

Agenda

Advisory Committee on Rules of Civil Procedure

October 26, 2005
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Education Room, Suite N31

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| Approval of minutes. | Fran Wikstrom |
| Rule 45. Subpoena. | Tim Shea |
| Form 40. Subpoena. | Tim Shea |
| RPC impact on URCP | Fran Wikstrom |

Meeting Schedule

November 16, 2005
January 25, 2006
February 22, 2006
March 22, 2006
April 26, 2006
May 24, 2006
June 28, 2006
September 27, 2006
October 25, 2006
November 29, 2006 (5th Wednesday)

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

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, September 21, 2005
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Francis J. Carney, James T. Blanch, Honorable David Nuffer, Virginia S. Smith, R. Scott Waterfall, Todd M. Shaughnessy, Terrie T. McIntosh, Janet H. Smith, Tom Lee, Cullen Battle, Leslie W. Slauch, Honorable Lyle R. Anderson, Thomas R. Karrenberg, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Jonathan Hafen

EXCUSED: Matty Branch, Lance Long, David W. Scofield, Paula Carr, Debora Threedy

STAFF: Tim Shea, Trystan Smith

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:04 p.m. Mr. Waterfall moved to approve the minutes as submitted. Mr. Blanch seconded the motion. The Committee unanimously approved the minutes.

II. INTRODUCTION OF NEW MEMBER: JONATHAN HAFEN.

Mr. Wikstrom introduced and welcomed Mr. Hafen to the Committee.

III. SUPREME COURT ACTION ON DRAFT RULES.

Mr. Wikstrom reported that he met with the Supreme Court, and the Court approved changes to the draft rules.

IV. RULE 45. SUBPOENA.

Mr. Shea brought Rule 45 back to the Committee. Mr. Wikstrom expressed concern that the Committee adequately protect the rights of third parties. Mr. Battle initiated an extensive discussion concerning whether a producing party should be paid before they are required to produce documents. The Committee discussed concerns regarding potential abuses with the costs of production versus the need for payment of costs up front.

The Committee's discussions then shifted to the difference between actual costs and reasonable costs. Mr. Wikstrom moved to revise Rule 45(d)(1)(D) to state "a statement of the

reasonable costs of producing or copying the documents or tangible things.” The Committee voted to approved the revision.

Next, the Committee discussed revising subsection (d) to allow for a declaration, instead of an affidavit. Mr. Hafen suggested the Committee include a form declaration with the rule. The Committee also discussed the evidentiary differences between a declaration and an affidavit. The Committee expressed no consensus concerning the declaration.

Mr. Slaugh suggested the Committee delete the phrase “not a party” from subsection (c)(2). The Committee agreed with his proposal.

Mr. Wikstrom asked Mr. Shea to incorporate the changes discussed above, and bring Rule 45 back to the Committee for further discussion.

V. RULE 71B. PROCEEDINGS WHERE PARTIES NOT SUMMONED

Mr. Shea brought Rule 71B back to the Committee. Mr. Shea explained the results of his legal research concerning the rule, including its historical background. Mr. Shea explained the case law interpreting the Rule 71B made clear that no personal judgment can be rendered against a defendant who has not been served.

Mr. Shea suggested the Committee delete in its entirety Rule 71B, and incorporate language concerning proceedings against non-served parties into Rule 4(b). Judge Quinn moved to repeal Rule 71B. Mr. Karrenberg seconded the motion, and it passed unanimously. Mr. Karrenberg moved to adopt the suggested addition to Rule 4(b). Mr. Carney seconded the motion, and it passed unanimously.

VI. RULE 6(e).

Judge Nuffer brought Rule 6(e) back to the Committee. Judge Nuffer suggested the Committee revise Rule 6(e) to allow for an additional 3 days to be added to any prescribed period for service by electronic means. Mr. Slaugh moved to adopt the revision. Judge Nuffer seconded the motion, and it passed unanimously.

VII. URSCP 13. REPRESENTATION.

Mr. Shea brought the new rule of small claims procedure to the Committee’s attention. The Supreme Court unilaterally adopted URSCP 13 to clarify who may represent a party during a small claims action. Mr. Shea indicated the addition of the rule is a part of a bigger project defining the unauthorized practice of law.

VIII. E-FILING: RULES 5, 10, & 11.

Mr. Shea brought e-filing back to the Committee. The Committee considered whether it should adopt e-filing rule changes in advance of e-filing coming on-line. Mr. Shea indicated there is no timetable for when e-filing will be possible because of budgetary concerns. After some discussion, the Committee decided to continue its creation of e-filing rules.

Mr. Shea indicated Rule 5(b)(1)(A)(vii) contained the procedure for e-filing, specifically, a document is e-filed when submitted to a party or attorney with an electronic filing account. Mr. Shea further indicated Rule 11 (a)(2) allows a signature to be made by any means recognized by law.

Mr. Slaugh suggested a revision to Rule 5(b)(1)(A)(vi) to allow a party to receive e-service by order of the Court, if the attorney has an electronic filing, or if he consents.

Mr. Waterfall moved to replace the word “averments” with “statements” in Rule 10(b). Mr. Slaugh seconded the motion. Mr. Shaughnessy and Judge Quinn disagreed with the need to revise the language. The Committee approved a revision to Rule 10(b) which stated: “All *statements* of claim or defense shall be made in numbered paragraphs.” “Each *paragraph* shall be limited”

Mr. Lee moved to redact the phrase “in the lower left hand corner” in Rule 10(a). The motion was seconded, and approved by the Committee.

The Committee also approved a change to the title of Rule 10(f) which shall now read “Nonconforming Papers.”

Finally, Mr. Wikstrom suggested a revision to the first sentence of Rule 10(f). After a brief discussion, the Committee agreed to the following revision: “The clerk of the court shall accept for filing papers not prepared in conformity with this rule, but the clerk or the court may require substitution of properly prepared papers.”

IX ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next committee meeting will be held on Wednesday, October 26, 2005, at the Administrative Office of the Courts.

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
6 name ~~and address~~ of the party or attorney serving the subpoena, and its civil action
7 number;

8 (a)(1)(C) command each person to whom it is directed

9 (a)(1)(C)(i) to appear ~~to and~~ give testimony at trial, or at hearing, or at deposition, or

10 (a)(1)(C)(ii) to ~~appear and~~ produce ~~or to permit for~~ inspection and copying of
11 documents or tangible things in the possession, custody or control of that person, or

12 (a)(1)(C)(iii) to copy and mail to the party issuing the subpoena documents in the
13 possession, custody or control of that person, or

14 (a)(1)(C)(iv) to appear and to permit inspection of premises, ~~at a time and place~~
15 ~~therein specified;~~

16 (a)(1)(D) if an appearance is required, specify the date, time and place for the
17 appearance; and

18 ~~(a)(1)(D)-(a)(1)(E)~~ set forth the text of Notice to Persons Served with a Subpoena, in
19 substantially similar form to the subpoena form appended to these rules.

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

23 ~~(a)(3)-(a)(2)~~ The clerk shall issue a subpoena, signed but otherwise in blank, to a
24 party requesting it, who shall complete it before service. An attorney admitted to
25 practice in the court in which the action is pending may also issue and sign a subpoena
26 as an officer of the court.

27 (b) Service; scope.

28 (b)(1) ~~Generally.~~

29 ~~(b)(1)(A)~~ A subpoena may be served by any person who is not a party and is not
30 less than 18 years of age. Service of a subpoena upon a person named therein shall be
31 made as provided in Rule 4(d) for the service of process and, if the person's

32 appearance is commanded, by tendering to that person the fees for one day's
33 attendance and the mileage allowed by law. When the subpoena is issued on behalf of
34 the United States, or this state, or any officer or agency of either, fees and mileage need
35 not be tendered. Prior notice of ~~any commanded production or inspection of documents~~
36 ~~or tangible things or a command to copy and mail documents, to produce documents or~~
37 ~~tangible things for inspection and copying, or to permit~~ inspection of premises before
38 trial shall be served on each party in the manner prescribed by Rule 5(b) at least ten
39 days before the subpoena is served on the person to whom it is directed.

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

44 ~~(b)(1)(C) (b)(2)~~ Service of a subpoena outside of this state, ~~for the taking of a~~
45 ~~deposition or production or inspection of documents or tangible things or inspection of~~
46 ~~premises outside this state,~~ shall be made in accordance with the requirements of the
47 jurisdiction in which such service is made.

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

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

52 ~~(b)(3)(A)~~ A person who resides in this state may be required to appear at a
53 deposition only in the county where-in which the person resides, ~~or~~ is employed, or
54 transacts business in person, or at such other place as the court may order. A person
55 who does not reside in this state may be required to appear at deposition only in the
56 county in this state where-in which the person is served with a subpoena, or at such
57 other place as the court may order.

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

63 (b)(4) ~~Subpoena for production or inspection of documents or tangible things or~~
64 ~~inspection of premises. A subpoena to command a person who is not a party to produce~~
65 ~~or to permit inspection and copying of documents or tangible things or to permit~~
66 ~~inspection of premises may be served at any time after commencement of the action.~~
67 ~~The scope and procedure shall comply with Rule 34, except that the person must be~~
68 ~~allowed at least 14 days to comply as stated in subparagraph (c)(2)(A) of this rule.~~
69 Payment of costs. The party serving the subpoena shall pay the reasonable cost of
70 producing or copying the documents or tangible things. Upon the request of the person
71 producing or copying the documents or tangible things, the party serving the subpoena
72 shall pay the reasonable cost in advance. Upon the request of any other party and the
73 payment of reasonable costs, the party serving the subpoena shall provide to the
74 requesting party copies of all documents obtained in response to the subpoena.

75 (c) Protection of persons subject to subpoenas; Objection.

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

82 ~~(c)(2)(A)-(c)(2)~~ A subpoena ~~served upon a person who is not a party to copy and~~
83 mail documents, to produce ~~or to permit inspection and copying of~~ documents or
84 tangible things for inspection and copying, or to permit inspection of premises, ~~whether~~
85 ~~or not joined with a command to appear at trial, or at hearing, or at deposition, must~~
86 ~~allow the person at least 14 days after service to comply, unless a shorter time has~~
87 ~~been ordered by the court for good cause shown shall comply with Rule 34, except that~~
88 the person must be allowed at least 14 days to comply.

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

93 ~~(c)(2)(C) A person commanded to produce or to permit inspection and copying of~~
94 ~~documents or tangible things or inspection of premises may, before the time specified~~
95 ~~for compliance with the subpoena, serve upon the party or attorney designated in the~~
96 ~~subpoena written objection to inspection or copying of any or all of the documents or~~
97 ~~tangible things or inspection of the premises.~~ (c)(3) The person subject to the subpoena
98 may object if the subpoena:

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

100 (c)(3)(B) does not conform to this rule;

101 (c)(3)(C) requires disclosure of privileged or non-public matter and no exception or
102 waiver applies;

103 (c)(3)(D) subjects the person to an undue burden; or

104 (c)(3)(E) requires disclosure of an unretained expert's opinion or information not
105 describing specific events or occurrences in dispute and resulting from the expert's
106 study made not at the request of any party.

107 (c)(4) If objection is made, the party ~~issuing~~ the subpoena ~~shall~~ is not be

108 entitled to ~~inspect and copy the materials or inspect the premises except pursuant to an~~
109 ~~order of the court~~ compliance. If objection has been made, the party issuing the
110 subpoena may, upon notice to the person commanded ~~to produce~~, move at any time for
111 an order to compel ~~the production~~ compliance. Such an order ~~to compel production~~
112 shall protect any person who is not a party or an officer of a party¹ from significant
113 expense resulting from the inspection and copying commanded. The court may quash
114 or modify the subpoena.

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

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

118 ~~(c)(3)(A)(ii) requires a resident of this state who is not a party to appear at deposition~~
119 ~~in a county in which the resident does not reside, or is not employed, or does not~~
120 ~~transact business in person; or requires a non-resident of this state to appear at~~
121 ~~deposition in a county other than the county in which the person was served;~~

¹ Should "who is not a party or an officer of a party" be deleted?

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

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

125 ~~(c)(3)(B) If a subpoena:~~

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

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

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

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

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

142 (d) Duties in responding to subpoena.

143 (d)(1) A person commanded to copy and mail documents or to produce documents
144 or tangible things for inspection and copying shall serve on the party issuing the
145 subpoena a declaration under penalty of perjury stating in substance:

146 (d)(1)(A) that the declarant has knowledge of the facts contained in the declaration;

147 (d)(1)(B) that the documents or tangible things copied or produced are a full and
148 complete response to the subpoena;

149 (d)(1)(C) that the documents are the originals or that a copy is a true copy of the
150 original; and

151 (d)(1)(D) the reasonable cost of copying or producing the documents or tangible
152 things.

153 ~~(d)(1)-(d)(2)~~ A person responding to a subpoena to copy and mail documents or to
154 produce documents or tangible things for inspection and copying shall copy or produce
155 them as they are kept in the usual course of business or shall organize and label them
156 to correspond with the categories in the ~~demand subpoena~~.

157 ~~(d)(2)-(d)(3)~~ When information subject to a subpoena is withheld on a claim that it is
158 privileged or subject to protection as trial preparation materials, the claim shall be made
159 expressly and shall be supported by a description of the nature of the documents,
160 communications, or things not produced that is sufficient to enable the demanding party
161 to contest the claim.²

162 (e) Contempt. Failure by any person without adequate excuse to obey a subpoena
163 served upon that person may be ~~deemed a held in~~ contempt of ~~the court from which the~~
164 ~~subpoena issued~~. An adequate cause for failure to obey exists when a subpoena
165 purports to require a nonparty to appear or produce at a place not within the limits
166 provided by ~~subparagraph (c)(3)(A)(ii)~~ this rule.

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

171 (g) Procedure when witness is confined in jail. If the witness is a prisoner ~~confined in~~
172 ~~a jail or prison within the state, a party may move without notice for~~ an order for
173 ~~examination to examine the witness~~ in the ~~jail; or~~ prison ~~upon deposition or, in the~~
174 ~~discretion of the court, for temporary removal and production to produce the witness~~
175 before the court or officer for the purpose of being orally examined, ~~may be made upon~~
176 ~~motion, with or without notice, by a justice of the Supreme Court, or by the district court~~
177 ~~of the county in which the action is pending~~.

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

181

² The rest of the rule speaks of “documents” and “tangible things.” The paragraph speaks of “information” and “communications.”

Attorney Name
Address
Email Address
Telephone Number
Bar Number

In the District Court of the State of Utah
_____ Judicial District
_____ County

(Address)

| | |
|---|--|
| <p>_____, Plaintiff, v. _____, Defendant.</p> | <p>Subpoena Case Number: _____ Judge : _____</p> |
|---|--|

To _____:

(1) You are commanded to copy the following documents and mail the copies to the attorney's address at the top of this page no later than _____(date):

(2) You are commanded to appear at:
_____ (date)
_____ (time)
_____ (place)

- to permit inspection of the premises
- to testify at a trial or hearing
- to testify at a deposition
- to produce the following documents or tangible things for inspection and copying:

3. The court-approved form entitled "Notice to Persons Served with a Subpoena" must be served with this subpoena. If you are commanded to appear at a trial, hearing or deposition, payment of \$18.50 plus \$1.00 for each mile you have to travel (one direction) must be served with this subpoena.

4. You may object to this subpoena by filing an objection with the court and mailing a copy of the objection to the following:

Date

Signature
 Court clerk
 Attorney for the plaintiff
 Attorney for the defendant

NOTICE TO PERSONS SERVED WITH A SUBPOENA

(1) Rights and responsibilities in general. A subpoena is a court order whether it is issued by the court clerk or by an attorney as an officer of the court. You must comply or file an objection, or you may face penalties for contempt of court. The subpoena must be served on you at least 14 days before the date designated for compliance. If you are commanded to appear at a trial, hearing or deposition, payment of \$18.50 plus \$1.00 for each 4 miles you have to travel (one direction) must be served with the subpoena. When the subpoena is issued on behalf of the United States or Utah, fees and mileage need not be tendered.

(2) Subpoena to copy and mail documents. If the subpoena commands you to copy documents and mail the copies to the attorney or party issuing the subpoena, you must organize the copies as you keep them in the ordinary course of business or organize and label them to correspond with the categories in the subpoena. The party issuing the subpoena must pay the reasonable cost of copying the documents. If you request it, the party issuing the subpoena must pay the reasonable cost in advance. You must mail with the copies a declaration under penalty of perjury stating in substance:

- (2)(A) that you have knowledge of the facts contained in the declaration;
- (2)(B) that the documents copied are a full and complete response to the subpoena;
- (2)(C) that a copy is a true copy of the original document; and
- (2)(D) the reasonable cost of copying the documents.

(3) Subpoena to appear. If the subpoena commands you to appear at a trial, hearing or a deposition, you must appear at the date, time, and place designated in the subpoena. The trial or hearing will be at the courthouse in which the case is pending. For a deposition, you can be commanded to appear in only the following counties:

(3)(A) If you are a resident of Utah, the subpoena may command you to appear in the county

- in which you reside,
- in which you are employed,
- in which you transact business in person, or
- in which the court orders.

(3)(B) If you are not a resident of Utah, the subpoena may command you to appear in the Utah county

- in which you are served with the subpoena or
- in which the court orders.

(4) Subpoena to permit inspection of premises. If the subpoena commands you to appear and to permit the inspection of premises, you must appear at the date, time, and place designated in the subpoena and do what is necessary to permit the premises to be inspected.

(5) Subpoena to produce documents or tangible things. If the subpoena commands you to appear at a trial, hearing or deposition and to produce designated documents or tangible things, you must produce the documents or tangible things as you keep them in the ordinary course of business or organize and label them to correspond with the categories in the subpoena. You need not make copies. The party issuing the subpoena must pay the reasonable cost of producing the documents or tangible things. If you request it, the party issuing the subpoena must pay the reasonable cost in advance. You must produce with the documents or tangible things a declaration under penalty of perjury stating in substance:

- (5)(A) that you have knowledge of the facts contained in the declaration;
- (5)(B) that the documents or tangible things produced are a full and complete response to the subpoena;
- (5)(C) that the documents are the originals or that a copy is a true copy of the original; and
- (5)(D) the reasonable cost of copying or producing the documents or tangible things.

(6) Objection to a subpoena. You must comply with those parts of the subpoena to which you do not object. You may object to all or part of the subpoena if it:

- (6)(A) fails to allow you a reasonable time for compliance;
- (6)(B) does not conform to Utah Rule of Civil Procedure 45;
(<http://www.utcourts.gov/resources/rules/urcp/45.htm>)
- (6)(C) requires you to disclose privileged or non-public matter and no exception or waiver applies;
- (6)(D) subjects you to an undue burden; or
- (6)(E) requires you to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party.

*“Even though you object to production or inspection of documents or tangible things, or inspection of premises, you must appear in person at the trial, at the hearing or at the deposition unless you obtain an order of the court”*¹

¹ This is in the notice now. It seems contrary to the rule.

(7) How to object. To object to the subpoena, you must file an objection with the court and mail a copy of the objection to persons listed in the subpoena. You must do this before the date on which your compliance is due. A form objection is at the end of this Notice; you may need to modify it to fit your circumstances. Once you have filed the objection, do not comply with the subpoena unless ordered to do so by the court.

8. Motion to compel. After you make a timely written objection, the party or attorney who issued the subpoena may obtain a court order to compel you to comply. The party must give you a copy of its motion and notice of any court hearing. You have the right to file a response to the motion and a right to attend a hearing.

9. Organizations. An organization that is not a party to the suit and is subpoenaed to appear at a deposition must designate one or more persons to testify on its behalf. The organization may set forth the matters on which each person will testify. Utah Rule of Civil Procedure 30(b)(6).

In the District Court of the State of Utah
_____ Judicial District
_____ County

(Address)

| | |
|---|---|
| <p>_____, Plaintiff,</p> <p>v.</p> <p>_____, Defendant.</p> | <p>Objection to subpoena</p> <p>Case Number: _____</p> <p>Judge : _____</p> |
|---|---|

Instructions: Identify the grounds for your objection and provide a full explanation. Attach and sign additional sheets as necessary.

I have been served with a subpoena in this case and I object because the subpoena:

(1) fails to allow me a reasonable time for compliance because: _____

(2) is contrary to Utah Rule of Civil Procedure 45 because: _____

(3) requires me to disclose privileged or non-public matter and no exception or waiver applies because: _____

Instructions for (3): If you object to the subpoena because the document or tangible thing is privileged or subject to protection as trial preparation materials, you must describe the nature of the documents or things with sufficient specificity to enable the party or attorney to contest your objection.

(4) subjects me to an undue burden because: _____

(5) requires me to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party because: _____

(6) other _____

Date

Signature of filer or attorney

Supreme Court of Utah

450 South State Street
P.O. Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerks' Office
Telephone (801) 578-3900
Fax (801) 578-3999
TDD (801) 578-3940
Supreme Court Reception 238-7967

Marilyn M. Branch
Appellate Court Administrator

Pat H. Bartholomew
Clerk

Christine M. Durham
Chief Justice

Michael J. Wilkins
Associate Chief Justice

Matthew B. Durrant
Justice

Bill N. Parrish
Justice

Ronald E. Nehring
Justice

September 21, 2005

Francis M. Wikstrom, Esq.
Parsons, Behle & Latimer
P. O. Box 45898
Salt Lake City, UT 84145-0898

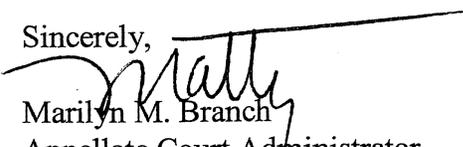
Dear Fran:

Enclosed are copies of amendments to the Utah Rules of Professional Conduct that were recently approved by the Utah Supreme Court, with an effective date of November 1, 2005. These amendments were made in order to permit Utah lawyers to provide unbundled legal services, pro se assistance and limited representation to citizens in need of more affordable, and available, legal help.

The Court requests that the Advisory Committee review these rules and recommend any changes to the Utah Rules of Civil Procedure that it believes are needed in view of the Court's approval of the unbundling rules. For example, do the Rules of Civil Procedure need to be amended to allow an attorney to enter an appearance limited to a particular hearing or proceeding or to allow an attorney to draft legal pleadings for a client who is otherwise unrepresented in court?

As always, thanks to the you and to the committee for your excellent work.

Sincerely,


Marilyn M. Branch
Appellate Court Administrator

Enclosures
cc: Tim Shea
Katherine Fox

Rules of Professional Conduct Effective November 1, 2005

With redline:

<http://www.utcourts.gov/resources/rules/approved/2005/11/RPC%20All%20w%20redline.pdf>

Without redline:

<http://www.utcourts.gov/resources/rules/approved/2005/11/RPC%20All.pdf>