

Agenda

Advisory Committee on Rules of Civil Procedure

March 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 74. Withdrawal of attorney	Todd Shaughnessy
Rule 45. Subpoena.	Tim Shea
E-filing rules.	Tim Shea

Meeting Schedule

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, February 23, 2005
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Glenn C. Hanni, Francis J. Carney, Cullen Battle, Thomas R. Karrenberg, Paula Carr, Terrie T. McIntosh, Virginia S. Smith, R. Scott Waterfall, Leslie W. Slauch, James T. Blanch, Lance Long, Honorable Anthony B. Quinn, Honorable Lyle R. Anderson, Honorable David Nuffer

EXCUSED: Honorable Anthony W. Schofield, David W. Scofield, Janet H. Smith, Todd M. Shaughnessy, Debora Threedy

STAFF: Tim Shea, Judith Wolferts, Trystan Smith

I. APPROVAL OF MINUTES.

Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the January 26, 2005 meeting were reviewed, and R. Scott Waterfall moved that they be approved as submitted. The motion was seconded by Francis J. Carney, and approved unanimously.

II. STAFF CHANGE.

Mr. Wikstrom introduced Trystan Smith, who will take Judith Wolferts' place as secretary to the Committee effective March 1, 2005. Mr. Wikstrom expressed his appreciation to Ms. Wolferts for her past service to the Committee.

III. RULE 7. PLEADINGS ALLOWED; MOTIONS, MEMORANDA, HEARINGS, ORDERS, OBJECTION TO COMMISSIONER'S ORDER.

Tim Shea introduced an amendment that would add the following language to Rule 7: "All orders shall be prepared as separate documents and shall not include any matter by reference unless permitted by the court." This amendment would require that all orders be separate documents, complete in and of themselves. Mr. Shea stated that the proposed amendment was prompted by complaints from judges that it is becoming common for attorneys to simply place a proposed order for the judge's signature at the end of a motion, rather than submitting a separate order. For example, an attorney might include a signature line and language at the end of a motion stating "based on the foregoing, the motion is granted."

Cullen Battle and Leslie Slauch asked whether this amendment would mean that orders could not incorporate by reference the arguments in motions. Thomas Karrenberg pointed out that the amendment would also apply to judgments. The Committee also discussed whether the proposed amendment would prohibit exhibits such as a property description from being attached to an order, and agreed that a judge could still allow this. A change in language was suggested to state “unless otherwise ordered by the court.”

After discussion, Mr. Blanch moved that the amendment be adopted with the language changes suggested by Committee members. The motion was seconded and approved, with one member voting no.

IV. FAX FILING.

Mr. Shea introduced a proposed amendment to Rule 5 that would specifically allow filing by fax. He stated that there seems to be agreement that state courts are presently permitting filing by fax, and there is a need to devise a rule that will assure uniformity. Mr. Wikstrom asked whether the amendment was requested by the Supreme Court. Mr. Shea responded that the district court in St. George has started to allow fax filing, and that this has come to the Supreme Court’s attention with the result that the Court asked the Committee to address the issue. According to Mr. Shea, the proposed amendment has met with mixed opinion but general approval by the judiciary. There would be no fee for fax filing, and any fees presently required for a pleading or other document would have to be paid for by credit card at the time of filing.

Mr. Carney asked the meaning of the term “acceptance by the clerk” as used in the amendment. Mr. Shea explained that “acceptance” is when the clerk actually date-stamps the brief or pleading that has been faxed. Paula Carr commented that this proposed amendment has been discussed at Inns of Court, and that concerns have been expressed that allowing this will create more work for court staff. Mr. Blanch expressed his opinion that the process for allowing e-filing is so far along that fax filing is now obsolete. Some members opposed any rule that would allow filing by fax and believe that it should not be encouraged. Other members suggested that fax filing is practical in some areas of the state and in some situations. One member commented that even though he is not in favor of fax filing, there should be a rule to regulate it if it is presently being allowed.

After considerable discussion, Mr. Wikstrom asked for a show of hands as to those in favor of a rule that would allow fax filing statewide, and those who believe it should be allowed only by local rule in certain parts of the state. The vote was nearly evenly split, with some members in total opposition to a rule that would allow fax filing. In light of this result, Mr. Wikstrom stated that further discussion will be deferred to a later date in order to give the Committee an opportunity to see what kind of reception the concept of fax filing receives in other committees.

V. OFFER OF JUDGMENT.

At the January 2005 Committee meeting, Representative LaVar Christensen appeared and

suggested that the Committee consider amending Rule 68 so that it applies to offers of judgment by plaintiffs as well as those by defendants. Mr. Wikstrom directed the Committee at that time to work on an amendment that would do so.¹

The Committee's revision of Rule 68 was presented. Some members felt that the proposed amendment would promote settlement. Other members felt that it is too pro-defense. After discussion, Mr. Wikstrom directed Mr. Shea to incorporate into the proposed amendment the changes suggested by the Committee, after which Mr. Carney is to submit the proposed amendment for comments to both plaintiffs' and defense lawyers in the litigation section to ascertain their views.

VI. TEMPORARY STAY IN EXECUTION OF JUDGMENT.

Mr. Carney has proposed an amendment to Rule 62(a) which would prohibit execution on a judgment until ten (10) days after entry of judgment. He stated that he is proposing the amendment because of situations of which he is aware where, even though the plaintiff knew there would be an appeal, the plaintiff nevertheless immediately garnished assets. After discussion, Mr. Slaugh moved to adopt the amendment. Mr. Carney seconded the motion, and it was approved unanimously.

VII. JURY DEMAND.

Mr. Carney has withdrawn his proposed amendment to Rule 38 concerning jury demands.

VIII. E-FILING RULES.

Mr. Shea stated that since the demonstration of e-filing presented to the Committee several months ago, the Administrative Office has been allowing e-filing in the Second and Third Districts in debt collection matters. The debt collection area was selected because matters generally are uncontested. It is anticipated that the e-filing process will now move to civil litigation in general. Davis County will be the first area for general e-filing in civil cases, and the Administrative Office has spoken to Davis County judges and identified several lawyers who will be part of the pilot program. This means that e-filing rules are necessary. Mr. Shea noted that there is nothing in the present rules that would prevent e-filing. He suggested that e-filing rules be kept to a minimum at first, that the courts be allowed to learn as they go, and that rules be adjusted as it becomes necessary.

A question was asked as to how close the proposed Utah e-filing rules are to the federal e-

¹Representative Christensen subsequently filed H.B. 127, which deals with offers of settlement by plaintiffs, and provides for 10% interest on any offer that is rejected if the plaintiff's subsequent recovery exceeds the offer. Leslie Slaugh reported that H.B. 127 is dead for this year.

filing rules. Judge David Nuffer commented that they conceptually are the same. Mr. Carney raised the issue of privacy, noting that due to the wider range of matters litigated in state court versus federal court, it is more difficult to maintain the privacy of personal information in state court. Mr. Shea agreed that filings in state court are more likely to include personal information, such as drivers license numbers and social security numbers. Judge Nuffer commented that the federal court requires that such private information be redacted before filing, but that this is not always possible in state court filings due to the nature of the litigation. Committee members expressed concern about such private information being available in documents that are available on-line. In addition to privacy issues, the Committee also discussed whether to set filing deadlines, such as prohibiting filing by e-mail after 5 p.m. on Fridays and before 8 a.m. on Mondays.

The discussion was ended due to the press of time. The matter will be revisited at the next meeting.

IX. 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, March 23, 2005, at the Administrative Office of the Courts.

1 Rule 74. Withdrawal of counsel.

2 (a) If ~~a motion is not~~ no motions or discovery are pending and a certificate of readiness for
3 trial has not been filed, an attorney may withdraw from the case by filing with the court and
4 serving on all parties a notice of withdrawal. The notice of withdrawal shall include the address
5 of the attorney's client and a statement that no motion or discovery is pending and no certificate
6 of readiness for trial has been filed. If a motion or discovery is pending or a certificate of
7 readiness for trial has been filed, an attorney may not withdraw except upon motion and order of
8 the court. The motion to withdraw shall describe the nature of any pending motion or discovery
9 and the date and purpose of any scheduled hearing.

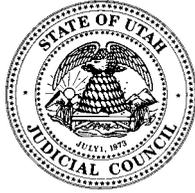
10 (b) If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or is
11 removed from the case by the court, the opposing party shall serve a Notice to Appear or
12 Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear
13 personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed
14 with the court. No further proceedings shall be held in the case until 20 days after filing the
15 Notice to Appear or Appoint Counsel unless the unrepresented party waives the time
16 requirement or unless otherwise ordered by the court.

17 (c) Substitution of counsel. An attorney may replace the counsel of record by filing and
18 serving a notice of substitution of counsel signed by former counsel, new counsel and the client.
19 Court approval is not required if new counsel certifies in the notice of substitution that counsel
20 will comply with the existing hearing schedule and deadlines.

21 Advisory Committee Note.

22 "Pending discovery" includes disclosures required by Rule 26, interrogatories, document
23 requests, physical or mental examinations, requests for admission under Rules 33, 34, 35, and 36,
24 and depositions for which notice has been served under Rules 30 and 31.

25



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: March 17, 2005
Re: Rule 45. Subpoena.

The Advisory Committee Note to Rule 45 contains several discrepancies. As far as I can tell, these discrepancies have existed since the rule was substantially amended January 1, 1995. The amended rule and the committee note were first published in March or April 1995 with an effective date of January 1, 1995. There have been a couple of modest amendments since then, but the initial publication of the note contained these same discrepancies.

The note contains references to three subsections in the rule that do not exist: (a)(6)(3); (c)(2)(D); and (d)(2)(D). In the first of these, the "(6)" is erroneous; the correct reference is to subsection (a)(3). In the last, the "(D)" is erroneous; the correct reference is to (d)(2).

The middle example, (c)(2)(D), is a curious case. The reference appears twice in the note, but there is no such subsection. After reviewing the note and the rule, it is my opinion that subsection (c)(2)(C) in the rule should have been numbered (c)(2)(D) and that what should have been included as (c)(2)(C) – a provision that the witness need not make copies or advance costs – was omitted.

I recommend that we delete the advisory committee note. For the most part, it merely tells us what the rule says. In a few places, it provides some long-since forgotten motivation or thinking. It does contain one clarification, that an attorney admitted pro hac vice can issue a subpoena, which should be integrated into the rule.

**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 45. Subpoena.

2 (a) Form; issuance.

3 (a)(1) Every subpoena shall:

4 (a)(1)(A) issue from the court in which the action is pending;

5 (a)(1)(B) state the title of the action, the name of the court from which it is issued, the name
6 and address of the party or attorney serving the subpoena, and its civil action number;

7 (a)(1)(C) command each person to whom it is directed to appear to give testimony at trial, or
8 at hearing, or at deposition, or to produce or to permit inspection and copying of documents or
9 tangible things in the possession, custody or control of that person, or to permit inspection of
10 premises, at a time and place therein specified; and

11 (a)(1)(D) set forth the text of Notice to Persons Served with a Subpoena, in substantially
12 similar form to the subpoena form appended to these rules.

13 (a)(2) A command to produce or to permit inspection and copying of documents or tangible
14 things, or to permit inspection of premises, may be joined with a command to appear at trial, or
15 at hearing, or at deposition, or may be issued separately.

16 (a)(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it,
17 who shall complete it before service. An attorney admitted to practice in the court in which the
18 action is pending, including an attorney admitted pro hac vice, may also issue and sign a
19 subpoena as an officer of the court.

20 (b) Service; scope.

21 (b)(1) Generally.

22 (b)(1)(A) A subpoena may be served by any person who is not a party and is not less than 18
23 years of age. Service of a subpoena upon a person named therein shall be made as provided in
24 Rule 4(d) for the service of process and, if the person's appearance is commanded, by tendering
25 to that person the fees for one day's attendance and the mileage allowed by law. When the
26 subpoena is issued on behalf of the United States, or this state, or any officer or agency of either,
27 fees and mileage need not be tendered. Prior notice of any commanded production or inspection
28 of documents or tangible things or inspection of premises before trial shall be served on each
29 party in the manner prescribed by Rule 5(b).

30 (b)(1)(B) Proof of service when necessary shall be made by filing with the clerk of the court
31 from which the subpoena is issued a statement of the date and manner of service and of the
32 names of the persons served, certified by the person who made the service.

33 (b)(1)(C) Service of a subpoena outside of this state, for the taking of a deposition or
34 production or inspection of documents or tangible things or inspection of premises outside this
35 state, shall be made in accordance with the requirements of the jurisdiction in which such service
36 is made.

37 (b)(2) Subpoena for appearance at trial or hearing. A subpoena commanding a witness to
38 appear at a trial or at a hearing pending in this state may be served at any place within the state.

39 (b)(3) Subpoena for taking deposition.

40 (b)(3)(A) A person who resides in this state may be required to appear at deposition only in
41 the county where the person resides, or is employed, or transacts business in person, or at such
42 other place as the court may order. A person who does not reside in this state may be required to
43 appear at deposition only in the county in this state where the person is served with a subpoena,
44 or at such other place as the court may order.

45 (b)(3)(B) A subpoena commanding the appearance of a witness at a deposition may also
46 command the person to whom it is directed to produce or to permit inspection and copying of
47 documents or tangible things relating to any of the matters within the scope of the examination
48 permitted by Rule 26(b), but in that event the subpoena will be subject to the provisions of Rule
49 30(b) and paragraph (c) of this rule.

50 (b)(4) Subpoena for production or inspection of documents or tangible things or inspection of
51 premises. A subpoena to command a person who is not a party to produce or to permit inspection
52 and copying of documents or tangible things or to permit inspection of premises may be served
53 at any time after commencement of the action. The scope and procedure shall comply with Rule
54 34, except that the person must be allowed at least 14 days to comply as stated in subparagraph
55 (c)(2)(A) of this rule. The party serving the subpoena shall pay the reasonable cost of producing
56 or copying the documents or tangible things. Upon the request of any other party and the
57 payment of reasonable costs, the party serving the subpoena shall provide to the requesting party
58 copies of all documents obtained in response to the subpoena.

59 (c) Protection of persons subject to subpoenas.

60 (c)(1) A party or an attorney responsible for the issuance and service of a subpoena shall take
61 reasonable steps to avoid imposing undue burden or expense on a person subject to that
62 subpoena. The court from which the subpoena was issued shall enforce this duty and impose
63 upon the party or attorney in breach of this duty an appropriate sanction, which may include, but
64 is not limited to, lost earnings and a reasonable attorney's fee.

65 (c)(2)(A) A subpoena served upon a person who is not a party to produce or to permit
66 inspection and copying of documents or tangible things or to permit inspection of premises,
67 whether or not joined with a command to appear at trial, or at hearing, or at deposition, must
68 allow the person at least 14 days after service to comply, unless a shorter time has been ordered
69 by the court for good cause shown.

70 (c)(2)(B) A person commanded to produce or to permit inspection and copying of documents
71 or tangible things or to permit inspection of premises need not appear in person at the place of
72 production or inspection unless also commanded to appear at trial, at hearing, or at deposition.

73 (c)(2)(C) the party who has served the subpoena shall pay the reasonable costs of production
74 and copying, a person who is not a party has no obligation to make copies or to advance costs.

75 ~~(c)(2)(C)~~ (c)(2)(D) A person commanded to produce or to permit inspection and copying of
76 documents or tangible things or inspection of premises may, before the time specified for
77 compliance with the subpoena, serve upon the party or attorney designated in the subpoena
78 written objection to inspection or copying of any or all of the documents or tangible things or
79 inspection of the premises. If objection is made, the party serving the subpoena shall not be
80 entitled to inspect and copy the materials or inspect the premises except pursuant to an order of
81 the court. If objection has been made, the party serving the subpoena may, upon notice to the
82 person commanded to produce, move at any time for an order to compel the production. Such an
83 order to compel production shall protect any person who is not a party or an officer of a party
84 from significant expense resulting from the inspection and copying commanded.

85 (c)(3)(A) On timely motion, the court from which a subpoena was issued shall quash or
86 modify the subpoena if it:

87 (c)(3)(A)(i) fails to allow reasonable time for compliance;

88 (c)(3)(A)(ii) requires a resident of this state who is not a party to appear at deposition in a
89 county in which the resident does not reside, or is not employed, or does not transact business in

90 person; or requires a non-resident of this state to appear at deposition in a county other than the
91 county in which the person was served;

92 (c)(3)(A)(iii) requires disclosure of privileged or other protected matter and no exception or
93 waiver applies;

94 (c)(3)(A)(iv) subjects a person to undue burden.

95 (c)(3)(B) If a subpoena:

96 (c)(3)(B)(i) requires disclosure of a trade secret or other confidential research, development,
97 or commercial information;

98 (c)(3)(B)(ii) requires disclosure of an unretained expert's opinion or information not
99 describing specific events or occurrences in dispute and resulting from the expert's study made
100 not at the request of any party;

101 (c)(3)(B)(iii) requires a resident of this state who is not a party to appear at deposition in a
102 county in which the resident does not reside, or is not employed, or does not transact business in
103 person; or

104 (c)(3)(B)(iv) requires a non-resident of this state who is not a party to appear at deposition in
105 a county other than the county in which the person was served;

106 the court may, to protect a person subject to or affected by the subpoena, quash or modify the
107 subpoena or, if the party serving the subpoena shows a substantial need for the testimony or
108 material that cannot otherwise be met without undue hardship and assures that the person to
109 whom the subpoena is addressed will be reasonably compensated, the court may order
110 appearance or production only upon specified conditions.

111 (d) Duties in responding to subpoena.

112 (d)(1) A person responding to a subpoena to produce documents shall produce them as they
113 are kept in the usual course of business or shall organize and label them to correspond with the
114 categories in the demand.

115 (d)(2) When information subject to a subpoena is withheld on a claim that it is privileged or
116 subject to protection as trial preparation materials, the claim shall be made expressly and shall be
117 supported by a description of the nature of the documents, communications, or things not
118 produced that is sufficient to enable the demanding party to contest the claim.

119 (e) Contempt. Failure by any person without adequate excuse to obey a subpoena served
120 upon that person may be deemed a contempt of the court from which the subpoena issued. An

121 adequate cause for failure to obey exists when a subpoena purports to require a nonparty to
122 appear or produce at a place not within the limits provided by subparagraph (c)(3)(A)(ii).

123 (f) Procedure where witness conceals himself or fails to attend. If a witness evades service of
124 a subpoena, or fails to attend after service of a subpoena, the court may issue a warrant to the
125 sheriff of the county to arrest the witness and bring the witness before the court.

126 (g) Procedure when witness is confined in jail. If the witness is a prisoner confined in a jail or
127 prison within the state, an order for examination in the prison upon deposition or, in the
128 discretion of the court, for temporary removal and production before the court or officer for the
129 purpose of being orally examined, may be made upon motion, with or without notice, by a
130 justice of the Supreme Court, or by the district court of the county in which the action is pending.

131 (h) Subpoena unnecessary; when. A person present in court, or before a judicial officer, may
132 be required to testify in the same manner as if the person were in attendance upon a subpoena.

133 Advisory Committee Notes

134 ~~Purposes of Amendment. The 1994 amendments represent a substantial change from prior~~
135 ~~practice. Patterned on the 1991 amendments to Fed. R. Civ. P. 45, these amendments expedite~~
136 ~~and facilitate procedures for serving subpoenas, modify procedures relating to persons who are~~
137 ~~not parties to correspond to procedures relating to parties under Utah R. Civ. P. 34, and specify~~
138 ~~the rights and obligations of persons served with a subpoena.~~

139 ~~Paragraph (a). This paragraph amends former Rule 45 in the following important respects:~~

140 ~~First, subparagraph (a)(6)(3) authorizes an attorney to issue and sign a subpoena as an officer~~
141 ~~of the court. The subparagraph eliminates the requirement that an attorney obtain a subpoena~~
142 ~~from the clerk of the court, and the requirement that a subpoena be issued under seal of the court.~~
143 ~~An attorney who is not a member of the Utah State Bar but who has been admitted to practice~~
144 ~~pro hac vice in the court in which the action is pending is authorized to issue a subpoena.~~
145 ~~Consistent with the authority of an attorney to issue a subpoena, subparagraph (a)(1)(B) requires~~
146 ~~every subpoena to identify the attorney serving it. Subparagraph (a)(1)(A) requires every~~
147 ~~subpoena to issue from the court in which the action is pending, amending former Rule 45(d)(1),~~
148 ~~which authorized a deposition to be issued from the court where the deposition is to take place,~~
149 ~~as well as the court where the action is pending.~~

150 ~~Second, subparagraph (a)(2) authorizes a party to serve upon a person who is not a party a~~
151 ~~subpoena to produce or to permit inspection and copying of documents or tangible things, or to~~

152 ~~permit inspection of premises. A party no longer must serve a subpoena duces tecum to discover~~
153 ~~documents or tangible things from a person who is not a party, although the amended rule~~
154 ~~preserves that option, and no longer must bring an independent action for entry onto land.~~
155 ~~Subparagraph (a)(2) also requires a person who is not a party to produce materials within that~~
156 ~~person's control, which subjects that person to the same scope of discovery as if that person were~~
157 ~~a party served with a discovery request under Rule 34.~~

158 ~~Third, subparagraph (a)(1)(D) requires every subpoena to state the rights and duties of a~~
159 ~~person served in a form substantially similar to the form in the Appendix to these rules.~~

160 ~~Paragraph (b) also amends former Rule 45 in several important respects. Subparagraph~~
161 ~~(b)(1)(A) requires prior notice of each commanded production or inspection of documents or~~
162 ~~tangible things, or inspection of premises, to be served as prescribed by Rule 5(b). This~~
163 ~~subparagraph ensures that other parties will have notice enabling them to object to or participate~~
164 ~~in discovery, or to serve a demand for additional materials. No similar provision is included for~~
165 ~~depositions, because depositions are governed by Rule 30 or 31. Subparagraph (b)(1)(A)~~
166 ~~specifies that the subpoena may be served as required by Rule 4(e), amending paragraph (c) of~~
167 ~~the former rule.~~

168 ~~Subparagraph (b)(4) authorizes a subpoena for production or inspection of documents or~~
169 ~~tangible things or inspection of premises to be served upon a person who is not a party at any~~
170 ~~time after commencement of the action. A subpoena served upon a person who is not a party has~~
171 ~~the same scope specified in Rule 34(a) for a request served upon a party, and is subject to the~~
172 ~~same procedures specified in Rule 34(b). A person who is not a party is not required to file a~~
173 ~~written response to the subpoena, unless the party objects to the subpoena pursuant to~~
174 ~~subparagraph (c)(2)(D).~~

175 ~~Subparagraph (b)(4) also requires each party serving a subpoena for the production of~~
176 ~~documents to provide to other parties copies of documents obtained in response to the subpoena.~~
177 ~~No comparable provision appears in the federal rule, but the Committee determined that such a~~
178 ~~provision would alleviate some of the burden imposed upon persons who are not parties and shift~~
179 ~~it to parties.~~

180 ~~Other subparagraphs make minor amendments to the former Rule 45. Subparagraph (b)(1)(C)~~
181 ~~amends former paragraph (d)(3) to include a subpoena for document production or inspection, as~~
182 ~~well as a deposition subpoena. Subparagraph (b)(2) is the former paragraph (e) with minor~~

183 ~~modifications. Subparagraph (b)(3)(A) requires a nonresident to attend deposition only in the~~
184 ~~county where the nonresident is served, amending former paragraph (d)(2) to eliminate the~~
185 ~~requirement that a nonresident attend a deposition within forty miles of the place of service.~~

186 ~~Paragraph (c). Paragraph (c) states the rights of witnesses or other persons served with~~
187 ~~subpoenas. The paragraph does not diminish rights conferred by any other rule or any other~~
188 ~~authority. Subparagraph (c)(1) states the duty of an attorney to minimize the burden on a witness~~
189 ~~who is not a party, and specifies that such a witness may recover lost earnings that result from~~
190 ~~the misuse of a subpoena. Subparagraph (c)(1) expands the responsibility of an attorney stated in~~
191 ~~Rule 26(g); this responsibility is correlative to the expanded power of an attorney to issue a~~
192 ~~subpoena.~~

193 ~~Subparagraph (c)(2)(A) specifies that a person who is not a party served with a subpoena for~~
194 ~~the production or inspection of documents or tangible things or inspection of premises must have~~
195 ~~at least 14 days to respond. A subpoena to appear at trial, at hearing, or at deposition must be~~
196 ~~served within a reasonable time, unless it also requires the production of documents.~~

197 ~~Subparagraph (c)(2)(C) states that a person who is not a party has no obligation to make~~
198 ~~copies or to advance costs, and has no counterpart in either the federal rule or the former state~~
199 ~~rule. The Committee included this statement in the rule so that it would become part of the notice~~
200 ~~provided to each person served with a subpoena.~~

201 ~~Subparagraph (c)(2)(D) specifies that a person served with a subpoena for the production or~~
202 ~~inspection of documents or tangible things or inspection of premises may serve written objection~~
203 ~~upon the party serving the subpoena. The party serving the subpoena bears the burden to obtain~~
204 ~~an order to compel production, and must provide prior notice to the person served of the motion~~
205 ~~to compel. A person served with a subpoena to appear at trial, at hearing, or at deposition, must~~
206 ~~appear unless the person obtains a court order to quash or modify the subpoena; a written~~
207 ~~objection to the serving party is insufficient. A person served with a subpoena duces tecum may~~
208 ~~object to providing documents by notifying the party serving the subpoena, but still must appear~~
209 ~~to testify at trial, at hearing, or at deposition, unless the person obtains an order to quash or~~
210 ~~modify the subpoena.~~

211 ~~Subparagraph (c)(3) identifies the circumstances in which a subpoena may be modified or~~
212 ~~quashed. It follows paragraph (c)(3) of the 1991 amendments to Fed. R. Civ. P. 45, but is~~

213 ~~modified to specify the locations where residents or nonresidents of the State may be compelled~~
214 ~~to attend deposition.~~

215 ~~Paragraph (d). This paragraph follows the 1991 amendments to Fed. R. Civ. P. 45.~~
216 ~~Subparagraph (d)(2)(D) applies to privileged attorney-client communications, and to all attorney~~
217 ~~work product protected under the doctrine of Hickman v. Taylor, 329 U.S. 495, 67 S. Ct. 385, 91~~
218 ~~L. Ed. 451 (1947), and progeny.~~

219 ~~Paragraph (e). This paragraph specifies that an adequate cause for failure to obey exists~~
220 ~~when a subpoena purports to require a party to respond at a place beyond the geographic~~
221 ~~boundaries imposed by the rule, amending former paragraph (f).~~

222 ~~Paragraph (f). This is the former paragraph (g), amended to eliminate references to the~~
223 ~~masculine pronoun.~~

224 ~~Paragraph (g). This is the former paragraph (h).~~

225 ~~Paragraph (h). This is the former paragraph (i), amended to eliminate references to the~~
226 ~~masculine pronoun.~~

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 in a
29 specific case service under this rule by email. A party shall use the method most likely to give
30 actual notice of a hearing scheduled 5 days or less from the date of service. Otherwise, a party
31 shall serve a paper 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 if that person has agreed to
41 accept service by fax;

42 (b)(1)(A)(vi) sending it by email to the person's last known email address if that person has
43 agreed to accept service by email; or

44 (b)(1)(A)(vii) upon any person with an electronic filing account, who is a party or attorney in
45 the case, by submitting the paper for electronic filing.

46 (b)(1)(B) Service by mail is complete upon mailing. ~~If the paper served is notice of a hearing~~
47 ~~and if the hearing is scheduled 5 days or less from the date of service, service shall be by~~
48 ~~delivery or other method of actual notice. Service by electronic means is complete on~~
49 ~~transmission if transmission is completed during normal business hours at the place receiving the~~
50 ~~service; otherwise, service is complete on the next business day.~~ Service by mail is complete
51 upon mailing. Service by fax or email is not effective if the party making service learns that the
52 attempted service did not reach the person to be served.

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

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

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

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

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

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

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

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

78

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.~~ Each averment 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 other exhibits, shall be typewritten, printed or photocopied in black~~
35 ~~type on good, white, unglazed paper of letter size (8 1/2" x 11"), with a top margin of not less~~
36 ~~than 2 inches above any typed material, a left hand margin of not less than 1 inch, a right hand~~
37 ~~margin of not less than one half inch, and a bottom margin of not less than one half inch. All~~
38 ~~typing or printing shall be clearly legible, shall be double spaced, except for matters customarily~~
39 ~~single spaced or indented, and shall not be smaller than 12 point size. Typing or printing shall~~
40 ~~appear on one side of the page only. Paper format. All pleadings and other papers filed with the~~
41 ~~court, other than exhibits, shall be created and reproduced with a page format of 8 1/2 inches wide~~
42 ~~x 11 inches long, on white background, with a top margin of not less than 2 inch, all other~~
43 ~~margins of not less than 1 inch, with text or images only on one side. All text or images shall be~~
44 ~~clearly legible, shall be double spaced, except for matters customarily single spaced or indented,~~
45 ~~and shall not be smaller than 12-point size.~~

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

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

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

60 (h) Electronic papers.

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

63 (h)(2) A paper digitally signed and electronically filed is the original.

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

66 (h)(4) An electronic copy of a paper shall conform to the format of the original.

67 (h)(5) An electronically filed paper may contain links only to other papers filed
68 simultaneously or already on file with the court.

69

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 paper using any form of signature recognized by law as binding.

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

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

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

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

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

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

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

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

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

33 (c)(1) How initiated.

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

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

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

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

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

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

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

66