

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  
4 or as otherwise directed by the court, the following papers must be served on every  
5 party:

6 (a)(1)(A) ~~every a~~ judgment;<sub>i</sub>

7 (a)(1)(B) ~~every an~~ order required by its terms to ~~that states it must~~ be served;<sub>i</sub>

8 (a)(1)(C) ~~every a~~ pleading subsequent to ~~after~~ the original complaint;<sub>i</sub>

9 (a)(1)(D) ~~every a~~ paper relating to disclosure or discovery;<sub>i</sub>

10 (a)(1)(E) ~~every written motion a~~ paper filed with the court other than ~~one a~~  
11 motion that may be heard ex parte;<sub>i</sub> and

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

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

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

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

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

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

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

28 (a)(3) **Service in actions begun by seizing property.** ~~If~~ an action is begun by  
29 seizure of seizing property, in which and no person is or need be named as  
30 defendant, any service required ~~to be made prior to~~ before the filing of an answer,

31 claim or appearance shall must be made upon the person ~~having~~ who had custody  
32 or possession of the property ~~at the time of its seizure~~ when it was seized.

33 (b) ~~Service:~~ How service is made.

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

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

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

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

49 (b)(3) Methods of service. A paper served under this rule may be served by:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114 ~~(f)(4) if the filer does not have an e-filing account, present the original affidavit or~~  
115 ~~declaration to the clerk of the court, and the clerk will electronically file a scanned image~~  
116 ~~and return the original to the filer.~~

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

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

123 Advisory Committee Notes

124 ~~Rule 5(d) is amended to give the trial court the option, either on an ad hoc basis or~~  
125 ~~by local rule, of ordering that discovery papers, depositions, written interrogatories,~~  
126 ~~document requests, requests for admission, and answers and responses need not be~~  
127 ~~filed unless required for specific use in the case. The committee is of the view that a~~  
128 ~~local rule of the district courts on the subject should be encouraged.~~

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

132 2001 amendments

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

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

140 ~~Paragraph (b)(1)(B) establishes when service by electronic means, if consented to in~~  
141 ~~writing, is complete. The term "normal business hours" is intended to mean 8:00 a.m. to~~  
142 ~~5:00 p.m. Monday through Friday, excluding legal holidays. If a fax or e-mail is received~~  
143 ~~after 5:00 p.m., the service is deemed complete on the next business day.~~

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