Agenda

Advisory Committee on Rules of Civil Procedure

January 25, 2006
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
Review of comments to draft rules. Recommendations for final action.	Tim Shea
Rule 45 and Form 40. Subpoena.	Tim Shea
URCP 7(f)(2) regarding finality of judgments	Tim Shea
URCP 10. Form of pleadings and other papers. Court forms and format requirements.	Tim Shea

Meeting Schedule

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, October 26, 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, Paula Carr, Debora Threedy, Terrie T. McIntosh, Tom Lee, Cullen Battle, Leslie W. Slaugh, David W. Scofield, Jonathan Hafen

EXCUSED: Honorable Anthony W. Schofield, R. Scott Waterfall, Todd M. Shaughnessy, Matty Branch, Lance Long, Honorable Anthony B. Quinn, Janet H. Smith, Honorable Lyle R. Anderson, Thomas R. Karrenberg

STAFF: Tim Shea, Trystan Smith, Matty Branch

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:09 p.m. Judge Nuffer moved to approve the minutes as submitted. Mr. Hafen seconded the motion. The Committee unanimously approved the minutes.

II. RULE 45. SUBPOENA & FORM 40. SUBPOENA.

Mr. Shea brought Rule 45 back to the Committee. Mr. Shea raised questions concerning the language in Rule 45 (c) (4), and Rule 45 (d) (3).

Currently, Rule 45 (c) (4) specifies that an order to compel production only protects a person "who is not a party or an officer of a party." Mr. Battle moved that the phrase be replaced with "shall protect any person who is subject to a subpoena." Mr. Hafen seconded the Motion, and it was unanimously approved.

Mr. Shea questioned whether the Committee should revise Rule 45 (d) (3) to make the word "information" consistent with the phrase "nature of the documents, communications, or things not produced." Mr. Carney indicated the that same language is contained in Rule 26. The Committee commented that "information" may be a term of art and agreed not to revise the language.

Mr. Wikstrom then entertained questions and/or changes concerning the entirety of Rule 45. Mr. Wikstrom suggested a revision to Rule 45 (c) (3) (E). He suggested, "resulting from the

expert's study *that was* not made at the request of any party." The Committee agreed with the change, and asked that similar revisions be made to the form and notice for subpoenas.

Mr. Wikstrom commented that 10 days was too long for prior notice of issuance of a subpoena. Mr. Carney suggested 5 days. Mr. Battle seconded motion, and it was approved unanimously.

Mr. Wikstrom suggested the Committee replace the phrase "except that" from Rule 45 (c) (2) with "and" allowing the subsection to state, "shall comply with Rule 34(a)(b)1, *and* the person must be allowed at least 14 days to comply." The Committee unanimously approved the revision.

Mr. Battle asked for a clarification concerning what "payment of reasonable costs in advance" meant in subsection (b)(4). Did it mean in advance of delivery of documents, or in advance of preparation of documents? After some discussion, the Committee agreed the responding party could determine when in advance payment should be rendered.

Mr. Wikstrom suggested the Committee insert the deleted language in lines 126 - 141 in a separate subsection to allow a subpoenaed party to have all the bases to object in one subsection under Rule 45 (c). Mr. Wikstrom further suggested a revision to the language in line 140 to state, "the court may order appearance or production only upon specified conditions *or impose conditions*." The Committee agreed to add the subsection with the stated revision. Mr. Carney and Mr. Battle voted against the insertion of a new subsection.

Mr. Wikstrom suggested the Committee add the phrase "or harm"to subsection (c) (4) allowing the subsection to read, "from significant expense *or harm* resulting from the inspection and copying commanded." The Committee agreed with the change.

Mr. Hafen suggested the Committee attach a form declaration which complied with subsection (d). The Committee agreed.

Finally, the Committee's discussion shifted to the language in Form 40.

Mr. Slaugh suggested a revision to paragraph 1 to state: "You are commanded to copy the following documents and mail *or deliver* the copies . . . ." The Committee agreed with the change.

Mr. Wikstrom questioned if the language in paragraph 7 should be revised to require the responding party to serve notice of their objection to all parties in the litigation. The Committee agreed that a responding party should not be obligated to serve its objection to all parties, but suggested additional language should be included in paragraph 7 which required the requesting party, if it receives an objection, to notify the remaining parties.

Mr. Wikstrom asked Mr. Shea to incorporate the above revisions to Rule 45 and Form 40, and bring each back to the Committee.

III. RPC IMPACT ON URCP.

Mr. Wikstrom indicated the Supreme Court asked the Committee to review the amendments to the Rules of Professional Conduct and consider changes to the URCP it believes are needed in light of the Court's approval of the unbundling rules. Mr. Hafen and Ms. Threedy volunteered to review the amendments.

IV. ADJOURNMENT.

The meeting adjourned at 5:19 p.m. The next committee meeting will be held on Wednesday, November 16, 2005, at the Administrative Office of the Courts.

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Administrative Office of the Courts

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

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

MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: January 18, 2006
Re: Comments to rule amendments

Rules

The following Rules of Civil Procedure were published for comment. The comment period has expired and the rules are ready for the committee's final recommendations.

URCP 004. Process. Amend. In conjunction with repealing Rule 71B, permit case to proceed against parties who are served.

URCP 006. Time Amend. Permit 3 additional days in which to respond if notice is served by mail, fax, or electronic service.

URCP 062. Stay of proceedings to enforce a judgment. Amend. Establishes an automatic 10-day stay on enforcing a judgment.

URCP 064C. Writ of attachment. Amend. Permits a writ of attachment when the writ is authorized by statute.

URCP 068. Offer of judgment. Amend. Changes name of rule to "Settlement offers." Makes results of failure to improve bi-directional.

URCP 071A. Process in behalf of and against persons not parties. Renumber and Amend. In conjunction with repealing Rule 71B, renumber Rule 71A as Rule 71. Gender neutral text.

URCP 071B. Proceedings where parties not summoned. Repeal. Rule is contrary to due process.

Comments

URCP 6

I agree entirely with the comments of Mr. Duffin and Mr. Johansen regarding Rule 68.

In addition, with regard to the proposed amendment to rule 6, shouldn't service by fax or electronic mail be treated as hand-delivery rather than regular mail? The justification for allowing parties 3 extra days to respond to papers served by mail is that

it takes longer to get them so the opposing party needs additional time to reply. This justification does not apply to service by fax and email. If anything, the party being served will receive the papers sooner when served by fax or email. Accordingly, such service should be treated like hand-delivery. Parties should not be given the extra time to reply that is necessary when service is by regular mail.

Posted by Angela Adams October 12, 2005 09:37 AM

URCP 62

From: Judge Michael Westfall
To: tims@email.utcourts.gov
Date: 10/21/05 9:00AM
Subject: URCP 62

I don't pretend to understand any of the reasons for changing URCP 62 to shift the burden of requesting enforcement versus a temporary delay in enforcing a judgment to the prevailing party but I don't think that change in the rule is a good idea. Once the trier of fact has reached a decision and judgment has been entered the prevailing party should be able to realize the benefit of that judgment. Allowing a party to request a delay in enforcement, as under the current rule, protects that party if the Court determines that immediate execution is not appropriate. To require that the prevailing party request the right to enforce the judge's decision suggests that the judgment is less than final. I think that is bad policy.

URCP 68

This comment concerns the amendment to Utah R. Civ. P. 68. The amendment's summary indicates that the offeror may recover expert witness fees and deposition recordings as part of "costs." I have read and re-read the rule but don't see any reference to these items. Is the word "costs" defined elsewhere?

Posted by October 10, 2005 07:38 AM

With regard to the proposed changes to Rule 68, I am sure that this has been discussed, but I believe that it would go a long way to assist in the resolution of cases in which attorneys' fees are otherwise allowed to also include a provision that would allow an award of attorneys fees against the party who fails to obtain a more favorable award. As the Proposed Rule reads, a party may still take the risk of pursuing an unrealistic or even abusive litigation strategy without any risk that it will be liable for the other side's attorneys' fees if it refuses a reasonable settlement offer. I believe that result is inconsistent with the intent of this rule which has as its primary purpose the encouragement of resolution of litigation prior to trial. The risk of an award of attorneys'

fees will cause litigants to be more reasonable in considering settlement offers. Likewise, it will protect litigants with limited financial resources from being overrun by parties who can afford to take illogical risks in their litigation strategy. Such a change would level the playing field for litigants and increase fairness in commercial litigation.

Posted by Conrad Johansen October 10, 2005 07:50 AM

I agree with Mr. Johansen's comments entirely. There needs to be a provision for attorney's fee's so that there is "teeth" when plaintiff makes an offer. I have seen many small accident accident or construction claims (amounts of less than 10,000)and which have no attorney fee provision, which are litigated for years, because the defendant refuses to make an offer. Idaho has a similar provision to provide for attorney's fees. I think that many small cases could be dispensed with much earlier if by making an offer, the other party now realizes that they may be subject to attorney's fees. When there are attorney's fees at issue, parties are much more realistic in their assessment, particularly with small cases.

Posted by Dan Duffin October 10, 2005 12:13 PM

I agree with the proposed Rule 68 changes. However, Rule 68 will never really have teeth until it is amended to include attorney fees as costs. The last time I checked (several years ago), there were some states which included attorney fees in recoverable costs if the party rejecting the settlement offer didn't do better at trial. I suggest that attorneys fees be added as recoverable costs. Gutsy?

Posted by David Knowles October 19, 2005 08:12 PM

I reviewed the proposed amendment and the comments with interest. It is my understanding that the issue of including attorneys fees in an amended Rule 68 was vigorously opposed by both plaintiffs and defendants advocates on the committee, Mr. King and Ms. Kidman. They both agreed that attorneys fees ought not to be included.

In mediation we always tell the parties that a reason to settle is because there is no such thing as a 100% likelihood that any party will prevail. Including attorneys fees in Rule 68 will dissuade people who have valid claims from bringing them.

Also in mediation we find that the cases which are most difficult to settle are those with either a statutory or contractual attorneys fees provision. The parties then have to guess at what is a reasonable amount for attorneys fees, in addition to guessing at a value for the underlying claim, throwing another element of uncertainty into the mix.

Including an attorneys fees provision in the rule will only make cases harder to settle and prolong litigation.

Posted by Bob Wilde October 20, 2005 03:54 PM

I agree with Mr. Wilde's comments on proposed rule 68.

Why should a party who has a valid claim and who rejects an offer of, say, $10,000 be liable to pay the wrongdoer's attorney's fees (which could easily exceed his damages) if he happens to get a penurious jury that only awards him $9,999?

Litigation is uncertain enough as it is. If a party who rejects what he considers an inadequate offer of settlement puts himself at risk to pay the other side's attorney's fees (in addition to court costs), that will only increase the pressure on him to accept an unreasonable settlement offer, which in turn will encourage opposing parties to make unreasonable offers because they have nothing to lose and everything to gain.

That imbalance could be corrected if the party who made the offer could be liable for the offeree's attorney's fees if the offeree does better at trial. But then we would be well on the way to adopting the British (loser pays) rule on attorney's fees, which this country has long rejected, for good reasons.

At a minimum, the court should give the proposed rule a chance to work before taking such a drastic measure as to shift responsibility for a party's attorney's fees to his opponent.

Posted by Paul M. Simmons December 2, 2005 02:14 PM

URCP 71B; URCP 4

This comment goes to the proposed elimination of 71B and the changes to Rule 4. The real problem with 71B is not that parties are being served after the judgment. The due process issue lies in that the rule as written does not provide an avenue for a defendant to object to the contents of the complaint.

The ability to bring a liable party into the lawsuit after judgment, as opposed to starting a new lawsuit, promotes efficiency in the courts. If a plaintiff is forced to begin a new lawsuit each time, this will increase the number of cases in the courts. Additionally, because the new party would have all of the same defenses available, whether she was served pre or post judgment, there is no prejudice to the new party if they are served post-judgment.

The remedy is to have the new party served with a traditional 20-Day summons. This can still be accomplished by eliminating 71B, but by altering the proposed Rule 4 changes to allow service post judgment to additional defendants, as long as one of the defendants was served within 120 days of filing the complaint.

Posted by Chip Shaner November 29, 2005 03:27 PM

Analysis of comments

URCP 6.

Ms. Adams is correct in her analysis. The justification for allowing an additional three days to take an action if notice of that action is sent by mail is to allow time for the mail to be delivered. The committee's reasoning in allowing an additional three days if notice is sent electronically, is to encourage use of electronic transactions. Also, FRCP 6 was recently amended to allow an additional three days if notice is sent electronically.

URCP 62

Judge Westfall argues that a judgment may be less than final if a party has to request the right to enforce it immediately. He recommends that the current rule not be amended. The purpose of the amendment is to permit a reasonable time in which the losing party can decide whether to apply for a stay without incurring the costs of execution. Under the current rule, the costs of execution interrupted by a stay will have to be paid – either by the debtor or creditor. In either event, if the execution is ultimately stayed, it is a process with no purpose.

URCP 68

I wrote the amendment summary when the committee was considering an amendment that would include expert witness fees and deposition recording fees as part of court costs. The committee eventually abandoned that approach, but the published summary retained it. I rewrote the summary when the mistake was pointed out.

The remaining comments discussed the advisability of including attorney fees within the scope of Rule 68. The score (including Ms. Adam's one sentence): 4 to 2 in favor of inclusion.

URCP 71B; URCP 4

Mr. Shaner recommends that Rule 71B be repealed, but that Rule 4 be amended to permit service on additional parties after the judgment, as long as at least one of the defendants was served within 120 days of the original complaint. Presumably the action against the post-judgment defendants would proceed in the normal course. Under the committee's proposal, service on the added defendants would have to be before trial, as traditionally has been the case. Mr. Shaner's recommendation would save the plaintiff the fee for filing a new case against a post-judgment defendant. Since the process is largely the same either way, the efficiency he claims is probably not to be found.

Encl. Rule 4
Rule 6
Rule 62
Rule 64C
Rule 68
Rule 71A
Rule 71B

Rule 4. Process.

(a) Signing of summons. The summons shall be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and served.

(b)(i) Time of service. In an action commenced under Rule 3(a)(1), the summons together with a copy of the complaint shall be served no later than 120 days after the filing of the complaint unless the court allows a longer period of time for good cause shown. If the summons and complaint are not timely served, the action shall be dismissed, without prejudice on application of any party or upon the court's own initiative.

(b)(ii) In any action brought against two or more defendants on which service has been timely obtained upon one of them ~~within the 120 days or such longer period as may be allowed by the court~~,

(b)(ii)(A) the plaintiff may proceed against those served, and

(b)(ii)(B) the ~~other or~~ others may be served or appear at any time prior to trial.

(c) Contents of summons.

(c)(1) The summons shall contain the name of the court, the address of the court, the names of the parties to the action, and the county in which it is brought. It shall be directed to the defendant, state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It shall state the time within which the defendant is required to answer the complaint in writing, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant. It shall state either that the complaint is on file with the court or that the complaint will be filed with the court within ten days of service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons shall state that the defendant need not answer if the complaint is not filed within 10 days after service and shall state the telephone number of the clerk of the court where the defendant may call at least 13 days after service to determine if the complaint has been filed.

(c)(3) If service is made by publication, the summons shall briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Method of Service. Unless waived in writing, service of the summons and complaint shall be by one of the following methods:

(d)(1) Personal service. The summons and complaint may be served in any state or judicial district of the United States by the sheriff or constable or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof. Personal service shall be made as follows:

(d)(1)(A) Upon any individual other than one covered by subparagraphs (B), (C) or (D) below, by delivering a copy of the summons and the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing, or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process;

(d)(1)(B) Upon an infant (being a person under 14 years) by delivering a copy of the summons and the complaint to the infant and also to the infant's father, mother or guardian or, if none can be found within the state, then to any person having the care and control of the infant, or with whom the infant resides, or in whose service the infant is employed;

(d)(1)(C) Upon an individual judicially declared to be of unsound mind or incapable of conducting the person’s own affairs, by delivering a copy of the summons and the complaint to the person and to the person's legal representative if one has been appointed and in the absence of such representative, to the individual, if any, who has care, custody or control of the person;

(d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and the complaint to the person who has the care, custody, or control of the individual to be served, or to that person's designee or to the guardian or conservator of the individual to be served if one has been appointed, who shall, in any case, promptly deliver the process to the individual served;

(d)(1)(E) Upon any corporation not herein otherwise provided for, upon a partnership or upon an unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy of the summons and the complaint to the defendant. If no such officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, an office or place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of such office or place of business;

(d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and the complaint to the recorder;

(d)(1)(G) Upon a county, by delivering a copy of the summons and the complaint to the county clerk of such county;

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and the complaint to the superintendent or business administrator of the board;

(d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and the complaint to the president or secretary of its board;

(d)(1)(J) Upon the state of Utah, in such cases as by law are authorized to be brought against the state, by delivering a copy of the summons and the complaint to the attorney general and any other person or agency required by statute to be served; and

(d)(1)(K) Upon a department or agency of the state of Utah, or upon any public board, commission or body, subject to suit, by delivering a copy of the summons and the complaint to any member of its governing board, or to its executive employee or secretary.

(d)(2) Service by mail or commercial courier service.

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(d)(2)(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(d)(3) Service in a foreign country. Service in a foreign country shall be made as follows:

(d)(3)(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(d)(3)(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(d)(3)(B)(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(d)(3)(B)(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(d)(3)(B)(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the summons and the complaint or by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(d)(3)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(4) Other service.

(d)(4)(A) Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit requesting an order allowing service by publication or by some other means. The supporting affidavit shall

set forth the efforts made to identify, locate or serve the party to be served, or the circumstances which make it impracticable to serve all of the individual parties.

(d)(4)(B) If the motion is granted, the court shall order service of process by publication or by other means, provided that the means of notice employed shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court's order shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. Unless service is by publication, a copy of the court's order shall be served upon the defendant with the process specified by the court.

(d)(4)(C) In any proceeding where summons is required to be published, the court shall, upon the request of the party applying for publication, designate the newspaper in which publication shall be made. The newspaper selected shall be a newspaper of general circulation in the county where such publication is required to be made and shall be published in the English language.

(e) Proof of Service.

(e)(1) If service is not waived, the person effecting service shall file proof with the court. The proof of service must state the date, place, and manner of service. Proof of service made pursuant to paragraph (d)(2) shall include a receipt signed by the defendant or defendant’s agent authorized by appointment or by law to receive service of process. If service is made by a person other than by an attorney, the sheriff or constable, or by the deputy of either, by a United States Marshal or by the marshal's deputy, the proof of service shall be made by affidavit.

(e)(2) Proof of service in a foreign country shall be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court. When service is made pursuant to paragraph (d)(3)(C), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(3) Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(f) Waiver of Service; Payment of Costs for Refusing to Waive.

(f)(1) A plaintiff may request a defendant subject to service under paragraph (d) to waive service of a summons. The request shall be mailed or delivered to the person upon whom service is authorized under paragraph (d). It shall include a copy of the complaint, shall allow the defendant at least 20 days from the date on which the request is sent to return the waiver, or 30 days if addressed to a defendant outside of the United States, and shall be substantially in the form of the Notice of Lawsuit and Request for Waiver of Service of Summons set forth in the Appendix of Forms attached to these rules.

(f)(2) A defendant who timely returns a waiver is not required to respond to the complaint until 45 days after the date on which the request for waiver of service was mailed or delivered to the defendant, or 60 days after that date if addressed to a defendant outside of the United States.

(f)(3) A defendant who waives service of a summons does not thereby waive any objection to venue or to the jurisdiction of the court over the defendant.

(f)(4) If a defendant refuses a request for waiver of service submitted in accordance with this rule, the court shall impose upon the defendant the costs subsequently incurred in effecting service.

Rule 6. Time

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time provided under subsection (e), is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action that has been pending before it.

(d) Notice of hearings. Notice of a hearing shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application.

(e) Additional time after service by mail, fax or electronic service. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is

served upon him by ~~mail~~ the means specified in Rule 5 (b)(1)(A)(iv), (v), (vi) or (vii), 3 days shall be added to the end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and legal holidays shall be included in the computation of any 3-day period under this subsection, except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

Rule 62. Stay of proceedings to enforce a judgment.

(a) ~~Stay upon entry of judgment. Execution or other proceedings to enforce a judgment may issue immediately upon the entry of the final judgment,~~ Delay in execution. No execution or other writ to enforce a judgment may issue until the expiration of ten days after entry of judgment, unless the court in its discretion ~~and on such conditions for the security of the adverse party as are proper,~~ otherwise directs.

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

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

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

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

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

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

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

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

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

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

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

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

(j) Amount of supersedeas bond.

(j)(1) Except as provided in subsection (j)(2), a court shall set the supersedeas bond in an amount that adequately protects the judgment creditor against loss or damage occasioned by the appeal and assures payment in the event the judgment is affirmed. In setting the amount, the court may consider any relevant factor, including:

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

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

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

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

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

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

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

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

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

(j)(3) If the court permits a bond that is less than the presumptive amount of compensatory damages, the court may also enter such orders as are necessary to protect the judgment creditor during the appeal.

(j)(4) If the court finds that the judgment debtor has violated an order or has otherwise dissipated assets, the court may set the bond under subsection (j)(1) without regard to the limits in subsection (j)(2).

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

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

Rule 64C. Writ of attachment.

(a) Availability. A writ of attachment is available to seize property in the possession or under the control of the defendant.

(b) Grounds. In addition to the grounds required in Rule 64A, the grounds for a writ of attachment require all of the following:

(b)(1) that the defendant is indebted to the plaintiff;

(b)(2)(i) that the action is upon a contract or is against a defendant who is not a resident of this state or is against a foreign corporation not qualified to do business in this state; or

(b)(2)(ii) the writ is authorized by statute; and

(b)(3) that payment of the claim has not been secured by a lien upon property in this state.

Rule 68. ~~Offer of judgment~~ Settlement offers.

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

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

(c) An offer made under this rule shall:

(c)(1) be in writing;

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

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

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

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

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

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

~~Rule 71A.~~ Rule 71. Process in behalf of and against persons not parties.

When an order is made in favor of a person who is not a party to the action, ~~he~~ that person may enforce obedience to the order by the same process as ~~if he were~~ a party~~;~~ ~~and, when~~. When obedience to an order may be lawfully enforced against a person who is not a party, ~~he~~ that person is liable to the same process for enforcing obedience ~~to the order~~ as ~~if he were~~ a party.

~~Rule 71B. Proceedings where parties not summoned.~~

~~(a) Effect of failure to serve all defendants. Where the action is against two or more defendants and the summons is served on one or more, but not all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.~~

~~(b) Proceedings after judgment against parties not originally served. When a judgment has been recovered against one or more, but not all, of several persons jointly indebted upon an obligation, the plaintiff may require any person not originally served with the summons to appear and show cause why he should not be bound by the judgment in the same manner as though he had been originally served with process.~~

~~(c) Summons and affidavit; contents and service. The plaintiff shall issue a summons, describing the judgment, and requiring the defendant to appear within the time required for appearance in response to an original summons, and show cause why he should not be bound by such judgment. The summons, together with a copy of an affidavit on behalf of the plaintiff to the effect that the judgment, or some part thereof remains unsatisfied, and specifying the amount actually due thereon, shall be served upon the defendant and returned in the same manner as the original summons.~~

~~(d) What constitutes the pleadings. The pleadings shall consist of plaintiff's affidavit, the summons, and the answer of the defendant, if any; provided that if defendant denies his liability on the obligation upon which the judgment was originally recovered, a copy of the original complaint and judgment shall be included.~~

~~(e) Hearing; judgment. The matter may be tried as other cases; but if the issues are found against the defendant, the judgment shall not exceed the amount of the original judgment remaining unsatisfied, with interest and costs.~~

Rule 45. Subpoena.

(a) Form; issuance.

(a)(1) Every subpoena shall:

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

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

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

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

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

(a)(1)(C)(iii) to copy documents in the possession, custody or control of that person and mail the copies to the party or attorney issuing the subpoena before a date certain, or

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

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

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

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

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

(b) Service; ~~scope~~ fees; prior notice.

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

~~(b)(1)(A)~~ A subpoena may be served by any person who is at least 18 years of age and not a party ~~and is not less than 18 years of age~~ to the case. Service of a subpoena upon ~~a~~ the person ~~named therein~~ to whom it is directed shall be made as provided in Rule 4(d) ~~for the service of process and, if the~~.

(b)(2) If the subpoena commands a person's appearance, ~~is commanded, by tendering to that person~~ the party or attorney issuing the subpoena shall tender with the subpoena the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States, or this state, or any officer or agency of either, fees and mileage need not be tendered in advance.

(b)(3) ~~Prior notice of any commanded production or inspection of documents or tangible things or~~ If the subpoena commands a person to copy and mail documents, to produce documents or tangible things for inspection and copying, or to permit inspection of premises, ~~before trial shall be served~~ the party or attorney issuing the subpoena shall serve prior notice on each party in the manner prescribed by Rule 5(b) at least seven days before the subpoena is served on the person to whom it is directed.

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

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

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

~~(b)(3) Subpoena for taking deposition.~~ (c) Appearance; resident; non-resident.

~~(b)(3)(A)~~ (c)(1) A person who resides in this state may be required to appear:

(c)(1)(A) at a trial or hearing in the county in which the case is pending; and

(c)(1)(B) at a deposition, or to produce documents or things, or to permit inspection of premises only in the county ~~where~~ in which the person resides, ~~or~~ is employed, or transacts business in person, or at such other place as the court may order.

(c)(2) A person who does not reside in this state but who is served within this state may be required to appear:

(c)(2)(A) at a trial or hearing in the county in which the case is pending; and

(c)(2)(B) at a deposition, or to produce documents or things, or to permit inspection of premises only in the county ~~in this state where~~ in which the person is served ~~with a subpoena,~~ or at such other place as the court may order.

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

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

~~(c)~~ (e) Protection of persons subject to subpoenas; objection.

~~(c)(1) A~~ (e)(1) The party or ~~an~~ attorney ~~responsible for the issuance and service of~~ issuing a subpoena shall take reasonable steps to avoid imposing an undue burden or

expense on ~~a~~ the person subject to ~~that~~ the subpoena. The court ~~from which the subpoena was issued~~ shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

~~(c)(2)(A)~~ (e)(2) A subpoena ~~served upon a person who is not a party~~ to copy and mail documents, to produce ~~or to permit inspection and copying of~~ documents or tangible things for inspection and copying, or to permit inspection of premises~~, whether or not joined with a command to appear at trial, or at hearing, or at deposition, must allow the person at least 14 days after service to comply, unless a shorter time has been ordered by the court for good cause shown~~ shall comply with Rule 34(a) and (b)(1), except that the person subject to the subpoena must be allowed at least 14 days after service to comply.

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

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

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

(e)(3)(B) requires a resident of this state to appear at other than a trial or hearing in a county in which the person does not reside, is not employed, or does not transact business in person;

(e)(3)(C) requires a non-resident of this state to appear at other than a trial or hearing in a county other than the county in which the person was served;

(e)(3)(D) requires the person to disclose privileged or other protected matter and no exception or waiver applies;

(e)(3)(E) requires the person to disclose a trade secret or other confidential research, development, or commercial information;

(e)(3)(F) subjects the person to an undue burden; or

(e)(3)(G) requires the person to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study that was not made at the request of a party.

(e)(4)(A) If the person subject to the subpoena objects, the objection must be made before the date for compliance.

(e)(4)(B) The person subject to the subpoena shall state the objection in a concise, non-conclusory manner. If the objection is that the information commanded by the subpoena is privileged or protected and no exception or waiver applies, or requires the person to disclose a trade secret or other confidential research, development, or commercial information, the objection shall sufficiently describe the nature of the documents, communications, or things not produced to enable the party or attorney issuing the subpoena to contest the objection.

(e)(4)(C) The person shall serve the objection on the party or attorney issuing the subpoena. The party or attorney issuing the subpoena shall serve a copy of the objection on the other parties.

(e)(5) If objection is made, the party ~~serving~~ or attorney issuing the subpoena ~~shall~~ is not ~~be~~ entitled to ~~inspect and copy the materials or inspect the premises except pursuant to an order of the court. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce,~~ compliance but may move ~~at any time~~ for an order to compel ~~the production~~ compliance. The motion shall be served on the other parties and on the person subject to the subpoena. ~~Such an~~ An order to compel ~~production~~ compliance shall protect ~~any~~ the person ~~who is not a party or an officer of a party~~ subject to the subpoena from significant expense ~~resulting from the inspection and copying commanded~~ or harm. The court may quash or modify the subpoena. If the party or attorney issuing the subpoena shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions.

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

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

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

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

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

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

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

~~(c)(3)(B)(ii) requires disclosure of 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;~~

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

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

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

~~(d)~~ (f) Duties in responding to subpoena.

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

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

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

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

(f)(1)(D) the reasonable cost of copying or producing the documents or tangible things.

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

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

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

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

~~(g)~~ (i) Procedure when witness is confined in jail. If the witness is a prisoner ~~confined in a jail or prison within the state~~, a party may move for an order ~~for examination~~ to examine the witness in the jail or prison ~~upon deposition or, in the discretion of the court, for temporary removal and production~~ or to produce the witness before the court or officer for the purpose of being orally examined~~, may be made upon motion, with or~~

~~without notice, by a justice of the Supreme Court, or by the district court of the county in which the action is pending~~.

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

Attorney Name
Address
Email Address
Telephone Number
Bar Number

In the District Court of the State of Utah
_____ Judicial District
_____ County
_____
(Address)

_____, Plaintiff, v. _____, Defendant.	Subpoena Case Number: _____ Judge : _____

To _____:

(1) [ ] You are commanded to appear at:
_____(date)
_____(time)
_____(place)

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

_____

_____

_____

(2) [ ] You are commanded to copy the following documents and to mail or deliver the copies to the person at the address at the top of this page. You must comply no later than _____(date).

3. A form entitled “Notice to Persons Served with a Subpoena” must be served with this subpoena. The form explains your rights and obligations. 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 for one of the reasons listed in paragraph 6 of the Notice by serving a written objection upon the attorney listed at the top of this subpoena. You must comply with any part of the subpoena to which you do not object.

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, deposition, or other place, 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 in advance.

(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:

(A) that you have knowledge of the facts contained in the declaration;
(B) that the documents produced are a full and complete response to the subpoena;
(C) that originals or true copies of the original documents have been produced; and
(D) the reasonable cost of copying the documents.

A form declaration is part of this Notice; you may need to modify it to fit your circumstances.

(3) Subpoena to appear. If the subpoena commands you to appear at a trial, hearing, deposition, or for inspection of premises, 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 or inspection of premises, you can be commanded to appear in only the following counties:

(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.

(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 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. The subpoena may require you to produce the documents at the trial, hearing, or deposition or to mail them to the issuing party or attorney. You need not make copies. The party issuing the subpoena must pay the reasonable cost of copying and 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:

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

A form declaration is part of this Notice; you may need to modify it to fit your circumstances.

(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:

(A) fails to allow you a reasonable time for compliance, which must be at least 14 days;
(B) requires you, as a resident of Utah, to appear at a deposition in a county in which you do not reside, are not employed, or do not transact business in person;

(C) requires you, as a non-resident of Utah, to appear at a deposition in a county other than the county in which you were served, unless the judge orders otherwise;
(D) requires you to disclose privileged or other protected matter and no exception or waiver applies;
(E) requires you to disclose a trade secret or other confidential research, development, or commercial information;
(F) subjects you to an undue burden; or
(G) 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 that was not made at the request of a party.

(7) How to object. To object to the subpoena, serve the objection upon the party or attorney issuing the subpoena. The name and address of that person should appear in the upper left corner of the subpoena. You must do this before the date for compliance. A form objection is part 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 issuing the subpoena might serve you with a motion for an order to compel you to comply and notice of a court hearing. That motion will be reviewed by a judge. You have the right to file a response to the motion, to attend the hearing, and to be heard. You may be represented by a lawyer. If the judge grants the motion, you may ask the judge to impose conditions to protect you.

(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)

_____, Plaintiff, v. _____, Defendant.	Objection to subpoena Case Number: _____ Judge : _____

Instructions: URCP 45 limits the grounds for an objection. For each of the grounds other than (2) or (3) please provide a full explanation. Attach 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 in which to comply.

_____

_____

_____

[.] (2) Requires me, as a resident of Utah, to appear at a deposition in a county in which I do not reside, am not employed, and do not transact business in person.

[.] (3) Requires me, as a non-resident of Utah, to appear at a deposition in a county other than the county in which I was served.

[.] (4) Requires me to disclose privileged or other protected matter and no exception or waiver applies.

_____

_____

_____

Instructions for (4): If you object to the subpoena for these grounds, you must describe the nature of the document or thing with sufficient specificity to enable the party or attorney to contest your objection.

[.] (5) Requires me to disclose a trade secret or other confidential research, development, or commercial information.

_____

_____

_____

Instructions for (5): If you object to the subpoena for these grounds, you must describe the nature of the document or thing with sufficient specificity to enable the party or attorney to contest your objection.

[.] (6) Subjects me to an undue burden.

_____

_____

_____

[.] (7) 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 that was not made at the request of a party.

_____

_____

_____

[.] (8) Other.

_____

_____

_____

On _____(date) I mailed this objection to the party or attorney issuing the subpoena at the following address:

_____

_____

_____

_____ _____

Date

Signature
[ ] Person subject to subpoena
[ ] Attorney for person subject to subpoena

In the District Court of the State of Utah
_____ Judicial District
_____ County
_____
(Address)

_____, Plaintiff, v. _____, Defendant.	Declaration of compliance with subpoena Case Number: _____ Judge : _____

Under penalty of perjury, I declare as follows:

(1) I have knowledge of the facts contained in this declaration.

(2) The documents or tangible things copied or produced are a full and complete response to the subpoena.

(3) The documents or tangible things are
[ ] the originals.
[ ] copies that are true copies of the originals.

(4) The reasonable cost of copying or producing the documents or tangible things is $_____.

Date	Signature [ ] Custodian of the records [ ] Attorney for the custodian of the records

Administrative Office of the Courts

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

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

MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: January 18, 2006
Re: Rule 7(f)(2)

The Supreme Court has asked us to consider whether an amendment to URCP 7(f)(2) might clarify the finality of a judicial decision when the decision is not followed by an order prepared by the prevailing party. The attached memo explains the circumstances.

The rules include the following definitions:

Rule 7(f)(1). "An order includes every direction of the court, including a minute order entered in writing, not included in a judgment."

Rule 54(a). "'Judgment' as used in these rules includes a decree and any order from which an appeal lies."

Rule 58A(c). "A judgment is complete and shall be deemed entered for all purposes, except the creation of a lien on real property, when the same is signed and filed as herein above provided. The clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket."

An unsigned minute entry not susceptible of enforcement does not constitute a final, appealable order. *Utah State Tax Comm'n v. Erekson*, 714 P.2d 1151, 1152 (Utah 1986) A signed minute entry that is susceptible of enforcement may constitute a final, appealable order. *Id*., citing *Dove v. Cude*, 710 P.2d 170, 171 (Utah 1985). Therefore the signed minute entry is a judgment. URCP 54(a). Therefore, it is complete when signed and filed. URCP 58A(c). Whether a minute entry is susceptible of enforcement will always be an arguable point, but not relevant to this discussion.

Within its context (motions), Rule 7(f)(2) does not seem to address the finality of a decision, but rather what is expected of the prevailing party after the judge reaches a decision. If that decision is supposed to resolve the case and the judge expects a written order to follow, there is no need to sign the minute entry. If the judge does not anticipate an order to follow the decision, then the judge can sign the minute entry. This

scenario is almost certainly covered by Rule 7(f)(2) within the scope of the phrase "unless otherwise directed by the court." But if there is any confusion, we might amend the rule to expressly recognize the scenario:

(f)(2) Unless the court signs a minute entry or approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.

Encl. Memo from Matty Branch

M E M O

TO: Fran Wikstrom

FROM: Matty Branch MB

DATE: November 8, 2005

RE: Referral to Supreme Court's Advisory Committee on the Rules of Civil Procedure

A petition for writ of certiorari recently reviewed by the Supreme Court raised the issue of whether the Rules of Civil Procedure precluded a signed minute entry denying a motion for new trial from becoming final until a proposed order complying with the dictates of rule 7 (f)(2) is submitted and signed by the district court. The court declined to grant certiorari but asked me to refer the issue to the Civil Procedure Advisory Committee to determine whether some clarification to the rule might be advisable. The following facts hopefully will provide the committee with some context as to the issue.

A party filed a motion for new trial contesting the denial of attorney fees as part of the final judgment. The district court denied the motion by signed minute entry. The party filed a notice of appeal thirty-one days later. The opposing party moved to dismiss on the ground that the notice of appeal was late. The Court of Appeals agreed and dismissed the appeal finding that the minute entry was a final order which began the running of time for filing a notice of appeal. Appellant's counsel argued that if the provisions of rule 7 (f)(2) were applicable, the minute entry could not be a final order because further action was required under rule 7 (f)(2).

Although rule 7 (f)(2) appears to focus on the obligations of a prevailing party for orally announced rulings rather than defining the finality of orders or judgements, clarification might be warranted. Thank you for your assistance with this request.

cc: Tim Shea

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MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: January 18, 2006
Re: Court forms

The Board of District Court Judges has asked me to present to the committee their request to exempt court-approved forms from the formatting requirements of URCP 10(d).

The courts are approving many more forms than in the past. We will always focus on convenient readability, (That is, after all, the purpose of Rule 10(d).) and we will comply with the formatting requirements if possible. But there will be some forms in which the formatting, while readable, does not follow the rule. For example, a 2" top margin accommodates readability in thick files because the clerks bind the papers on the top. Most of the forms are in cases that do not generate thick files. Double spacing between single-spaced paragraphs (such as this memo) is easily read. (Single spacing after periods and colons notwithstanding.)

There may be amendments that would better accommodate lawyers as well as court forms, but a simple exception will serve the Board's needs.

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