

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

2 **(a) Service:—When service is required.**

3 **(a)(1) Papers that must be served.** Except as otherwise provided in these rules or as otherwise  
4 directed by the court, the following papers must be served on every party:

5 (a)(1)(A) every a judgment;

6 (a)(1)(B) every an order required by its terms to that states it must be served;

7 (a)(1)(C) every a pleading subsequent to after the original complaint;

8 (a)(1)(D) every a paper relating to disclosure or discovery;

9 (a)(1)(E) every written motion a paper filed with the court other than one a motion that may be  
10 heard ex parte; and

11 (a)(1)(F) every a written notice, appearance, demand, offer of judgment, and or similar paper  
12 shall be served upon each of the parties.

13 **(a)(2) Serving parties in default.** No service ~~need be made on parties~~ is required on a party who  
14 is in default except that:

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

16 (a)(2)(B) a party in default for any reason other than for failure to appear shall must be served  
17 with all pleadings and papers as provided in paragraph (a)(1);

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

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

22 (a)(2)(E) pleadings asserting new or additional claims for relief against a party in default for  
23 any reason shall must be served in the manner provided for service of summons in under Rule 4  
24 with pleadings asserting new or additional claims for relief against the party.

25 **(a)(3) Service in actions begun by seizing property.** ~~In~~ If an action is begun by seizure of  
26 seizing property, in which and no person is or need be named as defendant, any service required to  
27 be made prior to before the filing of an answer, claim or appearance shall must be made upon the  
28 person having who had custody or possession of the property at the time of its seizure when it was  
29 seized.

30 **(b) Service:—How service is made.**

31 **(b)(1) Whom to serve.** If a party is represented by an attorney, ~~service shall be made a paper~~  
32 servd under this rule must be served upon the attorney unless the court orders service upon the  
33 party is ordered by the court. If an attorney has filed a Notice of Limited Appearance under Rule 75  
34 and the papers being served relate to a matter within the scope of the Notice, service shall Service  
35 must be made upon the attorney and the party if

36 (b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers  
37 being served relate to a matter within the scope of the Notice; or

38 (b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed  
 39 from the date a paper was last served on the attorney.

40 ~~(b)(1)(A)-(b)(2) When to serve.~~ If a hearing is scheduled ~~5~~ 7 days or less from the date of  
 41 service, ~~the a party shall use the method must serve a paper related to the hearing by the method~~  
 42 ~~most likely to give prompt actual notice of the hearing be promptly received.~~ Otherwise, ~~a party shall~~  
 43 ~~serve a paper under this rule: a paper that is filed with the court must be served before or on the same~~  
 44 ~~day that it is filed.~~

45 **(b)(3) Methods of service.** A paper is served under this rule by:

46 ~~(b)(1)(A)(i) upon any person with an electronic filing account who is a party or attorney in the~~  
 47 ~~case by (b)(3)(A) submitting the paper it for electronic filing if the person being served has an~~  
 48 ~~electronic filing account;~~

49 ~~(b)(1)(A)(ii) by sending it by email to the person's last known email address (b)(3)(B) emailing~~  
 50 ~~it to the email address provided by the person or to the email address on file with the Utah State~~  
 51 ~~Bar, if that the person has agreed to accept service by email or has an electronic filing account;~~

52 ~~(b)(1)(A)(iii) by faxing it to the person's last known fax number if that person has agreed to~~  
 53 ~~accept service by fax;~~

54 ~~(b)(1)(A)(iv) by (b)(3)(C) mailing it to the person's last known address;~~

55 ~~(b)(1)(A)(v) by (b)(3)(D) handing it to the person;~~

56 ~~(b)(1)(A)(vi) by (b)(3)(E) leaving it at the person's office with a person in charge or, if no one is~~  
 57 ~~in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place; or~~

58 ~~(b)(1)(A)(vii) by (b)(3)(F) leaving it at the person's dwelling house or usual place of abode with~~  
 59 ~~a person of suitable age and discretion then residing therein who resides there; or~~

60 ~~(b)(3)(G) any other method agreed to in writing by the parties.~~

61 ~~(b)(1)(B)-(b)(4) When service is effective.~~ Service by mail, ~~email or fax~~ or electronic means is  
 62 complete upon sending. ~~Service by electronic means is not effective if the party making service learns~~  
 63 ~~that the attempted service did not reach the person to be served.~~

64 ~~(b)(2)-(b)(5) Who serves.~~ Unless otherwise directed by the court:

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

67 ~~(b)(2)(B)-(b)(5)(A) every other pleading or paper required by this rule to be served shall must~~  
 68 ~~be served by the party preparing it; and~~

69 ~~(b)(2)(C)-(b)(5)(B) an order or judgment prepared by the court shall will be served by the~~  
 70 ~~court.~~

71 **(c) Service: N Serving numerous defendants.** ~~In any~~ If an action in which there is involves an  
 72 unusually large number of defendants, the court, upon motion or of its own initiative, may order that:

73 (c)(1) service of the a defendant's pleadings of the defendants and replies thereto need not be made  
 74 as between to them do not need to be served on the other defendants; and that

75 ~~(c)(2) any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense~~  
76 ~~contained therein shall be in a defendant's pleadings and replies to them are deemed to be denied or~~  
77 ~~avoided by all other parties; and that the~~

78 ~~(c)(3) filing of any such a defendant's pleadings and service thereof upon serving them on the plaintiff~~  
79 ~~constitutes notice of it them to the all other parties; and~~

80 ~~(c)(4) A a copy of every such the order shall must be served upon the parties in such manner and~~  
81 ~~form as the court directs.~~

82 ~~(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the~~  
83 ~~court either before or within a reasonable time after service.~~

84 ~~(e) Filing with the court defined. A party may file with the clerk of court using any means of delivery~~  
85 ~~permitted by the court. The court may require parties to file electronically with an electronic filing account.~~  
86 ~~Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the~~  
87 ~~judge. The filing date shall be noted on the paper.~~

88 ~~(f)(d) Certificate of service. Every pleading, order or A paper required by this rule to be served,~~  
89 ~~including electronically filed papers, shall must include a signed certificate of service showing the name of~~  
90 ~~the document served, the date and manner of service and on whom it was served.~~

91 ~~(e) Filing. Except as provided in Rule 7(f) and Rule 26(f), all papers after the complaint that are~~  
92 ~~required to be served must be filed with the court. Parties with an electronic filing account must file a~~  
93 ~~paper electronically. A party without an electronic filing account may file a paper by delivering it to the~~  
94 ~~clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the~~  
95 ~~electronic filing system, the clerk of court or the judge.~~

96 ~~(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:~~

97 ~~(f)(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah~~  
98 ~~Code Section 46-1-16(7);~~

99 ~~(f)(2) electronically file a scanned image of the affidavit or declaration;~~

100 ~~(f)(3) electronically file the affidavit or declaration with a conformed signature; or~~

101 ~~(f)(4) if the filer does not have an electronic filing account, present the original affidavit or~~  
102 ~~declaration to the clerk of the court, and the clerk will electronically file a scanned image and return~~  
103 ~~the original to the filer.~~

104 ~~The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for~~  
105 ~~inspection upon request until the action is concluded, including any appeal or until the time in which to~~  
106 ~~appeal has expired.~~

107 ~~(g) Service by the court. The court may serve papers by email on a party to the email address~~  
108 ~~provided by the party or on an attorney to the email address on file with the Utah State Bar.~~

#### 109 Advisory Committee Notes

110 Rule 5(d) is amended to give the trial court the option, either on an ad hoc basis or by local rule, of  
111 ordering that discovery papers, depositions, written interrogatories, document requests, requests for

112 ~~admission, and answers and responses need not be filed unless required for specific use in the case. The~~  
113 ~~committee is of the view that a local rule of the district courts on the subject should be encouraged.~~

114 The 1999 amendment to subdivision (b)(1)(B) does not authorize the court to conduct a hearing with  
115 less than 5 days notice, but rather specifies the manner of service of the notice when the court otherwise  
116 has that authority.

117 2001 amendments

118 Paragraph (b)(1)(A) has been changed to allow service by means other than U.S. Mail and hand  
119 delivery if consented to in writing by the person to be served, i.e. the attorney of the party. Electronic  
120 means include facsimile transmission, e-mail and other possible electronic means.

121 While it is not necessary to file the written consent with the court, it would be advisable to have the  
122 consent in the form of a stipulation suitable for filing and to file it with the court.

123 ~~Paragraph (b)(1)(B) establishes when service by electronic means, if consented to in writing, is~~  
124 ~~complete. The term "normal business hours" is intended to mean 8:00 a.m. to 5:00 p.m. Monday through~~  
125 ~~Friday, excluding legal holidays. If a fax or e-mail is received after 5:00 p.m., the service is deemed~~  
126 ~~complete on the next business day.~~

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