

Agenda

Advisory Committee on Rules of Civil Procedure

January 26, 2005
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
Report on meeting with Supreme Court.	Fran Wikstrom
Rule 62. Temporary stay in execution of judgment.	Frank Carney
Rule 38. Jury demand.	Frank Carney
Rule 5. Fax filing.	Tim Shea
Small Claims Rule 6. Pretrial.	Tim Shea
Small Claims Rule 9. Default judgment.	Tim Shea
E-filing rules.	Tim Shea

Meeting Schedule

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

Committee Web Page: <http://www.utcourts.gov/committees/civproc/>

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, November 17, 2004
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Thomas R. Karrenberg, Paula Carr, Francis J. Carney, Terrie T. McIntosh, Virginia S. Smith, R. Scott Waterfall, Leslie W. Slaugh, Todd M. Shaughnessy, Lance Long, Honorable Anthony B. Quinn, Honorable Anthony W. Schofield, Honorable David Nuffer

STAFF: Tim Shea, Judith Wolferts

EXCUSED: James T. Blanch, David W. Scofield, Cullen Battle, Janet H. Smith, Glenn C. Hanni, Debora Threedy, Honorable Lyle R. Anderson

GUESTS: Gary Thorup
Dallas Powell
Paul Barron
Jerome Battle
Susie Sundberg

I. APPROVAL OF MINUTES.

Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the October 27, 2004 meeting were reviewed, and Francis J. Carney moved that they be approved as submitted. The Motion was seconded by Judge Anthony W. Schofield, and approved unanimously.

II. RULE 62. CAP ON SUPERSEDEAS BONDS.

The Committee further discussed the proposed amendments to Rule 62. Mr. Wikstrom referred members to a memorandum received from attorney Michael Mayfield which comments on the amendments, and to the e-mail concerning the proposed amendment that has been received from Gary Thorup and Keith Teel.¹ Several members expressed a preference for suggestions in Mr. Thorup's e-mail, commenting that they appear to comport with the Committee's prior preference. The principal focus of the discussion was the language of the proposed advisory committee note, and suggestions were made that it be altered to comport with

¹These were contained in the materials provided to members prior to the meeting.

the suggestions in Mr. Thorup's e-mail. Issues were also raised concerning the statement in the proposed note regarding the trial judge limiting payment of dividends. Mr. Carney pointed out that this issue has already been discussed, and was moved to an advisory note due to concern about including this language in the text of the rule. Suggestions were also made for minor language changes, which were all agreed to by the members.

After further discussion, Judge Schofield moved that Rule 62 and the advisory committee note be approved as amended. Judge Anthony B. Quinn seconded the motion. The motion passed, with one member voting no.

Mr. Wikstrom pointed out that if the amendment process takes its usual course, the earliest that an amended Rule 62 could take effect is November of 2005. Judge David Nuffer moved that the proposed amended rule be sent immediately to the Supreme Court under the emergency action provision. Mr. Carney seconded the motion, which was approved unanimously.

II. RULE 7. MOTION TO RECONSIDER.

Lance Long reported on his findings on research into motions to reconsider in other jurisdictions. He stated that in no other jurisdiction did he find a rule that is similar to the one before the Committee. Some jurisdictions have rules stating that a motion to reconsider may be brought, but none of those rules states that the opposing party need not respond to a motion to reconsider until ordered by the court to do so. Mr. Long commented that in California, the legislature has expressly limited a judge's authority to reconsider, and this has brought up issues involving separation of powers and the proper standard of review for such motions. He expressed concern that a rule specifically allowing motions to reconsider will only encourage such motions, and that this might have an impact on present Rules 59 and 54.

Mr. Wikstrom asked whether anyone wished to make a motion to adopt proposed Rule 7. No motion was made.

III. ELECTRONIC FILING DEMONSTRATION. RULES REGULATING E-FILING.

Members of the district court technical team, including Jerome Battle and Paul Barron, demonstrated the procedures that are presently in use, and also being worked on, for electronic filing. Members asked questions, and made comments and suggestions.

IV. ADJOURNMENT.

The meeting adjourned at 5:50 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, January 26, 2005, at the Administrative Office of the Courts.

From: Francis J. Carney
To: Tim Shea, Fran Wikstrom, Leslie Slaugh
Date: 11/17/04 8:43PM
Subject: Rule 62(a) Change

The present state rule 62(a) reads:

"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."

The present federal rule 62(a) reads:

"Except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days of entry."

My suggested change to Rule 62 is this:

"No execution or other proceedings to enforce a judgment may issue until the expiration of ten days after its entry, unless the court otherwise directs."

Why do I suggest this? There are the counsel who, knowing full well that an appeal is planned, nevertheless immediately garnish or attach assets. I don't see the downside to this, but perhaps Les can explain the concerns the collection bar might have.

Frank

Francis J. Carney
Anderson & Karrenberg
700 Bank One Tower/50 West Broadway
Salt Lake City, Utah 84101
tel: 801-534-1700
fax: 801-364-7697
fcarney@aklawfirm.com
www.aklawfirm.com

From: Francis J. Carney
To: Tim Shea, Fran Wikstrom
Date: 11/18/04 7:53AM
Subject: Jury Demands

Gentlemen:

I would like to propose a change to Rule 38(b) on jury demands, which presently provides:

"(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by paying the statutory jury fee and serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be endorsed upon a pleading of the party."

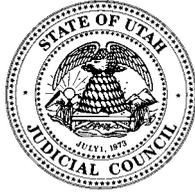
My proposition would be to change it so a jury demand can be made at any point up to 30 days before trial:

"(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by paying the statutory jury fee and serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 30 days before the trial date. Such demand may be endorsed upon a pleading of the party."

I wonder why we have the present requirement. Perhaps Paula can explain it. But the effect is that sometimes an unknowing error in not requesting a jury results in a bench trial, for no good reason. I don't see the downside by making it keyed to the trial date, rather than the answer date. There is one downside-- the court system would lose all the jury-demand fees that are now kept when cases settle and there is no trial.

Frank

Francis J. Carney
Anderson & Karrenberg
700 Bank One Tower/50 West Broadway
Salt Lake City, Utah 84101
tel: 801-534-1700
fax: 801-364-7697
fcarney@aklawfirm.com
www.aklawfirm.com



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 19, 2005
Re: Rule 5. Fax filing.

It's downright embarrassing to propose a rule to regulate filing documents by fax 20 years after the technology was introduced. We will be discussing Rule 5 in the context of electronic filing as well, but the Supreme Court and Judicial Council have asked the rules committees to consider a uniform fax filing policy. Or counterparts for the criminal, juvenile and appellate rules will be reviewing the proposal presented here as part of URCP 5.

At this point, I recommend keeping the fax and e-filing issues separate, so I have prepared two sets of amendments to Rule 5: one to regulate filing by fax; the other to regulate electronic filing. Electronic filing will also require amendments to Rules 10 and 11.

The proposed amendment to Rule 5 for fax filing has been the rounds within the judiciary and has met with mixed opinion, but general acceptance. The provisions are relatively straightforward. The one that draws the most interest is the requirement that the filer keep rather than file the original. The purpose for this is two-fold: first that the court file not be ballooned more than necessary; second there is a Court of Appeals decision treating the later filed (and out of time) original as the operative document over the on-time fax. We want to avoid that result.

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

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

2 (a) Service: When required.

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

8 (a)(2) No service need be made on parties in default for failure to appear except as provided
9 in Rule 55(a)(2)(default proceedings). Pleadings asserting new or additional claims for relief
10 against a party in default shall be served in the manner provided for service of summons in Rule
11 4.

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

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

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

22 (b)(1)(A) Delivery of a copy within this rule means: Handing it to the attorney or to the
23 party; or leaving it at the person's office with a clerk or person in charge thereof; or, if there is no
24 one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to
25 be served has no office, leaving it at the person's dwelling house or usual place of abode with
26 some person of suitable age and discretion then residing therein; or, if consented to in writing by
27 the person to be served, delivering a copy by electronic or other means.

28 (b)(1)(B) Service by mail is complete upon mailing. If the paper served is notice of a hearing
29 and if the hearing is scheduled 5 days or less from the date of service, service shall be by
30 delivery or other method of actual notice. Service by electronic means is complete on

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

33 (b)(2) Unless otherwise directed by the court:

34 (b)(2)(A) an order signed by the court and required by its terms to be served or a judgment
35 signed by the court shall be served by the party preparing it;

36 (b)(2)(B) every other pleading or paper required by this rule to be served shall be served by
37 the party preparing it; and

38 (b)(2)(C) an order or judgment prepared by the court shall be served by the court.

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

47 (d) Filing. All papers after the complaint required to be served upon a party shall be filed
48 with the court either before or within a reasonable time after service. The papers shall be
49 accompanied by a certificate of service showing the date and manner of service completed by the
50 person effecting service. Rule 26(i) governs the filing of papers related to discovery.

51 (e) Filing with the court defined.

52 (e)(1) The filing of pleadings and other papers with the court as required by these rules shall
53 be made by filing them with the clerk of the court, except that the judge may accept the papers,
54 note thereon the filing date and forthwith transmit them to the office of the clerk.

55 (e)(2) A party may transmit by fax a pleading or other paper intended for filing. Fax
56 transmissions are limited to 10 pages, excluding the cover page, unless otherwise permitted by
57 the clerk of the court. A document transmitted by fax is the equivalent of the original document,
58 including a signed original, for all purposes under these rules. Courtesy copies may not be
59 transmitted by fax unless permitted by the judge. Transmitting a document by fax is not filing;
60 filing is complete upon acceptance by the clerk of the court. If the clerk determines that there has
61 been an error in transmission or failure to comply with this rule or that the fax is of poor quality,

62 the clerk shall notify the sender of the error as soon as practical. The clerk shall issue a receipt
63 for fees paid, but is not required to notify a party of receipt of a fax or acceptance for filing. A
64 party transmitting a document by fax:

65 (e)(2)(A) shall keep the original document safe, in good condition and available for
66 production until completion of all appeals or until the time to appeal has expired;

67 (e)(2)(B) shall send the document to the fax number designated by the clerk of the court;

68 (e)(2)(C) shall include on a fax cover page the information required by Rule 10(a), the
69 sender's fax number, the credit card number to be billed if there is a fee for filing the pleading or
70 other paper, and the number of pages being faxed; and

71 (e)(2)(D) assumes all risk of failure of the transmission.

72 (e)(3) The clerk shall destroy the fax cover page after charging the fees and recording the
73 transaction.

74

1 Rule 6. Pretrial.

2 (a) No discovery may be conducted but the parties ~~are urged to~~shall exchange information
3 prior to the trial.

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

6 (c) One postponement of the trial date per side may be granted by the clerk of the court. To
7 request a postponement, a party must file a motion for postponement with the court at least 5
8 business days before trial. The clerk will give notice to the other party. A postponement for more
9 than 45 calendar days may be granted only by the judge. The court may require the party
10 requesting the postponement to pay the costs incurred by the other party.

11

1 Rule 9. Default judgment.

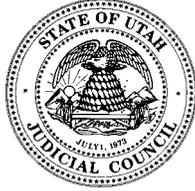
2 (a) If defendant fails to appear at the time set for trial, the court may grant plaintiff judgment
3 in an amount not to exceed the amount requested in plaintiff's affidavit.

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

7 (c) The appearing party shall immediately serve the default judgment on the non-appearing
8 party.

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

11



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 19, 2005
Re: Rules 5, 10 and 11. Electronic filing.

The development of electronic filing of debt collection cases moves forward. The Judicial Council has requested an appropriation from the legislature, which, if made will permit us to expand to all collection attorneys in all counties. We are extending that model to general civil litigation (excluding probate and divorce) in Davis County with a limited number of attorneys. We are working with the Litigation Section of the Bar to support their efforts at electronic communication among lawyers.

I believe we can support electronic filing and processing with relatively few amendments. As we gain experience we may discover additional problems that require a rule-based solution, but I believe the most challenging aspect of electronic filing will be for the courts and lawyers to change their respective internal operating procedures, most of which have evolved over the course of time without rules.

These amendments to Rules 5, 10 and 11 are intended to set the stage for electronic filing. There are a few specific issues that have come to light so far so far and these are addressed as well.

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efficient, and independent system for the advancement of justice under the law.**

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

2 (a) Service: When required.

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

8 (a)(2) No service need be made on parties in default except that:

9 (a)(2)(A) a party in default shall be served as ordered by the court;

10 (a)(2)(B) a party in default for any reason other than for failure to appear shall be served with
11 all pleadings and papers;

12 (a)(2)(C) a party in default for any reason shall be served with notice of any hearing
13 necessary to determine the amount of damages to be entered against the defaulting party;

14 (a)(2)(D) a party in default for any reason shall be served with notice of entry of judgment
15 under Rule 58A(d); and

16 (a)(2)(E) pleadings asserting new or additional claims for relief against a party in default for
17 any reason shall be served in the manner provided for service of summons in Rule 4.

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

22 (b) Service: How made ~~and by whom~~.

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

28 (b)(1)(A) ~~Delivery of a copy within this rule means: Handing~~ The judge may require service
29 ~~under this rule by email. A party shall serve notice of a hearing scheduled 5 days or less from the~~
30 ~~date of service by the method most likely to give actual notice. Otherwise, a party shall serve a~~
31 ~~document under this rule by:~~

- 32 (b)(1)(A)(i) handing it to the attorney or to the party person; or
33 (b)(1)(A)(ii) leaving it at the person's office with a clerk or person in charge, thereof; or, if
34 there is no one in charge, leaving it in a receptacle intended for receiving deliveries or in a
35 conspicuous place ~~therein; or, if the office is closed or the person to be served has no office,~~
36 (b)(1)(A)(iii) leaving it at the person's dwelling house or usual place of abode with some
37 person of suitable age and discretion then residing therein; or, if consented to in writing by the
38 person to be served, delivering a copy by electronic or other means;
39 (b)(1)(A)(iv) mailing it to the person's last known address;
40 (b)(1)(A)(v) faxing it to the person's last known fax number;
41 (b)(1)(A)(vi) sending it by email to the person's last known email address; or
42 (b)(1)(A)(vii) upon any person with an electronic filing account, who is a party or attorney in
43 the case, by submitting the document for electronic filing.

44 (b)(1)(B) Service by mail is complete upon mailing. ~~If the paper served is notice of a hearing~~
45 ~~and if the hearing is scheduled 5 days or less from the date of service, service shall be by~~
46 ~~delivery or other method of actual notice. Service by electronic means is complete on~~
47 ~~transmission if transmission is completed during normal business hours at the place receiving the~~
48 ~~service; otherwise, service is complete on the next business day. Service by fax or email is~~
49 ~~complete upon sending unless the method of transmission indicates the transmission has failed.~~

50 (b)(2) Unless otherwise directed by the court:

51 (b)(2)(A) an order signed by the court and required by its terms to be served or a judgment
52 signed by the court shall be served by the party preparing it;

53 (b)(2)(B) every other pleading or paper required by this rule to be served shall be served by
54 the party preparing it; and

55 (b)(2)(C) an order or judgment prepared by the court shall be served by the court.

56 (c) Service: Numerous defendants. In any action in which there is an unusually large number
57 of defendants, the court, upon motion or of its own initiative, may order that service of the
58 pleadings of the defendants and replies thereto need not be made as between the defendants and
59 that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense
60 contained therein shall be deemed to be denied or avoided by all other parties and that the filing
61 of any such pleading and service thereof upon the plaintiff constitutes ~~due~~ notice of it to the

62 parties. A copy of every such order shall be served upon the parties in such manner and form as
63 the court directs.

64 (d) Filing. All papers after the complaint required to be served upon a party shall be filed
65 with the court either before or within a reasonable time after service. The papers shall be
66 accompanied by a certificate of service showing the date and manner of service completed by the
67 person effecting service. Rule 26(i) governs the filing of papers related to discovery.

68 (e) Filing with the court defined. ~~The filing of pleadings and other papers with the court as~~
69 ~~required by these rules shall be made by filing them with the clerk of the court, except that the~~
70 ~~judge may accept the papers, note thereon the filing date and forthwith transmit them to the~~
71 ~~office of the clerk. A person may file with the court using any means of delivery permitted by the~~
72 ~~court, including personal, courier, mail, fax or electronic. The judge may require parties to file~~
73 ~~electronically. Filing is complete upon acceptance by the clerk of court.~~

74

1 Rule 10. Form of ~~pleadings and other~~ papers.

2 (a) Caption; names of parties; other necessary information. All ~~pleadings and other~~ papers
3 filed with the court shall contain a caption setting forth the name of the court, the title of the
4 action, the file number, the name of the pleading or other paper, and the name, if known, of the
5 judge (and commissioner if applicable) to whom the case is assigned. ~~In the complaint, the title
6 of the action shall include the names of all the parties, but other pleadings and papers need only
7 state the name of the first party on each side with an indication that there are other parties. A
8 party whose name is not known shall be designated by any name and the words "whose true
9 name is unknown." In an action in rem, unknown parties shall be designated as "all unknown
10 persons who claim any interest in the subject matter of the action." Every pleading and other
11 paper filed with the court Papers shall also state in the top left hand corner of the first page the
12 name, address, email address, telephone number and bar number of ~~any the~~ attorney representing
13 the party filing the paper, ~~which information shall appear in the top left hand corner of the first
14 page and signing the paper under subsection (e).~~ ~~Every pleading Papers~~ shall state in the lower
15 left hand corner of the last page the name ~~and address~~ of the party for whom it is filed; ~~this
16 information shall appear in the lower left hand corner of the last page of the pleading.~~ In the
17 complaint, the title of the action shall include the names of all the parties, but other papers need
18 only state the name of the first party on each side with an indication that there are other parties.
19 A party whose name is not known shall be designated by any name and the words "whose true
20 name is unknown." In an action in rem, unknown parties shall be designated as "all unknown
21 persons who claim any interest in the subject matter of the action." The plaintiff shall file
22 ~~together~~ with the complaint a completed cover sheet substantially similar in form and content to
23 the cover sheet approved by the Judicial Council.~~

24 (b) Paragraphs; separate statements. All averments of claim or defense shall be made in
25 numbered paragraphs, ~~the contents of each of which.~~ The averments shall be limited as far as
26 practicable to a statement of a single set of circumstances; and a paragraph may be referred to by
27 number in all succeeding pleadings. Each claim founded upon a separate transaction or
28 occurrence and each defense other than denials shall be stated in a separate count or defense
29 whenever a separation facilitates the clear presentation of the matters set forth.

30 (c) Adoption by reference; exhibits. Statements in a pleading paper may be adopted by
31 reference in a different part of the same pleading or in another pleading, or in any motion paper.
32 An exhibit to a pleading paper is a part thereof for all purposes.

33 (d) Paper quality, size, style and printing. All pleadings and other papers filed with the court,
34 except printed documents or Papers other than exhibits, shall be typewritten, printed or
35 photocopied in black type on good, white, unglazed paper of letter size (8 1/2" x 11"), with a top
36 margin of not less than 2 inches above any typed material, a left hand margin of not less than 1
37 inch, a right hand margin of not less than one half inch, and a bottom margin of not less than one
38 half inch. All typing or printing text shall be clearly legible, shall be double spaced, except for
39 matters customarily single spaced or indented, and shall not be smaller than 12-point size.
40 Typing or printing Text shall appear on one side of the page only.

41 (e) Signature line. Names The name of the person signing shall be typed or printed under all
42 that person's signature lines, and all signatures shall be made in permanent black or blue ink. If a
43 paper is digitally signed, the paper may contain the typed or printed name of the signer with or
44 without a graphic signature.

45 (f) Enforcement by clerk; waiver for pro se parties. The clerk of the court shall examine all
46 pleadings and other papers filed with the court. If they are accept for filing papers not prepared in
47 conformity with this rule, the clerk shall accept the filing but may require counsel to substitute
48 properly prepared papers for nonconforming papers. The clerk or the court may waive the
49 requirements of this rule for permit parties appearing pro se to file nonconforming papers. For
50 good cause shown, the court may relieve any party of any requirement of this rule permit any
51 party to file nonconforming papers.

52 (g) Replacing lost pleadings or papers. If an original pleading or paper filed in any action or
53 proceeding with the court is lost or incomplete, the court may, upon motion, with or without
54 notice, authorize a copy thereof to be filed and used in lieu of the original.

55 (h) Electronic documents.

56 (h)(1) Any reference in these rules to a writing, recording or image includes the electronic
57 version thereof.

58 (h)(2) A document digitally signed and electronically filed is the original.

59 (h)(3) An electronic copy of a document, recording or image may be filed as though it were
60 the original. Proof of the original, if necessary, is governed by the Utah Rules of Evidence.

61 (h)(4) The graphic representation of a document digitally signed and electronically filed shall
62 conform to the format requirements for paper documents. An electronic copy of a document shall
63 conform to the format of the original.

64 (h)(5) An electronically filed document may contain links only to other documents filed
65 simultaneously or already on file with the court.

66

1 Rule 11. Signing of pleadings, motions, and other papers; representations to court; sanctions.

2 (a) Signature.

3 (a)(1) Every pleading, written motion, and other paper filed with the court shall be signed by
4 at least one attorney of record in the attorney's individual name, or, if the party is not represented
5 by an attorney, shall be signed by the party. Each paper shall state the signer's address and
6 telephone number, if any.

7 (a)(2) A person may sign a document using any form of signature recognized by law as
8 binding.

9 (a)(3) Except when otherwise specifically provided Unless required by rule or statute,
10 pleadings need not be have a notarized, verified or accompanied by affidavit acknowledged
11 signature. A digital signature is not the equivalent of a notarized, verified or an acknowledged
12 signature, but if a rule or statute requires a notarized, verified or an acknowledged signature, a
13 digital signature satisfies that requirement.

14 (a)(4) An unsigned paper shall be stricken unless omission of the signature is corrected
15 promptly after being called to the attention of the attorney or party.

16 (b) Representations to court. By presenting a ~~pleading, written motion, or other~~ paper to the
17 court (whether by signing, filing, submitting, or ~~later~~ advocating), an attorney or unrepresented
18 party is certifying that to the best of the person's knowledge, information, and belief, formed
19 after an inquiry reasonable under the circumstances,

20 (b)(1) it is not being presented for any improper purpose, such as to harass or to cause
21 unnecessary delay or needless increase in the cost of litigation;

22 (b)(2) the claims, defenses, and other legal contentions ~~therein~~ are warranted by existing law
23 or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the
24 establishment of new law;

25 (b)(3) the ~~allegations and other~~ factual contentions have evidentiary support or, if specifically
26 so identified, are likely to have evidentiary support after a reasonable opportunity for further
27 investigation or discovery; and

28 (b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so
29 identified, are reasonably based on a lack of information or belief.

30 (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines
31 that subdivision (b) has been violated, the court may, subject to the conditions stated below,

32 impose an appropriate sanction upon the attorneys, law firms, or parties that have violated
33 subdivision (b) or are responsible for the violation.

34 (c)(1) How initiated.

35 (c)(1)(A) By motion. A motion for sanctions under this rule shall be made separately from
36 other motions or requests and shall describe the specific conduct alleged to violate subdivision
37 (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court
38 unless, within 21 days after service of the motion (or such other period as the court may
39 prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not
40 withdrawn or appropriately corrected. ~~If warranted, the court may award to the party prevailing~~
41 ~~on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the~~
42 ~~motion. In appropriate circumstances, a law firm may be held jointly responsible for violations~~
43 ~~committed by its partners, members, and employees.~~

44 (c)(1)(B) On court's initiative. On its own initiative, the court may enter an order describing
45 the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or
46 party to show cause why it has not violated subdivision (b) ~~with respect thereto.~~

47 (c)(2) Nature of sanction; limitations. If warranted, the court may award to the party
48 prevailing on the motion the costs and reasonable attorney fees incurred in presenting or
49 opposing the motion. A sanction imposed for violation of this rule shall be limited to what is
50 sufficient to deter repetition ~~of such conduct or comparable conduct by others similarly situated.~~
51 Subject to the limitations in subparagraphs (A) and (B), the sanction may ~~consist of, or~~ include,
52 directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion
53 and warranted for effective deterrence, an order directing payment to the movant of some or all
54 of the costs and reasonable attorney fees ~~and other expenses~~ incurred as a direct result of the
55 violation. In appropriate circumstances, a law firm may be held jointly responsible for violations
56 committed by its partners, members, and employees.

57 (c)(2)(A) Monetary sanctions may not be awarded against a represented party for a violation
58 of subdivision (b)(2).

59 (c)(2)(B) Monetary sanctions may not be awarded on the court's initiative unless the court
60 issues its order to show cause before a voluntary dismissal or settlement of the claims ~~made by or~~
61 ~~against the party which is, or whose attorneys are, to be sanctioned.~~

62 (c)(3) Order. When imposing sanctions, the court shall describe the conduct determined to
63 constitute a violation of this rule and explain the basis for the sanction ~~imposed~~.

64 (d) Inapplicability to discovery. ~~Subdivisions (a) through (c) of this~~ This rule does not apply
65 to disclosures and discovery requests, responses, objections, and motions that are subject to ~~the~~
66 ~~provisions of~~ Rules 26 through 37.

67