

IN THE SUPREME COURT OF THE STATE OF UTAH

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FILED
UTAH APPELLATE COURTS

MAY 15 2015

In re: Proposed Amendments
to Rules 5, 7, 54, 56, and 58A
of the UTAH RULES OF CIVIL PROCEDURE

ORDER

IT IS HEREBY ORDERED that the proposed amendments to Rules 5, 7, 54, 56, and 58A of the Utah Rules of Civil Procedure are adopted and promulgated effective November 1, 2015.

FOR THE COURT:

5-12-15

Date



Matthew B. Durrant
Chief Justice

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.** ~~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 ~~served 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
59 with 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~~ 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.~~

127

1 **Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.**

2 **(a) Pleadings. Only these pleadings are allowed:**

3 (a)(1) a complaint;

4 (a)(2) an answer to a complaint;

5 (a)(3) an answer to a counterclaim designated as a counterclaim;

6 (a)(4) an answer to a crossclaim;

7 (a)(5) a third-party complaint;

8 (a)(6) an answer to a third-party complaint; and

9 (a)(7) a reply to an answer if ordered by the court.

10 **(b) Motions. A request for an order must be made by motion. The motion must be in writing unless**
11 **made during a hearing or trial, must state the relief requested, and must state the grounds for the relief**
12 **requested. Except for the following, a motion must be made in accordance with this rule.**

13 (b)(1) A motion, other than a motion described in paragraphs (b)(2), (b)(3) or (b)(4), made in
14 proceedings before a court commissioner must follow Rule 101.

15 (b)(2) A request under Rule 26 for extraordinary discovery must follow Rule 37(a).

16 (b)(3) A request under Rule 37 for a protective order or for an order compelling disclosure or
17 discovery—but not a motion for sanctions—must follow Rule 37(a).

18 (b)(4) A request under Rule 45 to quash a subpoena must follow Rule 37(a).

19 (b)(5) A motion for summary judgment must follow the procedures of this rule as supplemented
20 by the requirements of Rule 56.

21 **(c) Name and content of motion.**

22 (c)(1) The rules governing captions and other matters of form in pleadings apply to motions and
23 other papers. The moving party must title the motion substantially as: "Motion [short phrase
24 describing the relief requested]." The motion must include the supporting memorandum. The motion
25 must include under appropriate headings and in the following order:

26 (c)(1)(A) a concise statement of the relief requested and the grounds for the relief requested;
27 and

28 (c)(1)(B) one or more sections that include a concise statement of the relevant facts claimed
29 by the moving party and argument citing authority for the relief requested.

30 (c)(2) If the moving party cites documents, interrogatory answers, deposition testimony, or other
31 discovery materials, relevant portions of those materials must be attached to or submitted with the
32 motion.

33 (c)(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the motion
34 may not exceed 25 pages, not counting the attachments, unless a longer motion is permitted by the
35 court. Other motions may not exceed 15 pages, not counting the attachments, unless a longer motion
36 is permitted by the court.

37 **(d) Name and content of memorandum opposing the motion.**

38 (d)(1) A nonmoving party may file a memorandum opposing the motion within 14 days after the
39 motion is filed. The nonmoving party must title the memorandum substantially as: “Memorandum
40 opposing motion [short phrase describing the relief requested].” The memorandum must include
41 under appropriate headings and in the following order:

42 (d)(1)(A) a concise statement of the party’s preferred disposition of the motion and the
43 grounds supporting that disposition;

44 (d)(1)(B) one or more sections that include a concise statement of the relevant facts claimed
45 by the nonmoving party and argument citing authority for that disposition; and

46 (d)(1)(C) objections to evidence in the motion, citing authority for the objection.

47 (d)(2) If the non-moving party cites documents, interrogatory answers, deposition testimony, or
48 other discovery materials, relevant portions of those materials must be attached to or submitted with
49 the memorandum.

50 (d)(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the
51 memorandum opposing the motion may not exceed 25 pages, not counting the attachments, unless a
52 longer memorandum is permitted by the court. Other opposing memoranda may not exceed 15
53 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

54 **(e) Name and content of reply memorandum.**

55 (e)(1) Within 7 days after the memorandum opposing the motion is filed, the moving party may file
56 a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum
57 opposing the motion. The moving party must title the memorandum substantially as “Reply
58 memorandum supporting motion [short phrase describing the relief requested].” The memorandum
59 must include under appropriate headings and in the following order:

60 (e)(1)(A) a concise statement of the new matter raised in the memorandum opposing the
61 motion;

62 (e)(1)(B) one or more sections that include a concise statement of the relevant facts claimed
63 by the moving party not previously set forth that respond to the opposing party’s statement of
64 facts and argument citing authority rebutting the new matter;

65 (e)(1)(C) objections to evidence in the memorandum opposing the motion, citing authority for
66 the objection; and

67 (e)(1)(D) response to objections made in the memorandum opposing the motion, citing
68 authority for the response.

69 (e)(2) If the moving party cites documents, interrogatory answers, deposition testimony, or other
70 discovery materials, relevant portions of those materials must be attached to or submitted with the
71 memorandum.

72 (e)(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the reply
73 memorandum may not exceed 15 pages, not counting the attachments, unless a longer

74 memorandum is permitted by the court. Other reply memoranda may not exceed 10 pages, not
75 counting the attachments, unless a longer memorandum is permitted by the court.

76 **(f) Objection to evidence in the reply memorandum; response.** If the reply memorandum includes
77 an objection to evidence, the nonmoving party may file a response to the objection no later than 7 days
78 after the reply memorandum is filed. If the reply memorandum includes evidence not previously set forth,
79 the nonmoving party may file an objection to the evidence no later than 7 days after the reply
80 memorandum is filed, and the moving party may file a response to the objection no later than 7 days after
81 the objection is filed. The objection or response may not be more than 3 pages.

82 **(g) Request to submit for decision.** When briefing is complete or the time for briefing has expired,
83 either party may file a "Request to Submit for Decision, but, if no party files a request, the motion will not
84 be submitted for decision. The request to submit for decision must state whether a hearing has been
85 requested and the dates on which the following documents were filed:

86 (g)(1) the motion;

87 (g)(2) the memorandum opposing the motion, if any;

88 (g)(3) the reply memorandum, if any; and

89 (g)(4) the response to objections in the reply memorandum, if any.

90 **(h) Hearings.** The court may hold a hearing on any motion. A party may request a hearing in the
91 motion, in a memorandum or in the request to submit for decision. A request for hearing must be
92 separately identified in the caption of the document containing the request. The court must grant a
93 request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim
94 or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or
95 the issue has been authoritatively decided.

96 **(i) Notice of supplemental authority.** A party may file notice of citation to significant authority that
97 comes to the party's attention after the party's motion or memorandum has been filed or after oral
98 argument but before decision. The notice may not exceed 2 pages. The notice must state the citation to
99 the authority, the page of the motion or memorandum or the point orally argued to which the authority
100 applies, and the reason the authority is relevant. Any other party may promptly file a response, but the
101 court may act on the motion without waiting for a response. The response may not exceed 2 pages.

102 **(j) Orders.**

103 **(j)(1) Decision complete when signed; entered when recorded.** However designated, the
104 court's decision on a motion is complete when signed by the judge. The decision is entered when
105 recorded in the docket.

106 **(j)(2) Preparing and serving a proposed order.** Within 14 days of being directed by the court to
107 prepare a proposed order confirming the court's decision, a party must serve the proposed order on
108 the other parties for review and approval as to form. If the party directed to prepare a proposed order
109 fails to timely serve the order, any other party may prepare a proposed order confirming the court's
110 decision and serve the proposed order on the other parties for review and approval as to form.

111 **(j)(3) Effect of approval as to form.** A party's approval as to form of a proposed order certifies
112 that the proposed order accurately reflects the court's decision. Approval as to form does not waive
113 objections to the substance of the order.

114 **(j)(4) Objecting to a proposed order.** A party may object to the form of the proposed order by
115 filing an objection within 7 days after the order is served.

116 **(j)(5) Filing proposed order.** The party preparing a proposed order must file it:

117 (j)(5)(A) after all other parties have approved the form of the order (The party preparing the
118 proposed order must indicate the means by which approval was received: in person; by
119 telephone; by signature; by email; etc.);

120 (j)(5)(B) after the time to object to the form of the order has expired (The party preparing the
121 proposed order must also file a certificate of service of the proposed order.); or

122 (j)(5)(C) within 7 days after a party has objected to the form of the order (The party preparing
123 the proposed order may also file a response to the objection.).

124 **(j)(6) Proposed order before decision prohibited; exceptions.** A party may not file a proposed
125 order concurrently with a motion or a memorandum or a request to submit for decision, but a
126 proposed order must be filed with:

127 (j)(6)(A) a stipulated motion;

128 (j)(6)(B) a motion that can be acted on without waiting for a response;

129 (j)(6)(C) an ex parte motion;

130 (j)(6)(D) a statement of discovery issues under Rule 37(a); and

131 (j)(6)(E) the request to submit for decision a motion in which a memorandum opposing the
132 motion has not been filed.

133 **(j)(7) Orders entered without a response; ex parte orders.** An order entered on a motion
134 under paragraph (l) or (m) can be vacated or modified by the judge who made it with or without
135 notice.

136 **(j)(8) Order to pay money.** An order to pay money can be enforced in the same manner as if it
137 were a judgment.

138 **(k) Stipulated motions.** A party seeking relief that has been agreed to by the other parties may file a
139 stipulated motion which must:

140 (k)(1) be titled substantially as: "Stipulated motion [short phrase describing the relief requested];

141 (k)(2) include a concise statement of the relief requested and the grounds for the relief requested;

142 (k)(3) include a signed stipulation in or attached to the motion and;

143 (k)(4) be accompanied by a request to submit for decision and a proposed order that has been
144 approved by the other parties.

145 **(l) Motions that may be acted on without waiting for a response.**

146 (l)(1) The court may act on the following motions without waiting for a response:

147 (l)(1)(A) motion to permit an over-length motion or memorandum;

- 148 (l)(1)(B) motion for an extension of time if filed before the expiration of time;
149 (l)(1)(C) motion to appear pro hac vice; and
150 (l)(1)(E) other similar motions.
- 151 (l)(2) A motion that can be acted on without waiting for a response must:
152 (l)(2)(A) be titled as a regular motion;
153 (l)(2)(B) include a concise statement of the relief requested and the grounds for the relief
154 requested;
155 (l)(2)(C) cite the statute or rule authorizing the motion to be acted on without waiting for a
156 response; and
157 (l)(2)(D) be accompanied by a request to submit for decision and a proposed order.
- 158 **(m) Ex parte motions.** If a statute or rule permits a motion to be filed without serving the motion on
159 the other parties, the party seeking relief may file an ex parte motion which must:
160 (m)(1) be titled substantially as: "Ex parte motion [short phrase describing the relief requested];
161 (m)(2) include a concise statement of the relief requested and the grounds for the relief
162 requested;
163 (m)(3) cite the statute or rule authorizing the ex parte motion;
164 (m)(4) be accompanied by a request to submit for decision and a proposed order.
- 165 **(n) Motion in opposing memorandum or reply memorandum prohibited.** A party may not make a
166 motion in a memorandum opposing a motion or in a reply memorandum. A party who objects to evidence
167 in another party's motion or memorandum may not move to strike that evidence. Instead, the party must
168 include in the subsequent memorandum an objection to the evidence.
- 169 **(o) Overlength motion or memorandum.** The court may permit a party to file an overlength motion
170 or memorandum upon a showing of good cause. An overlength motion or memorandum must include a
171 table of contents and a table of authorities with page references.
- 172 **(p) Limited statement of facts and authority.** No statement of facts and legal authorities beyond
173 the concise statement of the relief requested and the grounds for the relief requested required in
174 paragraph (c) is required for the following motions:
175 (p)(1) motion to allow an over-length motion or memorandum;
176 (p)(2) motion to extend the time to perform an act, if the motion is filed before the time to perform
177 the act has expired;
178 (p)(3) motion to continue a hearing;
179 (p)(4) motion to appoint a guardian ad litem;
180 (p)(5) motion to substitute parties;
181 (p)(6) motion to refer the action to or withdraw it from alternative dispute resolution under Rule 4-
182 510.05;
183 (p)(7) motion for a conference under Rule 16; and
184 (p)(8) motion to approve a stipulation of the parties.

185 **Advisory Committee Notes [Add to existing notes]**

186 The 2015 changes to Rule 7 repeal and reenact the rule. Many of the provisions from the former Rule
 187 7 are preserved in the 2015 version, but there are many changes as well. The committee's intent is to
 188 bring more regularity to motion practice. Some of these features are found in Rule 7-1 of the U.S. District
 189 Court for the District of Utah:

- 190 • integrate the memorandum supporting a motion with the motion itself;
- 191 • describe more uniform motion titles;
- 192 • describe more uniform content in the memoranda;
- 193 • regulate the process for citing supplemental authority;
- 194 • prohibit proposed orders before a decision, except for specified motions;
- 195 • move the special requirements for a motion for summary judgment to Rule 56;
- 196 • allow a limited statement of facts for specified motions;
- 197 • require an objection to evidence, rather than a motion to strike evidence; and
- 198 • require a counter-motion rather than a motion in the opposing memorandum.

199 The 2015 amendments in this rule, as well as in Rule 54 and Rule 58A, respond to the Supreme
 200 Court's directive to the committee in *Central Utah Water Conservancy District v. King*, 2013 UT 13 ¶127. In
 201 that case the Supreme Court directed the committee to address the problem of undue delay when the
 202 parties fail to comply with former Rule 7(f)(2). A major objective of the 2015 amendments is to continue
 203 the policy of clear expectations of the parties established in:

- 204 • *Butler v. Corporation of The President of The Church of Jesus Christ of Latter-Day Saints*,
 205 2014 UT 41
- 206 • *Central Utah Water Conservancy District v. King*, 2013 UT 13;
- 207 • *Giusti v. Sterling Wentworth Corp.*, 2009 UT 2;
- 208 • *Houghton v. Dep't of Health*, 2008 UT 86; and
- 209 • *Code v. Dep't of Health*, 2007 UT 43.

210 However, the 2015 amendments do so in a manner simpler than the "magic words" required under the
 211 former Rule 7(f)(2).

212 In these cases, the Supreme Court established a policy favoring a clear indication of whether a
 213 further document would be required from the parties after a judge's decision. The parties should not be
 214 required to guess what, if anything, should come next.

215 There were three ways to meet the test: a proposed order was submitted with the supporting or
 216 opposing memorandum; an order was prepared at the direction of the judge; the decision included an
 217 express indication that a further order was not required. The 2015 amendments remove a proposed order
 218 from the process in most circumstances. The trend under the former rule was to include in every order an
 219 indication that nothing further was required, sometimes even when the order expressly directed a party to
 220 prepare a further order. In other cases orders were prepared in some manner other than as described in

221 the rule, yet the order did not expressly state that nothing further was required. The order technically was
222 not complete, but everyone proceeded as if it were.

223 The 2015 amendments continue the policy of a bright-line test for a completed decision but do not
224 rely on conditions that might or might not be met. The one condition that can be counted on is the judge's
225 signature. Under the former rule, a completed decision was imposed by operation of law when the order
226 was prepared in one of the recognized ways. The 2015 rule imposes a completed decision by operation
227 of law when the document memorializing the decision is signed. Under the former rule, the judge's silence
228 meant that something further was required, unless the order was prepared in one of the ways described
229 in Rule 7. The presumption in the 2015 amendments is the opposite: silence means that nothing further is
230 required from the parties. Judges can expressly require an order confirming a decision if one is needed in
231 a particular case.

232 The committee recognizes the many different forms a judge's decision might take, and discussed
233 defining "order," but decided against the attempt. There are too many variations. If written, the document
234 might be titled "order," "ruling," "opinion," "decision," "memorandum decision," etc. The decision might not
235 be written; an oral directive is an order. A clerk's minute entry of an oral decision is, when signed by the
236 judge, treated the same as a written order. The committee decided instead to modify a phrase of long
237 standing from Rule 54(b)—"a decision, however designated"—in this rule and in Rule 58A. In this rule,
238 however a judge's decision may be designated, that decision is complete when the judge signs the
239 document memorializing the decision. Whether there is a right to appeal is determined by whether the
240 decision—or subsequent order confirming the decision—is a judgment. That analysis is governed by Rule
241 54. When the judgment is entered is governed by Rule 58A. If the order is not a judgment, the time in
242 which to petition for permission to appeal under Rule of Appellate Procedure 5 is calculated from the date
243 on which an order confirming an earlier decision is entered, but only if the judge directs that a confirming
244 order be prepared. If the judge does not direct that a confirming order be prepared, the time is calculated
245 from the date on which the decision, however designated, is entered.

246

1 **Rule 54. Judgments; costs.**

2 **(a) Definition; form.** "Judgment" as used in these rules includes a decree ~~and any or order that~~
3 adjudicates all claims and the rights and liabilities of all parties or any other order from which an appeal of
4 right lies. A judgment ~~need should~~ not contain a recital of pleadings, the report of a master, or the record
5 of prior proceedings. ~~Judgments shall state whether they are entered upon trial, stipulation, motion or the~~
6 ~~court's initiative; and, unless otherwise directed by the court, a judgment shall not include any matter by~~
7 ~~reference.~~

8 **(b) Judgment upon multiple claims and/or involving multiple parties.** When an action presents
9 more than one claim for relief ~~is presented in an action, ___~~ whether as a claim, counterclaim, cross claim,
10 or third party claim, ~~___~~ and/or when multiple parties are involved, the court may ~~direct the entry of a final~~
11 enter judgment as to one or more but fewer than all of the claims or parties only upon an express
12 determination by if the court expressly determines that there is no just reason for delay ~~and upon an~~
13 ~~express direction for the entry of judgment. In the absence of such determination and direction,~~
14 Otherwise, any order or other form of decision, however designated, that adjudicates fewer than all the
15 claims or the rights and liabilities of fewer than all the parties ~~shall not terminate~~ does not end the action
16 as to any of the claims or parties, and ~~the order or other form of decision is subject to revision~~ may be
17 changed at any time before the entry of judgment adjudicating all the claims and the rights and liabilities
18 of all the parties.

19 **(c) Demand for judgment.** A default judgment must not differ in kind from, or exceed in amount,
20 what is demanded in the pleadings. Every other judgment should grant the relief to which each party is
21 entitled, even if the party has not demanded that relief in its pleadings.

22 ~~**(c)(1) Generally.** Except as to a party against whom a judgment is entered by default, and except~~
23 ~~as provided in Rule 8(a), every final judgment shall grant the relief to which the party in whose favor it~~
24 ~~is rendered is entitled, even if the party has not demanded such relief in his pleadings. It may be~~
25 ~~given for or against one or more of several claimants; and it may, when the justice of the case~~
26 ~~requires it, determine the ultimate rights of the parties on each side as between or among~~
27 ~~themselves.~~

28 ~~**(c)(2) Judgment by default.** A judgment by default shall not be different in kind from, or exceed~~
29 ~~in amount, that specifically prayed for in the demand for judgment.~~

30 **(d) Costs.**

31 **(d)(1) To whom awarded.** ~~Except when express provision therefor is made either in a statute of~~
32 ~~this state or in these rules, costs shall be allowed as of course to the prevailing party unless the court~~
33 ~~otherwise directs; provided, however, where an appeal or other proceeding for review is taken, costs~~
34 ~~of the action, other than costs in connection with such appeal or other proceeding for review, shall~~
35 ~~abide the final determination of the cause. Unless a statute, these rules, or a court order provides~~
36 otherwise, costs should be allowed to the prevailing party. Costs against the state of Utah, its officers
37 and agencies ~~shall~~ may be imposed only to the extent permitted by law.

38 **(d)(2) How assessed.** The party who claims his costs must within 14 days after the entry of
 39 judgment ~~file and serve upon the adverse party against whom costs are claimed, a copy of a verified~~
 40 memorandum of the items of his costs and necessary disbursements in the action, and file with the
 41 court a like memorandum thereof duly verified stating that to affiant's knowledge the items are correct,
 42 and that the disbursements have been necessarily incurred in the action or proceeding. A party
 43 dissatisfied with the costs claimed may, within 7 days after service of the memorandum of costs, file a
 44 motion to have object to the bill of claimed costs taxed by the court.

45 **(d)(3) Memorandum filed before judgment.** A memorandum of costs served and filed after the
 46 verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions
 47 of law, but before the entry of judgment, ~~shall nevertheless be considered as is deemed served and~~
 48 filed on the date judgment is entered.

49 **(e) Interest and costs to be included in the judgment.** The clerk must include in any judgment
 50 signed by him any interest on the verdict or decision from the time it was rendered, and the costs, if the
 51 same have been taxed or ascertained. The clerk must, within two days after the costs have been taxed or
 52 ascertained, in any case where not included in the judgment, insert the amount thereof in a blank left in
 53 the judgment for that purpose, and make a similar notation thereof in the register of actions and in the
 54 judgment docket.

55 **Advisory Committee Notes**

56 In *Butler v. Corporation of The President of the Church of Jesus Christ of Latter-Day Saints*, 2014 UT
 57 41, the Supreme Court established the requirements of a judgment entered by means of a Rule 54(b)
 58 certification:

59 First, it must be entered in an action involving multiple claims or multiple parties. Second, it must
 60 have been entered on an order that would otherwise be appealable but for the fact that other
 61 claims or parties remain in the action. Third, the trial court, in its discretion, must make a
 62 determination that there is no just reason for delay of the appeal. *Id.* ¶128

63 To satisfy the second requirement, the Supreme Court in *Butler* included, in addition to the other
 64 requirements of appealability, the principle that the order must include one of the three indicia of finality
 65 imposed by former Rule 7(f)(2): a proposed order submitted with the supporting or opposing
 66 memorandum; an order prepared at the direction of the judge; an express indication that a further order
 67 was not required. The 2015 amendments to Rule 7 replace these indicia with the judge's signature. The
 68 2015 amendments of Rule 7, Rule 54 and Rule 58A do not disturb the principles established in *Butler*;
 69 they do make simpler the task of satisfying the requirement that the interlocutory order be complete under
 70 Rule 7 before it can be certified under Rule 54.

71

1 **Rule 56. Summary judgment.**

2 **(a) Motion for summary judgment or partial summary judgment.** A party may move for summary
3 judgment, identifying each claim or defense—or the part of each claim or defense—on which summary
4 judgment is sought. The court shall grant summary judgment if the moving party shows that there is no
5 genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law.
6 The court should state on the record the reasons for granting or denying the motion. The motion and
7 memoranda must follow Rule 7 as supplemented below.

8 (a)(1) Instead of a statement of the facts under Rule 7, a motion for summary judgment must
9 contain a statement of material facts claimed not to be genuinely disputed. Each fact must be
10 separately stated in numbered paragraphs and supported by citing to materials in the record under
11 paragraph (c)(1) of this rule.

12 (a)(2) Instead of a statement of the facts under Rule 7, a memorandum opposing the motion must
13 include a verbatim restatement of each of the moving party's facts that is disputed with an explanation
14 of the grounds for the dispute supported by citing to materials in the record under paragraph (c)(1) of
15 this rule. The memorandum may contain a separate statement of additional materials facts in dispute,
16 which must be separately stated in numbered paragraphs and similarly supported.

17 (a)(3) The motion and the memorandum opposing the motion may contain a concise statement of
18 facts, whether disputed or undisputed, for the limited purpose of providing background and context for
19 the case, dispute and motion.

20 (a)(4) Each material fact set forth in the motion or in the memorandum opposing the motion under
21 paragraphs (a)(1) and (a)(2) that is not disputed is deemed admitted for the purposes of the motion.

22 **(b) Time to file a motion.** A party seeking to recover upon a claim, counterclaim or cross-claim or to
23 obtain a declaratory judgment may move for summary judgment at any time after service of a motion for
24 summary judgment by the adverse party or after 21 days from the commencement of the action. A party
25 against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may
26 move for summary judgment at any time. Unless the court orders otherwise, a party may file a motion for
27 summary judgment at any time no later than 28 days after the close of all discovery.

28 **(c) Procedures.**

29 **(c)(1) Supporting factual positions.** A party asserting that a fact cannot be genuinely disputed
30 or is genuinely disputed must support the assertion by:

31 (c)(1)(A) citing to particular parts of materials in the record, including depositions, documents,
32 electronically stored information, affidavits or declarations, stipulations (including those made for
33 purposes of the motion only), admissions, interrogatory answers, or other materials; or

34 (c)(1)(B) showing that the materials cited do not establish the absence or presence of a
35 genuine dispute.

36 **(c)(2) Objection that a fact is not supported by admissible evidence.** A party may object that
37 the material cited to support or dispute a fact cannot be presented in a form that would be admissible
38 in evidence.

39 **(c)(3) Materials not cited.** The court need consider only the cited materials, but it may consider
40 other materials in the record.

41 **(c)(4) Affidavits or declarations.** An affidavit or declaration used to support or oppose a motion
42 must be made on personal knowledge, must set out facts that would be admissible in evidence, and
43 must show that the affiant or declarant is competent to testify on the matters stated.

44 **(d) When facts are unavailable to the nonmoving party.** If a nonmoving party shows by affidavit or
45 declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court
46 may:

47 (d)(1) defer considering the motion or deny it without prejudice;

48 (d)(2) allow time to obtain affidavits or declarations or to take discovery; or

49 (d)(3) issue any other appropriate order.

50 **(e) Failing to properly support or address a fact.** If a party fails to properly support an assertion of
51 fact or fails to properly address another party's assertion of fact as required by paragraph (c), the court
52 may:

53 (e)(1) give an opportunity to properly support or address the fact;

54 (e)(2) consider the fact undisputed for purposes of the motion;

55 (e)(3) grant summary judgment if the motion and supporting materials—including the facts
56 considered undisputed—show that the moving party is entitled to it; or

57 (e)(4) issue any other appropriate order.

58 **(f) Judgment independent of the motion.** After giving notice and a reasonable time to respond, the
59 court may:

60 (f)(1) grant summary judgment for a nonmoving party;

61 (f)(2) grant the motion on grounds not raised by a party; or

62 (f)(3) consider summary judgment on its own after identifying for the parties material facts that
63 may not be genuinely in dispute.

64 **(g) Failing to grant all the requested relief.** If the court does not grant all the relief requested by the
65 motion, it may enter an order stating any material fact—including an item of damages or other relief—that
66 is not genuinely in dispute and treating the fact as established in the case.

67 **(h) Affidavit or declaration submitted in bad faith.** If satisfied that an affidavit or declaration under
68 this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to
69 respond—may order the submitting party to pay the other party the reasonable expenses, including
70 attorney's fees, it incurred as a result. The court may also hold an offending party or attorney in contempt
71 or order other appropriate sanctions.

72 **Advisory Committee Notes**

73 The objective of the 2015 amendments is to adopt the style of Federal Rule of Civil Procedure 56
74 without changing the substantive Utah law. The 2015 amendments also move to this rule the special
75 briefing requirements of motions for summary judgment formerly found in Rule 7. Nothing in these
76 changes should be interpreted as changing the line of Utah cases regarding the burden of proof in
77 motions for summary judgment.
78

1 **Rule 58A. Entry of judgment; abstract of judgment.**

2 ~~(a) Judgment upon the verdict of a jury. Unless the court otherwise directs and subject to Rule~~
3 ~~54(b), the clerk shall promptly sign and file the judgment upon the verdict of a jury. If there is a special~~
4 ~~verdict or a general verdict accompanied by answers to interrogatories returned by a jury, the court shall~~
5 ~~direct the appropriate judgment, which the clerk shall promptly sign and file.~~

6 ~~(b) Judgment in other cases. Except as provided in paragraphs (a) and (f) and Rule 55(b)(1), all~~
7 ~~judgments shall be signed by the judge and filed with the clerk.~~

8 ~~(c) When judgment entered; recording. A judgment is complete and shall be deemed entered for~~
9 ~~all purposes, except the creation of a lien on real property, when it is signed and filed as provided in~~
10 ~~paragraphs (a) or (b). The clerk shall immediately record the judgment in the register of actions and the~~
11 ~~register of judgments.~~

12 (a) Separate document required. Every judgment and amended judgment must be set out in a
13 separate document ordinarily titled "Judgment"—or, as appropriate, "Decree."

14 (b) Separate document not required. A separate document is not required for an order disposing of
15 a post-judgment motion:

16 (b)(1) for judgment under Rule 50(b);

17 (b)(2) to amend or make additional findings under Rule 52(b);

18 (b)(3) for a new trial, or to alter or amend the judgment, under Rule 59; or

19 (b)(4) for relief under Rule 60.

20 **(c) Preparing a judgment.**

21 (c)(1) Preparing and serving a proposed judgment. The prevailing party or a party directed by
22 the court must prepare and serve on the other parties a proposed judgment for review and approval
23 as to form. The proposed judgment shall be served within 14 days after the jury verdict or after the
24 court's decision. If the prevailing party or party directed by the court fails to timely serve a proposed
25 judgment, any other party may prepare a proposed judgment and serve it on the other parties for
26 review and approval as to form.

27 (c)(2) Effect of approval as to form. A party's approval as to form of a proposed judgment
28 certifies that the proposed judgment accurately reflects the verdict or the court's decision. Approval as
29 to form does not waive objections to the substance of the judgment.

30 (c)(3) Objecting to a proposed judgment. A party may object to the form of the proposed
31 judgment by filing an objection within 7 days after the judgment is served.

32 (c)(4) Filing proposed judgment. The party preparing a proposed judgment must file it:

33 (c)(4)(A) after all other parties have approved the form of the judgment; (The party preparing
34 the proposed judgment must indicate the means by which approval was received: in person; by
35 telephone; by signature; by email; etc.)

36 (c)(4)(B) after the time to object to the form of the judgment has expired; (The party preparing
37 the proposed judgment must also file a certificate of service of the proposed judgment.) or

38 (c)(4)(C) within 7 days after a party has objected to the form of the judgment. (The party
39 preparing the proposed judgment may also file a response to the objection.)

40 **(d) Judge’s signature; judgment filed with the clerk.** Except as provided in paragraph (h) and Rule
41 55(b)(1), all judgments must be signed by the judge and filed with the clerk. The clerk must promptly
42 record all judgments in the docket.

43 **(e) Time of entry of judgment.**

44 (e)(1) If a separate document is not required, a judgment is complete and is entered when it is
45 signed by the judge and recorded in the docket.

46 (e)(2) If a separate document is required, a judgment is complete and is entered at the earlier of
47 these events:

48 (e)(2)(A) the judgment is set out in a separate document signed by the judge and recorded in
49 the docket; or

50 (e)(2)(B) 150 days have run from the clerk recording the decision, however designated, that
51 provides the basis for the entry of judgment.

52 **(d)-(f) Notice of judgment.** The party preparing the judgment shall promptly serve a copy of the
53 signed judgment on the other parties in the manner provided in Rule 5 and promptly file proof of service
54 with the court. Except as provided in Rule of Appellate Procedure 4(g), the time for filing a notice of
55 appeal is not affected by this requirement.

56 **(e)-(g) Judgment after death of a party.** If a party dies after a verdict or decision upon any issue of
57 fact and before judgment, judgment may nevertheless be entered.

58 **(f)-(h) Judgment by confession.** If a judgment by confession is authorized by statute, the party
59 seeking the judgment must file with the clerk a statement, verified by the defendant, ~~to the following effect~~
60 as follows:

61 ~~(f)(4)-(h)(1)~~ (f)(4)-(h)(1) If the judgment is for money due or to become due, it shall the statement must
62 concisely state the claim and that the specified sum is due or to become due.

63 ~~(f)(2)-(h)(2)~~ (f)(2)-(h)(2) If the judgment is for the purpose of securing the plaintiff against a contingent liability,
64 ~~it the statement~~ must state concisely the claim and that the specified sum does not exceed the
65 liability.

66 ~~(f)(3)-(h)(3)~~ (f)(3)-(h)(3) The statement must authorize the entry of judgment for the specified sum.

67 The clerk shall ~~must~~ sign and file the judgment for the specified sum, with costs of entry, if any,
68 and record it in the register of actions and the register of judgments.

69 **(g)-(i) Abstract of judgment.** The clerk may abstract a judgment by a signed writing under seal of
70 the court that:

71 ~~(g)(1)-(i)(1)~~ (g)(1)-(i)(1) identifies the court, the case name, the case number, the judge or clerk that signed
72 the judgment, the date the judgment was signed, and the date the judgment was recorded in the
73 registry of actions and the registry of judgments;

74 ~~(g)(2)-(i)(2)~~ (g)(2)-(i)(2) states whether the time for appeal has passed and whether an appeal has been filed;

75 ~~(g)(3)-(i)(3)~~ states whether the judgment has been stayed and when the stay will expire; and
76 ~~(g)(4)-(i)(4)~~ if the language of the judgment is known to the clerk, quotes verbatim the operative
77 language of the judgment or attaches a copy of the judgment.

78 **Advisory Committee Note**

79 The 2015 amendments to Rule 58A adopt the requirement, found in Rule 58 of the Federal Rules of
80 Civil Procedure, that a judgment be set out in a separate document. In the past, problems have arisen
81 when the district court entered a decision with dispositive language, but without the other formal elements
82 of a judgment, resulting in uncertainty about whether the decision started the time for appeals. This
83 problem was compounded by uncertainty under Rule 7 about whether the decision was the court's final
84 ruling on the matter or whether the prevailing party was expected to prepare an order confirming the
85 decision.

86 The 2015 amendments of Rule 7, Rule 54 and Rule 58A are intended to reduce this confusion by
87 requiring "that there be a judgment set out on a separate document—distinct from any opinion or
88 memorandum—which provides the basis for the entry of judgment." See Advisory Committee Notes to
89 1963 Amendments to Fed. R. Civ. P. 58. Courts and practitioners are encouraged to use appropriate
90 titles with separate documents intended to operate as judgments, such as "Judgment" or "Decree," and to
91 avoid using such titles on documents that are not appealable. The parties should consider the form of
92 judgment included in the Appendix of Forms. On the question of what constitutes a separate document,
93 the Committee refers courts and practitioners to existing case law interpreting Fed. R. Civ. P. 58. For
94 example, *In re Cendant Corp.*, 454 F.3d 235, 242-244 (3d Cir. 2006) offers three criteria:

95 1) the judgment must be set forth in a document that is independent of the court's opinion or decision;
96 2) it must contain ordering clauses stating the relief to which the prevailing party is entitled, and not
97 merely refer to orders made in other documents or state that a motion has been granted; and
98 3) it must substantially omit recitation of facts, procedural history, and the reasons for disposing of the
99 parties' claims.

100 While "some trivial departures" from these criteria—such as a one-sentence explanation of reasoning,
101 a single citation to authority, or a reference to a separate memorandum decision—"must be tolerated in
102 the name of common sense," any explanation must be "very sparse." *Kidd v. District of Columbia*, 206
103 F.3d 35, 39 (D.C. Cir. 2000).

104 The concurrent amendments to Rule 7 remove the separate document requirement formerly
105 applicable to interlocutory orders. Henceforward, the separate document requirement will apply only to
106 judgments, a change that should reduce the tendency to confuse judgments with other orders. Rule 7 has
107 also been amended to modify the process by which orders on motions are prepared. The process for
108 preparing judgments is the same.

109 Under amended Rule 7(j), a written decision, however designated, is complete—is the judge's last
110 word on the motion—when it is signed, unless the court expressly requests a party to prepare an order
111 confirming the decision. But this should not be confused with the need to prepare a separate judgment

112 when the decision has the effect of disposing of all claims in the case. If a decision disposes of all claims
113 in the action, a separate judgment is required whether or not the court directs a party to prepare an order
114 confirming the decision.

115 Rule 58A is similar to Fed. R. Civ. P. 58 in listing the instances where a separate document is not
116 required. The state rule differs from the federal rule regarding an order for attorney fees. Fed. R. Civ. P.
117 58 includes an order for attorney fees as one of the orders not requiring a separate document. That
118 particular order is omitted from the Utah rule because under Utah law a judgment does not become final
119 for purposes of appeal until the trial court determines attorney fees. See *ProMax Development*
120 *Corporation v. Raile*, 2000 UT 4, 998 P.2d 254. See also Utah Rule of Appellate Procedure 4, which
121 states that the time in which to appeal post-trial motions is from the disposition of the motion.

122 State Rule 58A is also similar to Fed. R. Civ. P. 58 in determining the time of entry of judgment when
123 a separate document is required but not prepared. This situation involves the “hanging appeals” problem
124 that the Supreme Court asked this Committee to address in *Central Utah Water Conservancy District v.*
125 *King*, 2013 UT 13, ¶27. Under the 2015 amendments, if a separate document is required but is not
126 prepared, judgment is deemed to have been entered 150 days from the date the decision—or the order
127 confirming the decision—was entered on the docket.

128