and put the burden on the plaintiff.

David Nuffer: "compensation and loan limitations" as part of (j)(1).

From: "Teel, Keith" <KTeel@cov.com>
To: Civil Procedures Committee
Date: 9/29/04 12:45PM
Subject: RE: Rule 62 changes

I wanted to offer the Committee comments on two different sections of the current draft that is under discussion.

I am quite concerned about the conditions in (j)(3), and particularly (j)(3)(A), prohibiting the payment of dividends, and (j)(3)(D), requiring the defendant to extract the judgment to all jurisdictions in which it has significant assets. Those are provisions that, for different reasons, could really hurt a company or be incredibly difficult to satisfy.

With respect to the provision prohibiting dividend payments, imagine an order by a judge prohibiting a company from paying dividends through the course of appeals, which could take two or three years. Almost inevitably that will cause stock values to plummet, harming the company, shareholders, and in some cases millions of folks whose retirement funds are invested in mutual funds holding significant blocks of stock. It would also not be good for the plaintiff, because it would weaken the company from whom the plaintiff ultimately hopes to collect. It is easy to say that it would be the unusual case where a judge would order this, but by including this provision in the rule at all it makes it seem like a quite normal condition to apply. In fact, no other state has included such a provision in its rule, and I'm not aware of any reported decisions where the payment of dividends has been prohibited in exchange for a lower appeal bond. This provision really could have terrible unintended consequences, and I strongly urge that it be deleted.

My problem with Section (j)(3)(D) is quite different. Big companies that get hit with big judgments typically have assets in most if not every state, and frequently in many local jurisdictions within that state. I'm not aware of an easy way to abstract a judgment in virtually every jurisdiction in this country, and wonder if platoons of lawyers would have to fan out across America to satisfy this condition. Of course, abstracting is only required where the assets are "significant." What does that mean? Is that a million dollars? A billion? I'm also not sure how this provision really helps. Is the notion that by abstracting the judgment somebody who is going to help the defendant dissipate assets won't do it? This seems like a condition that would be next to impossible as a practical matter to comply with, for no real benefit.

Of lesser concern is (j)(3)(E), relating to jurisdiction over corporate officers to enforce the judgment, but it's still hard to understand it why this is really necessary. Presumably by entering the judgment, except in the very rare case of a massive default judgment, the court has jurisdiction over the defendant. Why does it need jurisdiction over the officers? This condition seems intended more to annoy than to really achieve something.

I don't really have a problem with (j)(3)(B) or (j)(3)(C), as they are a couple specific ways in which assets might be dissipated. There may be other ways that could also occur, which is why in my comments submitted before last week's meeting I had advocated that the Committee

consider a general dissipation of assets provision, of the kind that has been used in all but three states. I still think that is worth the Committee's consideration.

With respect to Section (j)(2)(C), there have been a couple comments raising the issue of whether a judge should have some discretion to require a bond for punitive damages, and if so what standard should be applied. At the Committee's discussion last week it seemed that most people were comfortable not having a bond for punitives because such damages were penal in nature and a windfall for plaintiffs. No other state has adopted a discretionary approach for punitive damages that would allow a judge to exceed the bond limit for punitives absent a showing that assets have been dissipated. If the Committee feels there must be some leeway here, what about a high standard to overcome the presumption that no bond is required, coupled with a hard cap of $25 million if that high standard of proof is met. Presumably, even that $25 million cap could be overcome by a showing that the defendant is improperly dissipating assets.

Rule 9. Pleading special matters.

(a)(1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party. A party may raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued or the authority of a party to sue or be sued in a representative capacity by specific negative averment, which shall include facts within the pleader's knowledge. If raised as an issue, the party relying on such capacity, authority, or legal existence, shall establish the same on the trial.

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

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

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

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

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

(e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or quasi judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be

made specifically and with particularity and when so made the party pleading the judgment or decision shall establish on the trial all controverted jurisdictional facts.

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

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

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

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

(j) Libel and slander.

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

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

(k) Renew judgment. A complaint alleging failure to pay a judgment shall describe the judgment with particularity or attach a copy of the judgment to the complaint.

(l) Allocation of fault.

(l)(1) A party seeking to allocate fault to another shall identify by name, address, telephone number, employer, and by any other information known or reasonably available to the party the persons to whom fault is sought to be allocated. A party seeking to allocate fault to another shall, for each person, set forth a good faith factual and legal basis for doing so.

(l)(2) The party shall include the identity and factual and legal basis in the party's answer or in a supplemental answer filed within 90 days after the original answer. Upon motion, the court may permit a supplemental answer after the 90-day period if the party shows that the party could not have with reasonable diligence identified the person and the factual and legal basis within the time permitted by this rule.

(l)(3) A party may not seek to allocate fault to another except by compliance with this rule.

Rule 7(h). Motions for reconsideration of non-final orders on grounds that the court has overlooked points of law or fact.

(h)(1) Motion disfavored; time for filing; contents; response; oral argument not permitted. Motions for reconsideration of non-final orders or decisions on the grounds that the court has overlooked points of law or fact are strongly disfavored. Such motions may be filed only under exceptional circumstances and not later than 10 days after the entry of the order or decision for which reconsideration is sought. The motion shall state with particularity the points of law or fact the movant claims the court has overlooked or misapprehended. Counsel for movant must certify that the motion is presented in good faith and not for delay. Oral argument in support of the motion will not be permitted. No response to a motion for reconsideration will be received unless requested by the court. A response shall be filed within 14 days after the entry of the order requesting the response. A motion for reconsideration will not be granted in the absence of a request for a response.

(h)(2) Action by court if granted. If a motion for reconsideration is granted, the court may make a final disposition of the cause without reargument, or may restore it to the calendar for reargument or resubmission, or may make such other orders as are deemed appropriate under the circumstances of the particular case.

(h)(3) Attorneys fees. If the court denies a motion for reconsideration after requesting a response, the court shall award to the responding party reasonable attorneys fees in preparing the response.

Rule 47. Jurors.

(a) Examination of jurors. The court may permit the parties or their attorneys to conduct the examination of prospective jurors or may itself conduct the examination. In the latter event, the court shall permit the parties or their attorneys to supplement the examination by such further inquiry as is material and proper or shall itself submit to the prospective jurors such additional questions of the parties or their attorneys as is material and proper. Prior to examining the jurors, the court may make a preliminary statement of the case. The court may permit the parties or their attorneys to make a preliminary statement of the case, and notify the parties in advance of trial.

(b) Alternate jurors. The court may direct that alternate jurors be impaneled. Alternate jurors, in the order in which they are called, shall replace jurors who, prior to the time the jury retires to consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall be selected at the same time and in the same manner, shall have the same qualifications, shall be subject to the same examination and challenges, shall take the same oath, and shall have the same functions, powers, and privileges as principal jurors. An alternate juror who does not replace a principal juror shall be discharged when the jury retires to consider its verdict unless the parties stipulate otherwise and the court approves the stipulation. The court may withhold from the jurors the identity of the alternate jurors until the jurors begin deliberations. ~~If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed~~.

(c) Challenge defined; by whom made. A challenge is an objection made to the trial jurors and may be directed (1) to the panel or (2) to an individual juror. ~~Either party may challenge the jurors, but where there are several parties on either side, they must join in a challenge before it can be made.~~

(d) Challenge to panel; time and manner of taking; proceedings. A challenge to the panel can be founded only on a material departure from the forms prescribed in respect to the drawing and return of the jury, or on the intentional omission of the proper officer to summon one or more of the jurors drawn. It must be taken before a juror is sworn. It must be in writing or be stated on the record, and must specifically set forth the facts constituting the ground of challenge. If the challenge is allowed, the court must discharge the jury so far as the trial in question is concerned.

(e) Challenges to individual jurors; number of peremptory challenges. The challenges to individual jurors are either peremptory or for cause. Each party shall be entitled to three

peremptory challenges, except as provided under Subdivisions (b) and (c) of this rule. Several defendants or several plaintiffs shall be considered as a single party for the purposes of making peremptory challenges unless there is a substantial controversy between them, in which case the court shall allow as many additional peremptory challenges as is just. If one or two alternate jurors are called, each party is entitled to one peremptory challenge in addition to those otherwise allowed.

(f) Challenges for cause. A challenge for cause is an objection to a particular juror and shall be heard and determined by the court. The juror challenged and any other person may be examined as a witness on the hearing of such challenge. A challenge for cause may be taken on one or more of the following grounds. On its own motion the court may remove a juror upon the same grounds.

(f)(1) A want of any of the qualifications prescribed by law to render a person competent as a juror.

(f)(2) Consanguinity or affinity within the fourth degree to either party, or to an officer of a corporation that is a party.

(f)(3) Standing in the relation of debtor and creditor, guardian and ward, master and servant, employer and employee or principal and agent, to either party, or united in business with either party, or being on any bond or obligation for either party; provided, that the relationship of debtor and creditor shall be deemed not to exist between a municipality and a resident thereof indebted to such municipality by reason of a tax, license fee, or service charge for water, power, light or other services rendered to such resident.

(f)(4) Having served as a juror, or having been a witness, on a previous trial between the same parties for the same cause of action, or being then a witness therein.

(f)(5) Pecuniary interest on the part of the juror in the result of the action, or in the main question involved in the action, except interest as a member or citizen of a municipal corporation.

(f)(6) Conduct, responses, state of mind or other circumstances that reasonably lead the court to conclude the juror is not likely to act impartially. No person may serve as a juror, if challenged, unless the judge is convinced the juror can and will act impartially and fairly.

Rule 101. Motion practice before court commissioners.

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

(b) Time to file and serve. The moving party shall file the motion and attachments with the clerk of the court and obtain a hearing date and time. The moving party shall serve the responding party with the motion and attachments and notice of the hearing at least 14 calendar days before the hearing. The moving party shall serve the other party directly if the other party is unrepresented or if service is more than 90 days after the date of entry of the most recent appealable order.

(c) Response; reply. The responding party shall file and serve the moving party with a response and attachments at least 5 business days before the hearing. The moving party may file and serve the responding party with a reply and attachments at least 3 business days before the hearing. The reply is limited to responding to new matters raised in the response.

(d) Attachments; objection to failure to attach.

(d)(1) As used in this rule "attachments" includes all records, forms, information and affidavits necessary to support the party's position. A party may file and serve with the motion a memorandum supporting the motion. A party may file and serve with the response a memorandum opposing the motion. Attachments for motions and responses regarding alimony shall include income verification and financial declaration. Attachments for motions and responses regarding child support and child custody shall include income verification, financial declaration and child support worksheet. A financial declaration shall be verified.

(d)(2) If attachments necessary to support the moving party's position are not served with the motion, the responding party may file and serve an objection to the defect with the response. If attachments necessary to support the responding party's position are not served with the response, the moving party may file and serve an objection to the defect with the reply. The defect shall be cured within 2 business days after notice of the defect or at least 2 business days before the hearing, whichever is earlier.

(e) Courtesy copy. Parties shall deliver to the court commissioner a courtesy copy of all papers filed with the clerk of the court within the time required for filing with the clerk. The

courtesy copy shall state the name of the court commissioner and the date and time of the hearing.

(f) Late filings; sanctions. If a party files or serves papers beyond the time required in subsections (b) or (c), the court commissioner may hold or continue the hearing, reject the papers, impose costs and attorney fees caused by the failure and by the continuance, and impose other sanctions as appropriate.

(g) Counter motion. Opposing a motion is not sufficient to grant relief to the responding party. An application for an order may be raised by counter motion. This rule applies to counter motions except that a counter motion shall be filed and served with the response. The response to the counter motion shall be filed and served with the reply. The reply to the response to the counter motion shall be filed and served at least 2 business days before the hearing.

(h) Limit on hearing. The court commissioner shall not hold a hearing on a motion before the deadline for an appearance by the respondent under Rule 12.

(i) Limit on order to show cause. The court shall issue an order to show cause only upon motion supported by affidavit or other evidence sufficient to show probable cause to believe a party has violated a court order. The court commissioner shall proceed in accordance with Utah Code Title 78, Chapter 32, Contempt.

(j) Motions to judge. The following motions shall be to the judge to whom the case is assigned: motion for alternative service; motion to waive 90-day waiting period; motion to waive divorce education class; motion for entry of default judgment; motion for leave to withdraw after a case has been certified as ready for trial; and motions in limine. A court may provide that other motions be to the judge.

Rule 106. Modification of divorce decrees.

(a) Commencement; service; answer. ~~Proceedings~~ Except as provided in Utah Code Section 30-3-37, proceedings to modify a divorce decree shall be commenced by filing a petition to modify the divorce decree. Service of the petition and summons upon the opposing party shall be in accordance with Rule 4. The responding party shall serve the answer within ~~twenty days after service of the petition~~ the time permitted by Rule 12.

(b) Temporary orders.

(b)(1) The judgment, order or decree sought to be modified remains in effect during the pendency of the petition. The court may make the modification retroactive to the date on which the petition was filed. During the pendency of a petition to modify, the court:

(b)(1)(A) may order a temporary modification of child support as part of a temporary modification of custody or parent-time; and

(b)(2)(B) may order a temporary modification of custody or parent-time to address an immediate and irreparable harm or to ratify changes made by the parties, provided that the modification serves the best interests of the child.

(b)(2) Nothing in this rule limits the court's authority to enter temporary orders under Utah Code Section 30-3-3.