

# Agenda

## Advisory Committee on Rules of Civil Procedure

February 23, 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
Rule 7. Pleadings allowed; motions, memoranda, hearings, orders, objection to commissioner's order.	Tim Shea
Rule 5. Fax filing.	Tim Shea
Rule 68. Offer of judgment.	Tim Shea
Rule 62. Temporary stay in execution of judgment.	Frank Carney
Rule 38. Jury demand.	Frank Carney
E-filing rules.	Tim Shea

### Meeting Schedule

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, January 26, 2005  
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Cullen Battle, Glenn C. Hanni, David W. Scofield, Paula Carr, Janet H Smith, Francis J. Carney, Terrie T. McIntosh, Virginia S. Smith, Debora Threedy, R. Scott Waterfall, Leslie W. Slaugh, Todd M. Shaughnessy, Lance Long, Honorable Anthony W. Schofield, Honorable David Nuffer, Honorable Lyle R. Anderson (via telephone)

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Honorable Anthony B. Quinn, Thomas R. Karrenberg, James T. Blanch

GUESTS: Representative LaVar Christensen  
Ralph Dewsnup  
Edward Havas  
Paul Belnap  
Rick Schwermer  
John Lund  
Matty Branch

### I. APPROVAL OF MINUTES.

Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the November 17, 2004 meeting were reviewed, and R. Scott Waterfall moved that they be approved as submitted. The Motion was seconded by Leslie W. Slaugh, and approved unanimously.

### II. APPROVAL OF PROPOSED RULES 51 AND 62 BY SUPREME COURT.

Mr. Wikstrom reported on his meeting with the Supreme Court concerning proposed amendments. The Court approved proposed Rule 62 under its emergency rules. The Court also approved proposed Rule 51 with a minor change, which will make clear that jury instructions given during the course of the trial need not be repeated at the end of trial.

### **III. RULE 9. SB 10. DESIGNATION OF PERSONS CHARGED WITH FAULT.**

Mr. Wikstrom reported that the Supreme Court has not yet made a decision regarding the proposed amendment to Rule 9. This deferral is in anticipation of this Committee considering the proposed rule once again in light of proposed legislation contained in SB 10 that also addresses the process for designating persons who may be charged with fault. Mr. Wikstrom stated that a concern with amending only Rule 9 is that the Utah Rules of Civil Procedure do not apply in federal court, whereas if the proposed amendment is also dealt with by statute, it would be applied by both state and federal courts. This will make application consistent.

Mr. Wikstrom introduced Ralph Dewsnup, who provided background on SB 10. Mr. Dewsnup stated that SB 10 already was in the drafting process at the time the legislature learned that this Committee was also considering an amendment that would deal with designating persons charged with fault. By that time, the legislature had already met with both plaintiffs' and defense lawyers and come to an agreement on language. He stated that the legislature believes that it is proper to clarify this provision of the law by statute since there presently is nothing that deals with the timeliness of designating persons for purposes of allocating fault. Mr. Dewsnup also stated that the legislature is willing to work with the Committee to assure the consistency of requirements and language in SB 10 and proposed Rule 9.

The Committee and visitors discussed various aspects of SB 10 and proposed Rule 9, and proposed various modifications to make proposed Rule 9 and SB 10 consistent. After extensive discussion, it was moved and seconded to approve Rule 9 as amended in today's meeting. The motion passed unanimously.

### **IV. AMENDMENT TO RULE 26.**

A proposal was made to amend Rule 26(f)(2) to reflect the proposed amendment to Rule 9. After discussion, Mr. Waterfall moved that the amendment be approved. The motion was seconded and approved unanimously.

### **V. RULE 68. OFFER OF JUDGMENT.**

Mr. Wikstrom introduced Representative LaVar Christensen, who had asked to address the Committee regarding his concerns that Rule 68 is not bilateral in that it deals only with offers of judgment by a defendant. Rep. Christensen, who is a member of the Utah Bar and who has also practiced law in California, recommended that the Committee review and consider adopting an amendment similar to the California equivalent to Rule 68.

The Committee discussed the potential for including a plaintiff's settlement offer in Rule 68, including the potential for devising a proposed rule that is costs-based and bilateral. Mr. Wikstrom asked the staff to work on a draft of Rule 68 that is bilateral, and requested that Rep. Christensen be kept informed of progress.

**VI. SMALL CLAIMS RULE 6; PRETRIAL. SMALL CLAIMS RULE 9; DEFAULT JUDGMENT.**

The Committee rejected a proposed change to small claims Rule 6, which would have made it mandatory that parties in small claims actions exchange information prior to trial. The language which was retained states that the parties “are urged to exchange information prior to trial.”

After discussion, the Committee agreed to amend small claims Rule 9(c) to state that “the appearing party shall promptly serve the default judgment on the non-appearing party.”

**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, February 23, 2005, at the Administrative Office of the Courts.

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1 Rule 7. Pleadings allowed; motions, memoranda, hearings, orders, objection to  
2 commissioner's order.

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

8 (b) Motions. An application to the court for an order shall be by motion which, unless made  
9 during a hearing or trial or in proceedings before a court commissioner, shall be made in  
10 accordance with this rule. A motion shall be in writing and state succinctly and with particularity  
11 the relief sought and the grounds for the relief sought.

12 (c) Memoranda.

13 (c)(1) Memoranda required, exceptions, filing times. All motions, except uncontested or ex  
14 parte motions, shall be accompanied by a supporting memorandum. Within ten days after service  
15 of the motion and supporting memorandum, a party opposing the motion shall file a  
16 memorandum in opposition. Within five days after service of the memorandum in opposition, the  
17 moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised  
18 in the memorandum in opposition. No other memoranda will be considered without leave of  
19 court. A party may attach a proposed order to its initial memorandum.

20 (c)(2) Length. Initial memoranda shall not exceed 10 pages of argument without leave of the  
21 court. Reply memoranda shall not exceed 5 pages of argument without leave of the court. The  
22 court may permit a party to file an over-length memorandum upon ex parte application and a  
23 showing of good cause.

24 (c)(3) Content.

25 (c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a  
26 statement of material facts as to which the moving party contends no genuine issue exists. Each  
27 fact shall be separately stated and numbered and supported by citation to relevant materials, such  
28 as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is  
29 deemed admitted for the purpose of summary judgment unless controverted by the responding  
30 party.

31 (c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a verbatim  
32 restatement of each of the moving party's facts that is controverted, and may contain a separate  
33 statement of additional facts in dispute. For each of the moving party's facts that is controverted,  
34 the opposing party shall provide an explanation of the grounds for any dispute, supported by  
35 citation to relevant materials, such as affidavits or discovery materials. For any additional facts  
36 set forth in the opposing memorandum, each fact shall be separately stated and numbered and  
37 supported by citation to supporting materials, such as affidavits or discovery materials.

38 (c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table of  
39 contents and a table of authorities with page references.

40 (c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of documents  
41 cited in the memorandum, such as affidavits or discovery materials.

42 (d) Request to submit for decision. When briefing is complete, either party may file a  
43 "Request to Submit for Decision." The request to submit for decision shall state the date on  
44 which the motion was served, the date the opposing memorandum, if any, was served, the date  
45 the reply memorandum, if any, was served, and whether a hearing has been requested. If no party  
46 files a request, the motion will not be submitted for decision.

47 (e) Hearings. The court may hold a hearing on any motion. A party may request a hearing in  
48 the motion, in a memorandum or in the request to submit for decision. A request for hearing shall  
49 be separately identified in the caption of the document containing the request. The court shall  
50 grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the  
51 action or any claim or defense in the action unless the court finds that the motion or opposition to  
52 the motion is frivolous or the issue has been authoritatively decided.

53 (f) Orders.

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

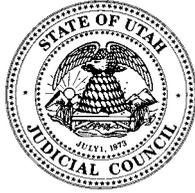
60 (f)(2) Unless the court approves the proposed order submitted with an initial memorandum,  
61 or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the

62 court's decision, serve upon the other parties a proposed order in conformity with the court's  
63 decision. Objections to the proposed order shall be filed within five days after service. The party  
64 preparing the order shall file the proposed order upon being served with an objection or upon  
65 expiration of the time to object.

66 [\(f\)\(3\) All orders shall be prepared as separate documents and shall not include any matter by](#)  
67 [reference unless permitted by the court.](#)

68 (g) Objection to court commissioner's recommendation. A recommendation of a court  
69 commissioner is the order of the court until modified by the court. A party may object to the  
70 recommendation by filing an objection in the same manner as filing a motion within ten days  
71 after the recommendation is made in open court or, if the court commissioner takes the matter  
72 under advisement, ten days after the minute entry of the recommendation is served. A party may  
73 respond to the objection in the same manner as responding to a motion.

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# 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:** February 18, 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 68. Offer of judgment.

2 (a) Unless otherwise specified, an offer made under this rule ~~by a party defending against a~~  
3 ~~claim to allow judgment to be entered in accordance with the offer~~ is an offer to resolve all  
4 claims between the parties to the date of the offer, including costs, interest and, if attorney fees  
5 are permitted by law or contract, attorney fees.

6 (b) If the adjusted award is not more favorable than the offer, the offeror is not liable for  
7 costs, prejudgment interest or attorney fees incurred by the offeree after the offer, and the offeree  
8 shall pay the offeror's costs incurred after the offer. The court may suspend the application of  
9 this rule to prevent manifest injustice.

10 (c) An offer made under this rule shall:

11 (c)(1) be in writing;

12 (c)(2) expressly refer to this rule;

13 (c)(3) be made more than 10 days before trial;

14 (c)(4) remain open for at least 10 days; and

15 (c)(5) be served on the offeree under Rule 5.

16 Acceptance of the offer shall be in writing and served on the offeror under Rule 5. Upon  
17 acceptance, either party may file the offer and acceptance with a proposed judgment under Rule  
18 58A.

19 (d) "Adjusted award" means the amount awarded by the finder of fact and, unless excluded  
20 by the offer, the offeree's costs and interest incurred before the offer, and, if attorney fees are  
21 permitted by law or contract and not excluded by the offer, the offeree's reasonable attorney fees  
22 incurred before the offer. If the offeree's attorney fees are subject to a contingency fee  
23 agreement, the court shall determine a reasonable attorney fee for the period preceding the offer.

24 (e) As used in this rule, "costs" means:

25 (e)(1) the costs permitted under Rule 54;

26 (e)(2) the actual, necessary and reasonable fees and expenses for expert witnesses who are  
27 not regular employees of a party for preparation for trial and during trial; and

28 (e)(3) the actual, necessary and reasonable expenses for reporting and recording fees and  
29 travel expenses for depositions reasonably taken, whether used at trial or not.

30

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

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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:

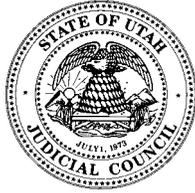
"(b) Demand. Any party may demand a trial by jury of any issue triable of right by a jury by paying the statutory jury fee and serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 30 days before the trial date. Such demand may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

\*\*\*\*\*

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# Administrative Office of the Courts

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

## MEMORANDUM

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

**To:** Civil Procedures Committee  
**From:** Tim Shea *TS*  
**Date:** February 18, 2005  
**Re:** Rules 5, 10 and 11. Electronic filing.

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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.

**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 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