Agenda

Advisory Committee on Rules of Civil Procedure

June 26, 2019

4:00 to 6:00 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

Welcome and approval of minutes.	Tab 1	Jonathan Hafen, Chair
Rule 4 and electronic acceptance of service	Tab 2	Justin Toth, Judge Laura Scott, Lauren DiFrancesco, Susan Vogel
Advisory Committee Notes	Tab 3	**Group B**: Jim Hunnicutt, Prof. Paul Stancil, Michael Petrogeorge, Judge Kent Holmberg **Group E**: Judge Amber Mettler, Judge Clay Stucki, Justin Toth, Heather Sneddon
Multidistrict litigation under Rule 42: formation of subcommittee	Tab 4	Judge Holmberg, Jonathan Hafen
Other business: Fall meeting schedule		Jonathan Hafen, Nancy Sylvester

Committee Webpage: http://www.utcourts.gov/committees/civproc/

2019 Meeting Schedule:

August 28 or 21, 2019

September 25, 2019

October 16, 2019

November 20, 2019

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Meeting Minutes – May 22, 2019

Committee members & staff	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair		**X**	
Rod N. Andreason	**X**		
Judge James T. Blanch	**X**		
Lincoln Davies		**X**	
Lauren DiFrancesco	**X**		
Dawn Hautamaki		**X**	
Judge Kent Holmberg	**X**		
James Hunnicutt	**X**		
Larissa Lee		**X**	
Trevor Lee	**X**		
Judge Amber M. Mettler	**X**		
Timothy Pack		**X**	
Bryan Pattison		**X**	
Michael Petrogeorge		**X**	
Judge Clay Stucki	**X**		
Judge Laura Scott			**X**
Leslie W. Slaugh	**X**		
Trystan B. Smith		**X**	
Heather M. Sneddon		**X**	
Paul Stancil	**X**		
Judge Andrew H. Stone	**X**		
Justin T. Toth			**X**
Susan Vogel	**X**		
Katy Strand, Recording Secretary		**X**	
Nancy Sylvester, Staff	**X**		

GUESTS: Rep. Brady Brammer, Michael Drechsel, Jacqueline Carlton, Joseph Wade.

(1) WELCOME AND APPROVAL OF MINUTES

Rod Andreason, acting committee chairperson, welcomed the committee and asked for approval of the minutes. Jim Hunnicutt moved to approve the minutes, as amended. Lauren DiFrancesco seconded. The motion passed.

(2) COORDINATION OF INTERVENTION RULES: URCP 24, URAP 25A, URCRP 12.

Nancy Sylvester introduced this issue. The committee reviewed the proposed changes and discussed subsection (d)(2) to appropriately encompass the intended breadth of the rule. The committee further discussed the advisability of the breadth of the rule. The committee reached a consensus on amending the rule to read:

Rule 24. Intervention.

(a) Intervention of right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) By a Government Officer or Agency. On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and motion ~~p~~ required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and set out the claim or defense for which intervention is sought.

(d) Constitutionality of Utah statutes, ordinances, and regulations.

(d)(1) **Challenges to a statute.** If a party challenges the constitutionality of a Utah statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality must notify the Attorney General of such fact as described in paragraphs (d)(1)(A), (d)(1)(B), and (d)(1)(C).

(d)(1)(A) **Form and Content**. The notice must (i) be in writing, (ii) be titled "Notice of Constitutional Challenge Under URCP 24(d)," (iii) concisely describe the nature of the challenge, and (iv) include, as an attachment, the pleading, motion, or other paper challenging the constitutionality of the statute.

(d)(1)(B) **Timing**. The party must serve the notice on the Attorney General on or before the date the party files the paper challenging the constitutionality of the statute.

(d)(1)(C) **Service**. The party must serve the notice on the Attorney General by email or, if circumstances prevent service by email, by mail at the address below, and file proof of service with the court.

Email: notices@agutah.gov

Mail:

Office of the Utah Attorney General

Attn: Utah Solicitor General

350 North State Street, Suite 230

P.O. Box 142320

Salt Lake City, Utah 84114-2320

(d)(1)(D) **Attorney General's response to notice.**

(d)(1)(D)(i) Within 14 days after the deadline for the parties to file all papers in response to the constitutional challenge, the Attorney General must file a notice of intent to respond unless the Attorney General determines that a response is unnecessary. The Attorney General may seek up to an additional 7 days' extension of time to file a notice of intent to respond.

(d)(1)(D)(ii) If the Attorney General files a notice of intent to respond within the time permitted by this rule, the court will allow the Attorney General to file a response to the constitutional challenge and participate at oral argument when it is heard.

(d)(1)(D)(iii) Unless the parties stipulate to or the court grants additional time, the Attorney General's response to the constitutional challenge must be filed within 14 days after filing the notice of intent to respond.

(d)(1)(D)(iv) The Attorney General's right to respond to a constitutional challenge under Rule 25A of the Utah Rules of Appellate Procedure is unaffected by the Attorney General's decision not to respond under this rule.

(d)(2) **Challenges to a governmental entity's administrative or legislative enactment**. If a party challenges the constitutionality of a governmental entity's ordinance, rule, or other administrative or legislative enactment in an action in which the governmental entity has not appeared, the party raising the question of constitutionality must notify the governmental entity by serving notice on the person identified in Rule 4(d)(1). The procedures for the party challenging the constitutionality of the enactment will be consistent with paragraphs (d)(1)(A), (d)(1)(B), and (d)(1)(C), except that service must be on the individual

governmental entity. The procedures for the response by the governmental entity must be consistent with paragraph (d)(1)(D).

(d)(3) **Failure to provide notice.** Failure of a party to provide notice as required by this rule is not a waiver of any constitutional challenge otherwise timely asserted. If a party does not serve a notice as required under paragraphs (d)(1) or (d)(2), the court may postpone the hearing until the party serves the notice.

Judge Andrew Stone moved to the send the rule out for comment, as amended. Judge Clay Stucki seconded. The motion passed.

(3) INFORMAL TRIALS: REFERRAL FROM THE JUDICIAL COUNCIL'S POLICY AND PLANNING COMMITTEE.

Judge Laura Scott introduced this issue; Ms. Sylvester provided additional background. Leslie Slaugh suggested having loose application of the rules of evidence—similar to Rule of Small Claims Procedure 7(d), in lieu of having the rules of evidence not apply at all. The committee discussed whether such modification would significantly alter the current practice of informal trials in domestic cases, as well as the general pros and cons of application of the Rules of Evidence in informal settings. The committee was generally in favor of applying this rule in domestic and probate matters in the short term, and leaving open the possibility of expanding the rule in the future to apply to other types of cases. The committee also was in favor of numbering the proposed rule as rule 39.1. Ms. Sylvester will run the proposed rule by commissioners for their input before further consideration by the committee.

(4) RULE 65C: SERVICE OF PETITIONS.

Ms. Sylvester introduced this issue. The committee discussed the distinction between e-filing documents and the court uploading documents to the docket. The committee had no changes to the proposal. Mr. Hunnicut moved to adopt the proposed changes. Judge Holmberg seconded. The motion passed.

(5) LICENSED PARALEGAL PRACTITIONERS AND THE CIVIL RULES.

Mr. Hunnicutt introduced this issue. The committee considered the proposed Rule 81(f) and debated the language of each sentence. The committee tabled Rule 81(f) for the next meeting to accommodate the arrival of guests to discuss Rule 68.

(6) DISCUSSION OF RULE 68 AND FORMATION OF A SUBCOMMITTEE.

Mr. Andreason introduced Rep. Brady Brammer, who introduced the issue to the committee. The committee discussed the issues at length with Rep. Brammer, centering on the following four areas of proposed improvement for Rule 68: (i) greater clarity as to recoverable costs in connection with a Rule 68 offer; (ii) more clear framework for shifting of attorney fees (where otherwise recoverable)

in connection with Rule 68 offers; (iii) more clarity on language as to whether an offer includes attorney fees (i.e., "adjusted award" language); and (iv) the advisability of whole or partial attorney fee shifting under Rule 68 where attorney fees would not otherwise be recoverable. Judge James Blanch raised the issue of gamesmanship in Rule 68 offers if attorney fees (not otherwise recoverable) are added to Rule 68 and the possibility that such a change would convert our legal system into a "loser-pays-attorney-fees" system. The committee discussed ways to evaluate whether a Rule 68 offer was made in good faith to combat such gamesmanship, including judicial oversight of the reasonableness of the offer. Rep. Brammer suggested implementing any new proposal involving fee-shifting of not otherwise recoverable attorney fees as a pilot program using Tier 1 cases with a sliding scale of or cap on attorney fees. Judge Kent Holmberg suggested a fifth possible change—a cost-shifting mechanism that would include all costs (not only those currently recoverable) in lieu of an attorney fee shifting scheme. Mr. Andreason appointed the following subcommittee to further evaluate the issue: Trevor Lee, Judge Clay Stucki, Leslie Slaugh, Susan Vogel, Rep. Ivory, and Rep. Brammer. The committee tabled the issue for further consideration by the subcommittee.

(7) ADJOURNMENT.

The remaining issues were deferred until the next meeting. The meeting adjourned at 6:10. The next meeting will be held June 26, 2019 at 4:00 pm.

Tab 2

Utah State Courts

Nancy Sylvester <nancyjs@utcourts.gov>

URCP Advisory Committee -- Rule 4 Revisions

Justin Toth <jtoth@rqn.com> Tue, Jun 25, 2019 at 10:05 AM
To: Nancy Sylvester <nancyjs@utcourts.gov>
Cc: "Jonathan O. Hafen (jhafen@parrbrown.com)" <jhafen@parrbrown.com>

Nancy –

Here are some proposed revisions from our subcommittee for discussion.

I've tried to adopt the Supreme Court's preference where we actually spelled out the specific parts of the Utah Electronic Transactions Act with which we wanted service to comply. But it seemed incredibly cumbersome to actually use the language from the UETA in Rule 4 because it is so lengthy. So, I simply cross-referenced those portions of the UETA in Rule 4 that the Supreme Court identified from your discussions with them.

I haven't heard back from Lauren or Judge Scott yet, but in their defense, I sent the revisions to them on Saturday morning. So, they may just not have had a chance to focus on it.

Susan Vogel had these comments:

If we refer to code sections/subsections, how do we update them when they change? (The court website links are very hard to keep live for this reason.)

Since a unnamed process server uses a sheriff's badge in their logo, maybe the language re deceit could read:

Duty to avoid deception: A request to accept service must comply with Utah Code Sections ... and must not falsely state or imply that the request to accept service originates with (from?) a judicial officer, court, or federal, state or local government entity.

JT

Justin Toth | Ray Quinney & Nebeker P.C. | 36 South State Street, Suite 1400 | Salt Lake City, Utah 84111
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Utah State Courts

Nancy Sylvester <nancyjs@utcourts.gov>

Rule 4 feedback from the Supreme Court

3 messages

Nancy Sylvester <nancyjs@utcourts.gov> Wed, Apr 10, 2019 at 10:45 AM
To: Justin Toth <jtoth@rqn.com>, Judge Laura Scott, "Lauren DiFrancesco E.H." <lauren.difrancesco@stoel.com>, Susan Vogel <susanv@utcourts.gov>
Cc: "Jonathan O. Hafen" <jhafen@parrbrown.com>
Bcc: Nancy Sylvester <nancyjs@utcourts.gov>

Dear Rule 4 Subcommittee,

Jonathan and I took Rule 4 to the Supreme Court for its review this morning. The Court understood what the committee is trying to do regarding acceptance of service, but expressed some concerns about referring to the UETA and the "deception" code sections rather than simply spelling out in the rule how we expect process servers to comply with Rule 4. They have tentatively blessed simply adopting the language from the code sections that we think should apply.

For example, some of this language from **section 46-4-203, Attribution and effect of electronic record and electronic signature:**
(1)
(a) An electronic record or electronic signature is attributable to a person if it was the act of the person.
(b) The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.
(2) The effect of an electronic record or electronic signature attributed to a person under Subsection (1) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

Some of this language from section **46-4-202, Provision of information in writing -- Presentation of records:**
(1)
(a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt.
(b) An electronic record is not capable of retention by the recipient if the sender or its information processing system inhibits the ability of the recipient to print or store the electronic record.

And/or some of this language from section **46-4-105, Use of electronic records and electronic signatures -- Variation by agreement:**
(2)
(a) This chapter applies only to transactions between parties each of which has agreed to conduct transactions by electronic means.
(b) Whether or not the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct.

While it would be great if we could get a draft back from you in time for our April 24 meeting, we recognize that you may not have time to meet before then. So we will plan on putting this on the May agenda (materials needed by May 15) unless we hear otherwise.

Thank you for all of your work on this rule. Please let me know if you have any questions.

Sincerely,

Nancy

--
Nancy J. Sylvester
Associate General Counsel
Administrative Office of the Courts
450 South State Street

Rule 4. Process.

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

(b) Time of service. Unless the summons and complaint are accepted, a copy of the summons and complaint in an action commenced under Rule 3(a)(1) must be served no later than 120 days after the complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint are not timely served, the action against the unserved defendant may be dismissed without prejudice on motion of any party or on the court's own initiative.

(c) Contents of summons.

(c)(1) The summons must:

(c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(c)(1)(B) be directed to the defendant;

(c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number;

(c)(1)(D) state the time within which the defendant is required to answer the complaint in writing;

(c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default will be entered against the defendant; and

(c)(1)(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons must also:

(c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(c)(3) If service is by publication, the summons must also 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) Methods of service. The summons and complaint may be served in any state or judicial district of the United States. Unless service is accepted, service of the summons and complaint must be by one of the following methods:

(d)(1) Personal service. The summons and complaint may be served by any 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 summons and complaint, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

(d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by leaving them at the individual's dwelling house or usual place of abode with a person of suitable

age and discretion who resides there, or by delivering them to an agent authorized by appointment or by law to receive process;

(d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to the minor and also to the minor'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 minor, or with whom the minor resides, or by whom the minor is employed;

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

(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 complaint to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual;

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

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

(d)(1)(G) Upon a county, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the county clerk;

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the superintendent or administrator of the board;

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

(d)(1)(J) Upon the state of Utah or its department or agency by delivering a copy of the summons and complaint to the attorney general and any other person or agency required by statute to be served; and

(d)(1)(K) Upon a public board, commission or body by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, 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) Acceptance of service.

(d)(3)(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary expenses of serving the summons and complaint.

(d)(3)(B) Acceptance of service by party. Unless the person to be served is a minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, a party may accept service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint.

(d)(3)(B)(i) Content of proof of electronic acceptance. If acceptance is obtained electronically, the proof of acceptance must demonstrate on its face compliance with Utah Code § 46-4-105(2)(a)-(b), § 46-4-202(1)(a)-(b) and § 46-4-203(a)(1)-(2). The proof of acceptance must demonstrate that the party received readable copies of the summons and complaint prior to signing the acceptance of service.

(d)(3)(B)(ii) Duty to avoid deception. A request to accept service must comply with Utah Code Sections 76-8-512 and 76-8-513 and must not state or imply that the request to accept service originates with a judicial officer or court.

(d)(3)(C) Acceptance of service by attorney for party. An attorney may accept service of a summons and complaint on behalf of the attorney's client by signing a document that acknowledges receipt of the summons and complaint.

(d)(3)(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

(d)(4) Service in a foreign country. Service in a foreign country must be made as follows:

(d)(4)(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)(4)(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)(4)(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)(4)(B)(ii) as directed by the foreign authority in response to a letter of request issued by the court; or

(d)(4)(B)(iii) unless prohibited by the law of the foreign country, by delivering a copy of the summons and complaint to the individual personally or by any form of mail requiring a signed receipt, addressed and dispatched by the clerk of the court to the party to be served; or

(d)(4)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(5) Other service.

(d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

(d)(5)(B) If the motion is granted, the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action. The court's order must specify the content of the process to be served and the event upon which service is complete. Unless service is by publication, a copy of the court's order must be served with the process specified by the court.

(d)(5)(C) If the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.

(e) Proof of service.

(e)(1)The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.

(e)(2) Proof of service in a foreign country must 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.

(e)(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

Advisory Committee Notes

Tab 3

Utah State Courts

Nancy Sylvester <nancyjs@utcourts.gov>

Civil Rules 4/24/19 Takeaways

Jim Hunnicutt <jim@dolowitzhunnicutt.com> Wed, May 15, 2019 at 11:10 AM
To: Nancy Sylvester <nancyjs@utcourts.gov>
Cc: "Judge Kent Holmberg, Paul Stancil <stancilp@law.byu.edu>, "mpetrogeorge@parsonsbehle.com" <mpetrogeorge@parsonsbehle.com>

Dear Nancy,

Here is the report from Group B (Judge Holmberg, Paul Stancil, Michael Petrogeorge, and Jim Hunnicutt) regarding the Advisory Committee Notes as to URCP 8 - 16.

Rule 8 General Rule of Pleadings
Recommendation: DELETE entire Advisory Committee Note.
The Note describes the standard of notice pleading, which is well known by now and no longer needed. The Note also warns practitioners about the 3-tier discovery structure, and says, "Rule 8 provides that a party waives its right to recover damages in excess of the maximums provided for that tier unless the pleading is amended. The trial court may determine if the amendment requires further discovery." This guidance is no longer necessary in light of the recent Utah Supreme Court opinion, *Pilot v. Hill*, 2019 UT 10, which elaborates on the issue and sets forth the actual standard in considerable detail.

Rule 9 Pleading Special Matters
Recommendation: EDIT the Advisory Committee Note.
Created in 2016, this Note is fairly recent and very concisely points out that Rule 9 was altered to track with statutory changes regarding renewing judgments. The final sentence of the Note, however, appears both unnecessary, and inaccurate because it misstates subparts of the rule itself. (The final sentence of the Note, the deletion of which is recommended, reads: "Issues of capacity, conditions precedent, and statutes of limitation in paragraphs (a), (e), and (j) should be decided along with other claims and defenses.") The final sentence should be deleted. Group B also noted that while the WestLaw version of the Note seemed accurate, the version of the Advisory Committee Note on the Court's website is missing some hyphens in the statutory references.

Rule 10 Form of Pleadings and Other Papers
Recommendation: DELETE entire Advisory Committee Note.
This Note is very long and out-of-date. It clearly predates the advent of e-filing. The Note also is inaccurate, *e.g.*, it references margins as 2" at the top and ½" at the bottom of a page, but those margins were amended in Rule 10 years ago. The entire Note is a vestigial relic that ought to be deleted, and there does not seem to be a need to replace it with anything.

Rule 11
Recommendation: DELETE entire Advisory Committee Note.
This Note appears to date back to 1997. This Note inaccurately quotes old language from the federal version of Rule 11, which has been amended since then. The Note appears to have been intended to highlight a difference between the state and federal versions of Rule 11, but practitioners no longer need that pointed out. Rule 11 motions are relatively uncommon, and anyone filing a Rule 11 motion is likely going to pay close attention to the applicable version of the rule.

Rules 12-14: Skipped, because they have no Advisory Committee Notes.

Rule 15 Amended and supplemental pleadings

Recommendation: MAINTAIN entire Advisory Committee Note.
This Note is recent (2016) and very concise.

Rule 16 Pretrial conferences
Recommendation: DELETE entire Advisory Committee Note, and REVISE Rule 16.
The existing Note is very short, stating in its entirety: "For the purposes of this rule, 'ADR' is as defined in CJA Rule 4-510.01." Twice in the rule itself, the acronym "ADR" is used. The Group suggests deleting the Advisory Committee Note and instead revising the two instances of "ADR processes" in the rule's language to instead read "alternative dispute resolution ("ADR") processes" to hopefully make the rule a little easier to read, especially if a reader was unfamiliar with "ADR."

Sincerely,

Jim

DOLOWITZ HUNNICUTT, PLLC

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Salt Lake City, Utah 84111

tel: 801-535-4340

www.dolowitzhunnicutt.com

From: Nancy Sylvester <nancyjs@utcourts.gov>
Sent: Wednesday, April 24, 2019 6:34 PM
To: Cathy Dupont; Dawn Hautamaki; Heather Sneddon; Jim Hunnicutt; Jonathan O. Hafen; Judge Amber Mettler; Judge Andrew Stone; Judge Clay Stucki; Judge James Blanch; Judge Kent Holmberg; Judge Laura Scott; Justin Toth; Katy Strand; Larissa Lee; Lauren DiFrancesco E.H.; Leslie Slaugh; Lincoln Davies; Michael Petrogeorge; Pattison, Bryan J.; Paul Stancil; Rod Andreason; Susan Vogel; Tim Pack; Trevor Lee; Trystan Smith
Subject: Civil Rules 4/24/19 Takeaways

[Quoted text hidden]

URCP 8.

Advisory Committee Notes

The pleading standard under Rule 8 remains “notice pleading” as exemplified by the official forms appended to the Rules. But parties are encouraged to plead facts that entitle them to relief or establish affirmative defenses because more expansive pleadings will trigger broader disclosures from the opponent under Rule 26. This encouragement is consistent with the general approach of the 2011 amendments which require each party to disclose its affirmative case early in the process so that the adversary might evaluate its merits and focus the need for discovery.

The amount of damages pled will determine the amount of standard discovery available under Rule 26(c)(3). It would be unfair for a party to plead a smaller amount of damages in order to take advantage of the streamlined discovery and then seek to recover greater damages. Thus, Rule 8 provides that a party waives its right to recover damages in excess of the maximums provided for that tier unless the pleading is amended. The trial court may determine if the amendment requires further discovery.

Rule 9. Pleading special matters.

Advisory Committee Note

The 2016 amendments deleted former paragraph (k) on renewing judgments because it was superfluous. The Renewal of Judgment Act (Utah Code Sections 78B-6-1801 through 78B-6-1804) allows a domestic judgment to be renewed by motion, and Section 78B-5-302 governs domesticating a foreign judgment, which can then be renewed by motion.

The process for renewing a judgment by motion is governed by Rule 58C.

~~Issues of capacity, conditions precedent, and statutes of limitation in paragraphs (a), (e), and (j) should be decided along with other claims and defenses.~~

URCP 10.

Advisory Committee Notes

~~As a general matter, Rule 10 deals with the form of papers filed with the court - both "pleadings" as defined in Rule 7(a) and "other papers filed with the court," including motions, memoranda, discovery responses, and orders. The changes in the present rule were promulgated to clarify ambiguities in the prior rule and to address specific problems encountered by the courts. Paragraph (b), (c) and (e) of the rule were not changed, except that paragraph (e) was redesignated as (g) and new paragraphs (e) and (f) were added.~~

~~Paragraph (a). This paragraph specifies requirements for captions in every paper filed with the court. In addition to the other requirements, the caption must contain the name of the judge to whom the case is assigned, if the judge's name is known at the time the paper is filed. In the top left-hand corner of the first page, each paper must state identifying information concerning the attorney representing the party filing~~

~~the paper. Finally, every pleading must state the name and current address of the party for whom it is filed; this information should appear on the lower left-hand corner of the last page. This information need not be set forth in papers other than pleadings.~~

~~Paragraph (d). The changes in this paragraph make it clear that papers filed with the court must be "typewritten, printed or photocopied in black type." The Advisory Committee considered suggestions from groups that so-call "dox matrix" printing be specifically prohibited. The Advisory Committee, however, settled on the requirements that "typing or [printing shall be clearly legible . . . and shall not be smaller than pica size. If typing or printing on papers filed with the court complies with these standards, the papers should not be deemed to violate the rule merely because they were prepared in a dox matrix printer. As currently written, this paragraph also removes any confusion concerning the top margin and left margin requirements (now 2 inches and 1 inch respectively), and this paragraph imposes new requirements for right and bottom margins (both one-half inch).~~

~~Paragraph (e). This paragraph, which is an addition to the rule, requires typed signature lines and signature lines and signatures in permanent black or blue ink.~~

~~Paragraph (f). The changes in this paragraph make it clear that the clerk must accept all papers for filing, even though they may violate the rule, but the clerk may require counsel to substitute conforming for nonconforming papers. The clerk is given discretion to waive requirements of the rule for parties who are not represented by counsel; for good cause shown, the court may relieve parties of the obligation to comply with the rule or any part of it.~~

URCP 011

Advisory Committee Notes

~~The 1997 amendments conform state Rule 11 with federal Rule 11. One difference between the rules concerns holding a law firm jointly responsible for violations by a member of the firm. Federal Rule 11(c)(1)(A) states: "Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees." Under the federal rule, joint responsibility is presumed unless the judge determines not to impose joint responsibility. State Rule 11(c)(1)(A) provides: "In appropriate circumstances, a law firm may be held jointly responsible for violations committed by its partners, members, and employees." Under the state rule, joint responsibility is not presumed, and the judge may impose joint responsibility in appropriate circumstances. What constitutes appropriate circumstances is left to the discretion of the judge, but might include: repeated violations, especially after earlier sanctions; firm-wide sanctionable practices; or a sanctionable practice approved by a supervising attorney and committed by a subordinate.~~

URCP 012: no note

URPC 013: no note

URCP 014: no note

URCP 015

Advisory Committee Notes (no changes)

Although the precise language is different for purposes of clarity, the 2016 amendments to Utah Rule of Civil Procedure 15(c) adopt the approach of Federal Rule 15(c) regarding the relation-back of an amended pleading when the amended pleading adds a new party.

Rule 16. Pretrial conferences.

(a) Pretrial conferences. The court, in its discretion or upon motion, may direct the attorneys and, when appropriate, the parties to appear for such purposes as:

(a)(1) expediting the disposition of the action;

(a)(2) establishing early and continuing control so that the case will not be protracted for lack of management;

(a)(3) discouraging wasteful pretrial activities;

(a)(4) improving the quality of the trial through more thorough preparation;

(a)(5) facilitating mediation or other alternative dispute resolution ("ADR") processes for the settlement of the case;

(a)(6) considering all matters as may aid in the disposition of the case;

(a)(7) establishing the time to join other parties and to amend the pleadings;

(a)(8) establishing the time to file motions;

(a)(9) establishing the time to complete discovery;

(a)(10) extending fact discovery;

(a)(11) setting the date for pretrial and final pretrial conferences and trial;

(a)(12) provisions providing for the preservation, disclosure or discovery of electronically stored information;

(a)(13) considering any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production; and

(a)(14) considering any other appropriate matters.

(b) Trial settings. Unless an order sets the trial date, any party may and the plaintiff shall, at the close of all discovery, certify to the court that discovery is complete, that any required mediation or other alternative dispute resolution ("ADR") processes have been completed or excused and that the case is ready for trial. The court shall schedule the trial as soon as mutually convenient to the court and parties. The court shall notify parties of the trial date and of any final pretrial conference.

(c) Final pretrial conferences. The court, in its discretion or upon motion, may direct the attorneys and, when appropriate, the parties to appear for such purposes as settlement and trial management. The conference shall be held as close to the time of trial as reasonable under the circumstances.

(d) Sanctions. If a party or a party's attorney fails to obey an order, if a party or a party's attorney fails to attend a conference, if a party or a party's attorney is substantially unprepared to participate in a

conference, or if a party or a party's attorney fails to participate in good faith, the court, upon motion or its own initiative, may take any action authorized by Rule 37(b).

URCP 16.

Advisory Committee Notes

~~For the purposes of this rule, "ADR" is as defined in CJA Rule 4-510.01.~~

Nancy's recommendation: bring this note into the rule itself. It's helpful to direct readers to the CJA rules governing ADR.

Rule 54. Judgments; costs.

(a) Definition; form. "Judgment" as used in these rules includes a decree or order that adjudicates all claims and the rights and liabilities of all parties or any other order from which an appeal of right lies. A judgment should not contain a recital of pleadings, the report of a master, or the record of prior proceedings.

(b) Judgment upon multiple claims and/or involving multiple parties. When an action presents more than one claim for relief—whether as a claim, counterclaim, cross claim, or third party claim—and/or when multiple parties are involved, the court may enter judgment as to one or more but fewer than all of the claims or parties only if the court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties does not end the action as to any of the claims or parties, and may be changed at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

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

(d) Costs.

(d)(1) To whom awarded. Unless a statute, these rules, or a court order provides otherwise, costs should be allowed to the prevailing party. Costs against the state of Utah, its officers and agencies may be imposed only to the extent permitted by law.

(d)(2) How assessed. The party who claims costs must not later than 14 days after the entry of judgment file and serve a verified memorandum of costs. A party dissatisfied with the costs claimed may, within 7 days after service of the memorandum of costs, object to the claimed costs.

(d)(3) Memorandum filed before judgment. A memorandum of costs served and filed after the verdict, or at the time of or subsequent to the service and filing of the findings of fact and conclusions of law, but before the entry of judgment, is deemed served and filed on the date judgment is entered.

(e) Amending the judgment to add costs or attorney fees. If the court awards costs under paragraph (d) or attorney fees under Rule 73 after the judgment is entered, the prevailing party must file and serve an amended judgment including the costs or attorney fees. The court will enter the amended judgment unless another party objects within 7 days after the amended judgment is filed.

Advisory Committee Notes

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

> First, it must be entered in an action involving multiple claims or multiple parties. Second, it must have been entered on an order that would otherwise be appealable but for the fact that other claims or parties remain in the action. …. Third, the trial court, in its discretion, must make a determination that there is no just reason for delay of the appeal. *Id*. ¶28

To satisfy the second requirement, the Supreme Court in *Butler* included, in addition to the other requirements of appealability, the principle that the order must include one of the three indicia of finality

imposed by former Rule 7(f)(2): a proposed order submitted with the supporting or opposing memorandum; an order prepared at the direction of the judge; an express indication that a further order was not required. The 2015 amendments to Rule 7 replace these indicia with the judge's signature. The 2015 amendments of Rule 7, Rule 54 and Rule 58A do not disturb the principles established in Butler; they do make simpler the task of satisfying the requirement that the interlocutory order be complete under Rule 7 before it can be certified under Rule 54.

2016 amendments

Paragraph (e) describes the process by which the determination of costs or fees becomes part of the judgment. If there is legal error in entering judgment for costs or attorney fees, that error is reviewable on appeal just like any other.

Rule 55 – no advisory committee notes

Rule 56. Summary judgment.

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

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

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

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

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

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

(c) Procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Advisory Committee Notes

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

Rule 57 – no advisory committee notes

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

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

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

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

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

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

(b)(4) for relief under Rule 60; or

(b)(5) for attorney fees under Rule 73.

(c) Preparing a judgment.

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

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

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

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

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

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

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

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

(e) Time of entry of judgment.

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

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

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

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

(f) Award of attorney fees. A motion or claim for attorney fees does not affect the finality of a judgment for any purpose, but under Rule of Appellate Procedure 4, the time in which to file the notice of appeal runs from the disposition of the motion or claim.

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

(h) Judgment after death of a party. If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may nevertheless be entered.

(i) Judgment by confession. If a judgment by confession is authorized by statute, the party seeking the judgment must file with the clerk a statement, verified by the defendant, as follows:

(i)(1) If the judgment is for money due or to become due, the statement must concisely state the claim and that the specified sum is due or to become due.

(i)(2) If the judgment is for the purpose of securing the plaintiff against a contingent liability, the statement must state concisely the claim and that the specified sum does not exceed the liability.

(i)(3) The statement must authorize the entry of judgment for the specified sum.

The clerk must sign the judgment for the specified sum.

(j) Abstract of judgment. The clerk may abstract a judgment by a signed writing under seal of the court that:

(j)(1) identifies the court, the case name, the case number, the judge or clerk that signed the judgment, the date the judgment was signed, and the date the judgment was recorded in the registry of actions and the registry of judgments;

(j)(2) states whether the time for appeal has passed and whether an appeal has been filed;

(j)(3) states whether the judgment has been stayed and when the stay will expire; and

(j)(4) if the language of the judgment is known to the clerk, quotes verbatim the operative language of the judgment or attaches a copy of the judgment.

Advisory Committee Note

2015 amendments

The 2015 amendments to Rule 58A adopt the requirement, found in Rule 58 of the Federal Rules of Civil Procedure, that a judgment be set out in a separate document. ~~In the past, problems have arisen when the district court entered a decision with dispositive language, but without the other formal elements of a judgment, resulting in uncertainty about whether the decision started the time for appeals. This~~

~~problem was compounded by uncertainty under Rule 7 about whether the decision was the court's final ruling on the matter or whether the prevailing party was expected to prepare an order confirming the decision.~~

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

~~1) the judgment must be set forth in a document that is independent of the court's opinion or decision;~~

~~2) it must contain ordering clauses stating the relief to which the prevailing party is entitled, and not merely refer to orders made in other documents or state that a motion has been granted; and~~

~~3) it must substantially omit recitation of facts, procedural history, and the reasons for disposing of the parties' claims.~~

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

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

~~Under amended Rule 7(j), a written decision, however designated, is complete – is the judge's last word on the motion – when it is signed, unless the court expressly requests a party to prepare an order confirming the decision. But this should not be confused with the need to prepare a separate judgment when the decision has the effect of disposing of all clams in the case. If a decision disposes of all claims in the action, a separate judgment is required whether or not the court directs a party to prepare an order confirming the decision.~~

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

2016 amendments

The 2016 amendments in paragraphs (b) and (f) are part of a coordinated effort with the Advisory Committee on the Rules of Appellate Procedure to change the effect of a motion for attorney fees on the appealability of a judgment. The combined amendments of this rule and Rule of Appellate Procedure 4 effectively overturn *ProMax Development Corp. v. Raile*, 2000 UT 4, 998 P.2d 254

and *Meadowbrook, LLC v. Flower*, 959 P.2d 115 (Utah 1998). Paragraph (f) also addresses any doubts about the enforceability of a judgment while a motion for attorney fees is pending. [Possible additional language: These amendments are a departure from Federal Rule of Civil Procedure 58(e).]

~~Under *ProMax* and *Meadowbrook* a judgment was not final until the claim for attorney fees had been resolved. An appeal filed before a claim for attorney fees had been resolved was premature and would be dismissed. Under the 2016 amendments, the time to appeal runs from the order disposing of a timely motion for attorney fees, just as it does timely motions under Rules 50, 52 and 59. The 2016 amendments to appellate Rule 4(b) also add a motion under Rule 60(b), but only if the motion is filed within 28 days after the judgment.~~

~~If a notice of appeal is filed before the order resolving the timely motion, the appeal is not dismissed; it is treated as filed on the day the order ultimately is entered, although the party must file an amended notice of appeal to appeal from the order disposing of the motion.~~

~~Although this change overturns *ProMax* and *Meadowbrook*, it is not the same as the federal rule. Under Federal Rule of Civil Procedure 58(e):~~

> ~~Ordinarily, the entry of judgment may not be delayed, nor the time for appeal extended, in order to tax costs or award fees. But if a timely motion for attorney's fees is made under Rule 54(d)(2), the court may act before a notice of appeal has been filed and become effective to order that the motion have the same effect under Federal Rule of Appellate Procedure 4 (a)(4) as a timely motion under Rule 59.~~

~~In other words, a motion for attorney fees extends the time to appeal, but only if the trial court judge rules that it does. In the 2016 amendment of the state rules, a timely motion for attorney fees automatically has that effect.~~

~~Although the 2016 amendments change a policy of long standing in the Utah state courts, the amendments will help to protect the appellate rights of parties and avoid the cost of premature appeals.~~

Rule 58B – no advisory committee notes

Rule 58C. Motion to renew judgment.

(a) Motion. A judgment creditor may renew a judgment by filing a motion under Rule 7 in the original action before the statute of limitations on the original judgment expires. A copy of the judgment must be filed with the motion.

(b) Affidavit. The motion must be supported by an affidavit:

(b)(1) accounting for the original judgment and all post-judgment payments, credits, and other adjustments provided for by law or contained in the original judgment; and

(b)(2) affirming that notice was sent to the most current address known for the judgment debtor, stating what efforts the creditor has made to determine whether it is the debtor's correct address.

(c) Effective date of renewed judgment. If the court grants the motion, the court will enter an order renewing the original judgment from the date of entry of the order or from the scheduled expiration date of the original judgment, whichever occurs first. The statute of limitations on the renewed judgment runs from the date the order is signed and entered.

Advisory Committee Notes

~~The Renewal of Judgment Act (Utah Code Sections 78B-6-1801 through 78B-6-1804) allows a domestic judgment to be renewed by motion, and Section 78B-5-302 governs domesticating a foreign judgment, which can then be renewed by motion. The statute of limitations on an action for failure to pay a judgment is governed by Section 78B-2-311.~~

Rule 59 – no advisory committee notes

Rule 60. Relief from judgment or order.

(a) Clerical mistakes. The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. After a notice of appeal has been filed and while the appeal is pending, the mistake may be corrected only with leave of the appellate court.

(b) Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon just terms, the court may relieve a party or its legal representative from a judgment, order, or proceeding for the following reasons:

(b)(1) mistake, inadvertence, surprise, or excusable neglect;

(b)(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(b)(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or other misconduct of an opposing party;

(b)(4) the judgment is void;

(b)(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment should have prospective application; or

(b)(6) any other reason that justifies relief.

(c) Timing and effect of the motion. A motion under paragraph (b) must be filed within a reasonable time and for reasons in paragraph (b)(1), (2), or (3), not more than 90 days after entry of the judgment or order or, if there is no judgment or order, from the date of the proceeding. The motion does not affect the finality of a judgment or suspend its operation.

(d) Other power to grant relief. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Advisory Committee Notes

~~The 1998 amendment eliminates as grounds for a motion the following: "(4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action." This basis for a motion is not found in the federal rule. The committee concluded the clause was ambiguous and possibly in conflict with rule permitting service by means other than personal service.~~

~~2016 amendments~~

~~The deadlines for a motion are as stated in this rule, but if a motion under paragraph (b) is filed within 28 days after the judgment, it will have the same effect on the time to appeal as a motion under Rule 50, 52, or 59. See the 2016 amendments to Rule of Appellate Procedure 4(b).~~

For more information on prior rule amendments, please visit https://www.utcourts.gov/utc/rules-approved/. Prior versions of the court rules and pre-2004 court rule amendments are also available at the State Law Library: https://www.utcourts.gov/lawlibrary/.

For discussion materials on rule amendments, please visit the web blog of the Advisory Committee on the Utah Rules of Civil Procedure at https://www.utcourts.gov/utc/civproc/.

Rule 61 – no advisory committee notes

Rule 62. Stay of proceedings to enforce a judgment.

(a) Delay in execution. No execution or other writ to enforce a judgment may issue until the expiration of 14 days after entry of judgment, unless the court in its discretion 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.

Advisory Committee Notes

~~The 1995 amendments to this rule eliminated references to writs of mandate and prohibition in Subdivision (g) since the extraordinary relief procedure of Rule 65B has eliminated the concept of the "writ." Subdivision (i) was substantially rewritten to define the requirements for both commercial and personal supersedeas bonds and to allow the court to permit a cash deposit or other form of security in lieu of a supersedeas bond. The committee concluded that individual circumstances will determine the degree to which a particular form of security may be affected by bankruptcy, financial instability or other uncertainty, and that the court should be given broad discretion to permit such forms of security as the facts may require. Subdivision (j) was amended to allow a party whose judgment is stayed to object to the amount or sufficiency of the security. The rule does not specify a time within which a party must object to security; thus a party may respond appropriately to changing circumstances affecting the sufficiency or form of security originally approved by the court.~~

~~2005 Amendment. In considering conditions for setting a bond of less than the presumed amount under paragraph (j)(1), the judge's objective is to protect both a judgment creditor's interest in collecting a judgment affirmed on appeal and to afford a judgment debtor a reasonable opportunity to prosecute an appeal without unduly and unnecessarily affecting the judgment debtor's operations. Among the options the judge might consider are to:~~

~~(1) require periodic financial reports;~~

~~(2) appoint a receiver or master;~~

~~(3) require the debtor to abstract the judgment to all jurisdictions in which the debtor has significant assets;~~

~~(4) require the debtor's corporate officers to personally acknowledge receiving the judgment and to consent to personal jurisdiction for the purpose of enforcing the judgment;~~

~~(5) limit loans other than in the ordinary course of business;~~

~~(6) limit transfer or disposition of assets other than in the ordinary course of business; and~~

~~(7) limit payment of dividends.~~

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Rule 63 – no advisory committee notes

Rule 63A – no advisory committee notes

Rule 64– no advisory committee notes

Rule 64A – no advisory committee notes

Rule 64B – no advisory committee notes

Rule 64C – no advisory committee notes

Rule 64D – no advisory committee notes

Rule 64E – no advisory committee notes

Rule 65A. Injunctions.

(a) **Preliminary injunctions.**

(a)(1) **Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(a)(2) **Consolidation of hearing.** Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) **Temporary restraining orders.**

(b)(1) **Notice.** No temporary restraining order shall be granted without notice to the adverse party or that party's attorney unless (A) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (B) the applicant or the applicant's attorney certifies to the court in writing as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required.

(b)(2) **Form of order.** Every temporary restraining order shall be endorsed with the date and hour of issuance and shall be filed forthwith in the clerk's office and entered of record. The order shall define the injury and state why it is irreparable. The order shall expire by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

(b)(3) **Priority of hearing.** If a temporary restraining order is granted, the motion for a preliminary injunction shall be scheduled for hearing at the earliest possible time and takes precedence over all other civil matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the temporary restraining order shall have the burden to show entitlement to a preliminary injunction; if the party does not do so, the court shall dissolve the temporary restraining order.

(b)(4) **Dissolution or modification.** On 48 hours' notice to the party who obtained the temporary restraining order without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification. In that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

(c) **Security.**

(c)(1) **Requirement.** The court shall condition issuance of the order or injunction on the giving of security by the applicant, in such sum and form as the court deems proper, unless it appears that none of the parties will incur or suffer costs, attorney fees or damage as the result of any wrongful order or injunction, or unless there exists some other substantial reason for dispensing with the requirement of security. No such security shall be required of the United States, the State of Utah, or of an officer, agency, or subdivision of either; nor shall it be required when it is prohibited by law.

(c)(2) **Amount not a limitation.** The amount of security shall not establish or limit the amount of costs, including reasonable attorney fees incurred in connection with the restraining order or preliminary injunction, or damages that may be awarded to a party who is found to have been wrongfully restrained or enjoined.

(c)(3) **Jurisdiction over surety.** A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) **Form and scope.** Every restraining order and order granting an injunction shall set forth the reasons for its issuance. It shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. It shall be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice, in person or through counsel, or otherwise, of the order. If a restraining order is granted without notice to the party restrained, it shall state the reasons justifying the court's decision to proceed without notice.

(e) **Grounds.** A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

(e)(1) The applicant will suffer irreparable harm unless the order or injunction issues;

(e)(2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;

(e)(3) The order or injunction, if issued, would not be adverse to the public interest; and

(e)(4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

(f) **Domestic relations cases.** Nothing in this rule shall be construed to limit the equitable powers of the courts in domestic relations cases.

Advisory Committee Notes

~~Rule 65A has been materially revised from the former rule. Some of the changes in the rule are the result of suggestions from Utah's judges, all of whom were asked for their comments on specific ways to improve injunction practice. Although most paragraphs have been changed, there are two major~~

~~revisions. First, under paragraph (b) of the present rule, the court now has explicit authority to order the consolidation of trial on the merits with the hearing on a preliminary injunction. Second, the grounds for the issuance of temporary restraining orders and preliminary injunctions have been modernized and clarified in paragraph (e). Portions of the rule have been reorganized for purposes of clarity.~~

~~Paragraph (a). Subparagraph (a)(1) is identical to paragraph (a) of the former rule. It is also identical to the corresponding subparagraph in Rule 65, Federal Rules of Civil Procedure. Subparagraph (a)(2) is entirely new to the Utah rules. It is borrowed from subparagraph (a)(2) of the federal rule. It allows the court, in its discretion, to adjudicate the entire case at the time of the preliminary injunction hearing. If the court decides not to consolidate the trial on the merits with the preliminary injunction hearing, admissible evidence received at the preliminary injunction hearing nevertheless becomes part of the trial record and need not be introduced again.~~

~~Paragraph (b). This paragraph is similar to paragraph (b) of the former rule. It has been reorganized for clarity and has been modernized in other respects. Subparagraph (1) prohibits the issuance of a temporary restraining order unless two conditions are met. First, as in the former rule, the record must disclose that irreparable injury, loss, or damage will result if the court does not intervene. Second, the applicant or the applicant's attorney must provide written certification of any effort to give notice and the reasons for which notice should not be required. The latter requirement is new. The language in subparagraphs (3) and (4) has been modernized and clarified.~~

~~Paragraph (c). This paragraph has been revised to reflect developments in the case law and a new rule in this state on damages for wrongfully issued injunctions. Subparagraph (1) makes it clear that the court may decline to require security if it appears that none of the parties will suffer expense or damages from a wrongful temporary restraining order or preliminary injunction, or if, in the particular case, there is some other substantial reason for dispensing with the requirement of security. See Corporation of President of Church of Jesus Christ of Latter-Day Saints v. Wallace, 573 P.2d 1285, 1286-87 (Utah 1978). Otherwise, the court should require security in an appropriate amount. Subparagraph (2), which is new, makes it clear that the amount of the security required by the court does not limit the recovery that may be awarded to a wrongfully restrained party. This provision represents a change in Utah law. Compare with Mountain States Tel. & Tel. Co. v. Atkin, Wright & Mills, 681 P.2d 1258 (Utah 1984). In the committee's view, the prior rule was unfair to the wrongfully enjoined party whose damages from the injunction may far exceed the amount of security estimated at the outset of the case. Subparagraph (2) also explicitly allows a wrongfully enjoined party to recover attorney fees. Subparagraph (3) is closely similar to language in a portion of the former rule's paragraph (c).~~

~~Paragraph (d). This paragraph is similar to the corresponding paragraph in the former rule. Borrowing a concept from paragraph (b) of the former rule, it requires the court to state its reasons for granting a temporary restraining order without notice.~~

~~Paragraph (e). This paragraph completely revises the corresponding paragraph of the former rule. The committee sought to modernize the grounds for the issuance of injunctive orders by incorporating standards consistent with national trends. There is little case law in Utah interpreting the grounds for injunctive orders, and the committee was divided as to whether the development of grounds should be left entirely to the courts. A majority of the committee believed, however, that courts and litigants would benefit from explicit standards drawn from sound authority. The standards set forth in paragraph (e) are derived from Tri-State Generation & Transmission Ass'n. v. Shoshone River Power, Inc., 805 F.2d 351, 355 (10th Cir. 1986), and Otero Savings & Loan Ass'n. v. Federal Reserve Bank, 665 F.2d 275, 278 (10th Cir. 1981). Federal courts require proof of compliance with each of the four standards, but the weight given to each standard may vary. The substantial body of federal case authority in this area should assist the Utah courts in developing the law under paragraph (e).~~

~~Paragraph (f). This paragraph is new. It acknowledges that in domestic relations cases courts must occasionally enter prohibitory or mandatory orders under circumstances that do not permit compliance with the procedures in Rule 65A. The committee believed that this rule should not be construed to limit the authority of the court in domestic relations cases.~~

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Rule 65B. Extraordinary relief.

(a) Availability of remedy. Where no other plain, speedy and adequate remedy is available, a person may petition the court for extraordinary relief on any of the grounds set forth in paragraph (b) (involving wrongful restraint on personal liberty), paragraph (c) (involving the wrongful use of public or corporate authority) or paragraph (d) (involving the wrongful use of judicial authority, the failure to exercise such authority, and actions by the Board of Pardons and Parole). There shall be no special form of writ. Except for instances governed by Rule 65C, the procedures in this rule shall govern proceedings on all petitions for extraordinary relief. To the extent that this rule does not provide special procedures, proceedings on petitions for extraordinary relief shall be governed by the procedures set forth elsewhere in these rules.

(b) Wrongful restraints on personal liberty.

(b)(1) Scope. Except for instances governed by Rule 65C, this paragraph shall govern all petitions claiming that a person has been wrongfully restrained of personal liberty, and the court may grant relief appropriate under this paragraph.

(b)(2) Commencement. The proceeding shall be commenced by filing a petition with the clerk of the court in the district in which the petitioner is restrained or the respondent resides or in which the alleged restraint is occurring.

(b)(3) Contents of the petition and attachments. The petition shall contain a short, plain statement of the facts on the basis of which the petitioner seeks relief. It shall identify the respondent and the place where the person is restrained. It shall state the cause or pretense of the restraint, if known by the petitioner. It shall state whether the legality of the restraint has already been adjudicated in a prior proceeding and, if so, the reasons for the denial of relief in the prior proceeding. The petitioner shall attach to the petition any legal process available to the petitioner that resulted in restraint. The petitioner shall also attach to the petition a copy of the pleadings filed by the petitioner in any prior proceeding that adjudicated the legality of the restraint.

(b)(4) Memorandum of authorities. The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.

(b)(5) Dismissal of frivolous claims. On review of the petition, if it is apparent to the court that the legality of the restraint has already been adjudicated in a prior proceeding, or if for any other reason any claim in the petition shall appear frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating that the claim is frivolous on its face and the reasons for this conclusion. The order need not state findings of fact or conclusions of law. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal.

(b)(6) Responsive pleadings. If the petition is not dismissed as being frivolous on its face, the court shall direct the clerk of the court to serve a copy of the petition and a copy of any memorandum upon the respondent by mail. At the same time, the court may issue an order directing the respondent to answer or otherwise respond to the petition, specifying a time within which the respondent must comply. If the circumstances require, the court may also issue an order directing the respondent to appear before the court for a hearing on the legality of the restraint. An answer to a petition shall state plainly whether the respondent has restrained the person alleged to have been restrained, whether the person so restrained has been transferred to any other person, and if so, the identity of the transferee, the date of the transfer, and the reason or authority for the transfer. Nothing in this paragraph shall be construed to prohibit the court from ruling upon the petition based upon a dispositive motion.

(b)(7) Temporary relief. If it appears that the person alleged to be restrained will be removed from the court's jurisdiction or will suffer irreparable injury before compliance with the hearing order can be enforced, the court shall issue a warrant directing the sheriff to bring the respondent before the court to be dealt with according to law. Pending a determination of the petition, the court may place the person alleged to have been restrained in the custody of such other persons as may be appropriate.

(b)(8) Alternative service of the hearing order. If the respondent cannot be found, or if it appears that a person other than the respondent has custody of the person alleged to be restrained, the hearing order and any other process issued by the court may be served on the person having custody in the manner and with the same effect as if that person had been named as respondent in the action.

(b)(9) Avoidance of service by respondent. If anyone having custody of the person alleged to be restrained avoids service of the hearing order or attempts wrongfully to remove the person from the court's jurisdiction, the sheriff shall immediately arrest the responsible person. The sheriff shall forthwith bring the person arrested before the court to be dealt with according to law.

(b)(10) Hearing or other proceedings. In the event that the court orders a hearing, the court shall hear the matter in a summary fashion and shall render judgment accordingly. The respondent or other person having custody shall appear with the person alleged to be restrained or shall state the reasons for failing to do so. The court may nevertheless direct the respondent to bring before it the person alleged to be restrained. If the petitioner waives the right to be present at the hearing, the court shall modify the hearing order accordingly. The hearing order shall not be disobeyed for any defect of form or any misdescription in the order or the petition, if enough is stated to impart the meaning and intent of the proceeding to the respondent.

(c) Wrongful use of or failure to exercise public authority.

(c)(1) Who may petition the court; security. The attorney general may, and when directed to do so by the governor shall, petition the court for relief on the grounds enumerated in this paragraph. Any person who is not required to be represented by the attorney general and who is aggrieved or threatened by one of the acts enumerated in subparagraph (2) of this paragraph may petition the court under this paragraph if (A) the person claims to be entitled to an office unlawfully held by another or (B) if the attorney general fails to file a petition under this paragraph after receiving notice of the person's claim. A petition filed by a person other than the attorney general under this paragraph shall be brought in the name of the petitioner, and the petition shall be accompanied by an undertaking with sufficient sureties to pay any judgment for costs and damages that may be recovered against the petitioner in the proceeding. The sureties shall be in the form for bonds on appeal provided for in Rule 73.

(c)(2) Grounds for relief. Appropriate relief may be granted: (A) where a person usurps, intrudes into, or unlawfully holds or exercises a public office, whether civil or military, a franchise, or an office in a corporation created by the authority of the state of Utah; (B) where a public officer does or permits any act that results in a forfeiture of the office; (C) where persons act as a corporation in the state of Utah without being legally incorporated; (D) where any corporation has violated the laws of the state of Utah relating to the creation, alteration or renewal of corporations; or (E) where any corporation has forfeited or misused its corporate rights, privileges or franchises.

(c)(3) Proceedings on the petition. On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. The court may also grant temporary relief in accordance with the terms of Rule 65A.

(d) Wrongful use of judicial authority or failure to comply with duty; actions by board of pardons and parole.

(d)(1) Who may petition. A person aggrieved or whose interests are threatened by any of the acts enumerated in this paragraph may petition the court for relief.

(d)(2) Grounds for relief. Appropriate relief may be granted: (A) where an inferior court, administrative agency, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion; (B)

where an inferior court, administrative agency, corporation or person has failed to perform an act required by law as a duty of office, trust or station; (C) where an inferior court, administrative agency, corporation or person has refused the petitioner the use or enjoyment of a right or office to which the petitioner is entitled; or (D) where the Board of Pardons and Parole has exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law.

(d)(3) Proceedings on the petition. On the filing of a petition, the court may require that notice be given to adverse parties before issuing a hearing order, or may issue a hearing order requiring the adverse party to appear at the hearing on the merits. The court may direct the inferior court, administrative agency, officer, corporation or other person named as respondent to deliver to the court a transcript or other record of the proceedings. The court may also grant temporary relief in accordance with the terms of Rule 65A.

(d)(4) Scope of review. Where the challenged proceedings are judicial in nature, the court's review shall not extend further than to determine whether the respondent has regularly pursued its authority.

Advisory Committee Notes

~~This rule represents a complete reorganization of the former rule. This rule also revises parts of the former rule dealing with habeas corpus and post-conviction remedies. The rule applies generally to proceedings that are necessitated by the absence of another plain, speedy and adequate remedy in the court. After the rule's introductory paragraph, each subsequent paragraph is intended to deal with a separate type of proceeding. Thus, subparagraph (b) deals with proceedings involving wrongful restraint on personal liberty other than those governed by Rule 65C; paragraph (c) deals with proceedings involving the wrongful use of public or corporate authority; and paragraph (d) deals with proceedings involving the wrongful use of judicial authority or the failure to exercise such authority. Paragraph (d) also deals with petitions challenging actions by the Board of Pardons and Parole and the failure of the Board to perform a required act. To the extent that the special procedures set forth in these paragraphs do not cover specific procedural issues that arise during a proceeding, the normal rules of civil procedure will apply.~~

~~This rule effectively eliminates the concept of the "writ" from extraordinary relief procedure. In the view of the advisory committee, the concept was used inconsistently and confusingly in the former rule, and there was disagreement among judges and lawyers as to what it meant in actual practice. The concept has been replaced with terms such as "hearing order" and "relief" that are more descriptive of the procedural reality.~~

~~Paragraph (b). This paragraph governs all petitions claiming that a person has been wrongfully restrained of personal liberty other than those specifically governed by paragraph Rule 65C. It replaces paragraph (f) of the former rule. Paragraph (b) endeavors to simplify the procedure in habeas corpus cases and provides for a means of summary dismissal of frivolous claims. Thus, if it is apparent to the court that the claim is "frivolous on its face", the court may issue an order dismissing the claim, which terminates the proceeding. Apart from this significant change from former practice, paragraph (b) is patterned after the former rule.~~

~~Paragraphs (c) and (d) replace paragraph (b) of the former rule. The committee's general purpose in drafting these paragraphs was to simplify and clarify the requirements of the preexisting paragraph.~~

~~Paragraph (c). Paragraph (c) replaces paragraph (b)(1) of the former rule. This paragraph deals generally with proceedings for the unlawful use of public office or corporate franchises. As a general matter, the attorney general may seek relief on grounds enumerated in the paragraph. Any other person, including a governmental officer or entity not required to be represented by the attorney general, may also seek relief under paragraph (c) if the person claims to be entitled to an office unlawfully held by another or if the attorney general fails to file a petition under paragraph (c) after receiving notice of the person's claim. In allowing appropriate governmental entities and officers to proceed under this paragraph, the rule eliminates a procedural barrier that previously prevented anyone other than the attorney general and "private" persons to seek relief. Although the rule removes the procedural barrier, it was not intended to modify the substantive rules that limit the authority or standing of any governmental entity or officer. Nor was the rule intended to modify the constitutional or statutory authority of the attorney general. Since paragraph (c) provides only a general outline of procedures to be used in such proceedings, litigants should look to the other rules of civil procedure for guidance on specific questions not covered by paragraph (c). In proceedings under this paragraph and paragraph (d), parties seeking temporary relief in advance of a hearing on the merits should comply with the requirements of Rule 65A.~~

~~Paragraph (d). This paragraph governs relatively unusual proceedings in which the normal rules of appellate procedure are inadequate to provide redress for an abuse by a court, administrative agency, or officer exercising judicial or administrative functions. This paragraph replaces subparagraph (2), (3) and (4) of paragraph (b) of the former rule. This paragraph allows the court wide discretion in the manner in which such proceedings are handled. Like the former rule, the scope of review under this paragraph is limited to determining whether the respondent has regularly pursued its authority.~~

~~1992 Revisions.~~

~~These revisions harmonize parallel provisions of the rule and address technical problems relating to venue and the content of memoranda and orders in habeas corpus and post-conviction proceedings.~~

~~Paragraph (b). Changes to this paragraph affect the venue requirements for one category of extraordinary relief petition. The general rule established in the paragraph is that petitions governed by paragraph (b) must be commenced in the district court in the county in which the commitment leading to confinement was issued. Challenges to parole violation proceedings, however, should be filed in the district court in the county in which the petitioner is located.~~

~~Paragraph (c). The changes to this paragraph enlarge the discretion of the court in dealing with those petitions for wrongful restraint that the paragraph governs. In dismissing claims that are frivolous on their face, the court is relieved of the responsibility to state findings of fact or conclusions of law. This change harmonizes paragraph (c) with the parallel requirements of paragraph (b)(7) of the rule. Other changes allow the court more discretion in ordering a hearing concerning unlawful restraints. The remaining changes in this paragraph clarify the contents of pleadings and memoranda filed with the court.~~

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Rule 65C. Post-conviction relief.

(a) Scope. This rule governs proceedings in all petitions for post-conviction relief filed under the Post-Conviction Remedies Act, Utah Code Title 78B, Chapter 9. The Act sets forth the manner and extent to which a person may challenge the legality of a criminal conviction and sentence after the conviction and sentence have been affirmed in a direct appeal under Article I, Section 12 of the Utah Constitution, or the time to file such an appeal has expired.

(b) Procedural defenses and merits review. Except as provided in paragraph (h), if the court comments on the merits of a post-conviction claim, it shall first clearly and expressly determine whether that claim is independently precluded under Section 78B-9-106.

(c) Commencement and venue. The proceeding shall be commenced by filing a petition with the clerk of the district court in the county in which the judgment of conviction was entered. The petition should be filed on forms provided by the court. The court may order a change of venue on its own motion if the petition is filed in the wrong county. The court may order a change of venue on motion of a party for the convenience of the parties or witnesses.

(d) Contents of the petition. The petition shall set forth all claims that the petitioner has in relation to the legality of the conviction or sentence. The petition shall state:

(d)(1) whether the petitioner is incarcerated and, if so, the place of incarceration;

(d)(2) the name of the court in which the petitioner was convicted and sentenced and the dates of proceedings in which the conviction was entered, together with the court's case number for those proceedings, if known by the petitioner;

(d)(3) in plain and concise terms, all of the facts that form the basis of the petitioner's claim to relief;

(d)(4) whether the judgment of conviction, the sentence, or the commitment for violation of probation has been reviewed on appeal, and, if so, the number and title of the appellate proceeding, the issues raised on appeal, and the results of the appeal;

(d)(5) whether the legality of the conviction or sentence has been adjudicated in any prior post-conviction or other civil proceeding, and, if so, the case number and title of those proceedings, the issues raised in the petition, and the results of the prior proceeding; and

(d)(6) if the petitioner claims entitlement to relief due to newly discovered evidence, the reasons why the evidence could not have been discovered in time for the claim to be addressed in the trial, the appeal, or any previous post-conviction petition.

(e) Attachments to the petition. If available to the petitioner, the petitioner shall attach to the petition:

(e)(1) affidavits, copies of records and other evidence in support of the allegations;

(e)(2) a copy of or a citation to any opinion issued by an appellate court regarding the direct appeal of the petitioner's case;

(e)(3) a copy of the pleadings filed by the petitioner in any prior post-conviction or other civil proceeding that adjudicated the legality of the conviction or sentence; and

(e)(4) a copy of all relevant orders and memoranda of the court.

(f) Memorandum of authorities. The petitioner shall not set forth argument or citations or discuss authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall be filed with the petition.

(g) Assignment. On the filing of the petition, the clerk shall promptly assign and deliver it to the judge who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk shall assign the case in the normal course.

(h)(1) Summary dismissal of claims. The assigned judge shall review the petition, and, if it is apparent to the court that any claim has been adjudicated in a prior proceeding, or if any claim in the petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating either that the claim has been adjudicated or that the claim is frivolous on its face. The order shall be sent by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal. The order of dismissal need not recite findings of fact or conclusions of law.

(h)(2) A claim is frivolous on its face when, based solely on the allegations contained in the pleadings and attachments, it appears that:

(h)(2)(A) the facts alleged do not support a claim for relief as a matter of law;

(h)(2)(B) the claim has no arguable basis in fact; or

(h)(2)(C) the claim challenges the sentence only and the sentence has expired prior to the filing of the petition.

(h)(3) If a claim is not frivolous on its face but is deficient due to a pleading error or failure to comply with the requirements of this rule, the court shall return a copy of the petition with leave to amend within 21 days. The court may grant one additional 21-day period to amend for good cause shown.

(h)(4) The court shall not review for summary dismissal the initial post-conviction petition in a case where the petitioner is sentenced to death.

(i) Service of petitions. If, on review of the petition, the court concludes that all or part of the petition should not be summarily dismissed, the court shall designate the portions of the petition that are not dismissed and direct the clerk to serve a copy of the petition, attachments and memorandum by mail upon the respondent. If the petition is a challenge to a felony conviction or sentence, the respondent is the state of Utah represented by the Attorney General. In all other cases, the respondent is the governmental entity that prosecuted the petitioner.

(j) Appointment of pro bono counsel. If any portion of the petition is not summarily dismissed, the court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis to represent the petitioner in the post-conviction court or on post-conviction appeal. In determining whether to appoint counsel the court shall consider whether the petition or the appeal contains factual allegations that will

require an evidentiary hearing and whether the petition involves complicated issues of law or fact that require the assistance of counsel for proper adjudication.

(k) Answer or other response. Within 30 days after service of a copy of the petition upon the respondent, or within such other period of time as the court may allow, the respondent shall answer or otherwise respond to the portions of the petition that have not been dismissed and shall serve the answer or other response upon the petitioner in accordance with Rule 5(b). Within 30 days (plus time allowed for service by mail) after service of any motion to dismiss or for summary judgment, the petitioner may respond by memorandum to the motion. No further pleadings or amendments will be permitted unless ordered by the court.

(l) Hearings. After pleadings are closed, the court shall promptly set the proceeding for a hearing or otherwise dispose of the case. The court may also order a prehearing conference, but the conference shall not be set so as to delay unreasonably the hearing on the merits of the petition. At the prehearing conference, the court may:

(l)(1) consider the formation and simplification of issues;

(l)(2) require the parties to identify witnesses and documents; and

(l)(3) require the parties to establish the admissibility of evidence expected to be presented at the evidentiary hearing.

(m) Presence of the petitioner at hearings. The petitioner shall be present at the prehearing conference if the petitioner is not represented by counsel. The prehearing conference may be conducted by means of telephone or video conferencing. The petitioner shall be present before the court at hearings on dispositive issues but need not otherwise be present in court during the proceeding. The court may conduct any hearing at the correctional facility where the petitioner is confined.

(n) Discovery; records.

(n)(1) Discovery under Rules 26 through 37 shall be allowed by the court upon motion of a party and a determination that there is good cause to believe that discovery is necessary to provide a party with evidence that is likely to be admissible at an evidentiary hearing.

(n)(2) The court may order either the petitioner or the respondent to obtain any relevant transcript or court records.

(n)(3) All records in the criminal case under review, including the records in an appeal of that conviction, are deemed part of the trial court record in the petition for post-conviction relief. A record from the criminal case retains the security classification that it had in the criminal case.

(o) Orders; stay.

(o)(1) If the court vacates the original conviction or sentence, it shall enter findings of fact and conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony conviction, the order shall be stayed for 7 days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial, pursue a new sentence, appeal the order, or take no action. Thereafter the stay of the order is governed by these rules and by the Rules of Appellate Procedure.

(o)(2) If the respondent fails to provide notice or gives notice that no action will be taken, the stay shall expire and the court shall deliver forthwith to the custodian of the petitioner the order to release the petitioner.

(o)(3) If the respondent gives notice that the petitioner will be retried or resentenced, the trial court may enter any supplementary orders as to arraignment, trial, sentencing, custody, bail, discharge, or other matters that may be necessary and proper.

(p) Costs. The court may assign the costs of the proceeding, as allowed under Rule 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court may direct the costs to be paid by the governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of Corrections, Utah Code Title 78A, Chapter 2, Part 3 governs the manner and procedure by which the trial court shall determine the amount, if any, to charge for fees and costs.

(q) Appeal. Any final judgment or order entered upon the petition may be appealed to and reviewed by the Court of Appeals or the Supreme Court of Utah in accord with the statutes governing appeals to those courts.

Advisory Committee Notes

~~This rule replaces former paragraph (b) of Rule 65B. It governs proceedings challenging a conviction or sentence, regardless whether the claim relates to an original commitment, a commitment for violation of probation, or a sentence other than commitment. Claims relating to the terms or conditions of confinement are governed by paragraph (b) of the Rule 65B. This rule, as a general matter, simplifies the pleading requirements and contains two significant changes from procedure under the former rule. First, the paragraph requires the clerk of court to assign post-conviction relief to the judge who sentenced the petitioner if that judge is available. Second, the rule allows the court to dismiss frivolous claims before any answer or other response is required. This provision is patterned after the federal practice pursuant to 28 U.S.C. § 2254. The advisory committee adopted the summary procedures set forth as a means of balancing the requirements of fairness and due process on the one hand against the public's interest in the efficient adjudication of the enormous volume of post-conviction relief cases.~~

~~The requirement in paragraph (l) for a determination that discovery is necessary to discover relevant evidence that is likely to be admissible at an evidentiary hearing is a higher standard than is normally used in determining motions for discovery.~~

~~This rule replaces former paragraph (b) of Rule 65B. It governs proceedings challenging a conviction or sentence, regardless whether the claim relates to an original commitment, a commitment for violation of probation, or a sentence other than commitment. Claims relating to the terms or conditions of confinement are governed by paragraph (b) of the Rule 65B. This rule, as a general matter, simplifies the pleading requirements and contains two significant changes from procedure under the former rule. First, the paragraph requires the clerk of court to assign post-conviction relief to the judge who sentenced the petitioner if that judge is available. Second, the rule allows the court to dismiss frivolous claims before any answer or other response is required. This provision is patterned after the federal practice pursuant to 28 U.S.C. § 2254. The advisory committee adopted the summary procedures set forth as a means of balancing the requirements of fairness and due process on the one hand against the public's interest in the efficient adjudication of the enormous volume of post-conviction relief cases.~~

~~The requirement in paragraph (m) for a determination that discovery is necessary to discover relevant evidence that is likely to be admissible at an evidentiary hearing is a higher standard than is normally used in determining motions for discovery.~~

~~The 2009 amendments embrace Utah's Post-Conviction Remedies Act as the law governing post-conviction relief. It provides an independent and adequate procedural basis for dismissal without the necessity of a merits review. See Gardner v. Galetka, 568 F.3d 862, 884-85 (10th Cir. 2009). It is the committee's view that the added restrictions which the Act places on post-conviction petitions do not amount to a suspension of the writ of habeas corpus. See Felker v. Turpin, 518 U.S. 651, 664 (1996) (relying on McCleskey v. Zant, 499 U.S. 467, 489 (1991)).~~

~~Section 78B-9-202 governs the payment of counsel in death penalty cases.~~

For more information on prior rule amendments, please visit https://www.utcourts.gov/utc/rules-approved/. Prior versions of the court rules and pre-2004 court rule amendments are also available at the State Law Library: https://www.utcourts.gov/lawlibrary/.

For discussion materials on rule amendments, please visit the web blog of the Advisory Committee on the Utah Rules of Civil Procedure at https://www.utcourts.gov/utc/civproc/.

Rule 66 – no advisory committee notes

Rule 67 – no advisory committee notes

Rule 68. Settlement offers.

(a) Unless otherwise specified, an offer made under this rule is an offer to resolve all claims in the action 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 14 days before trial;

(c)(4) remain open for at least 14 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.

Advisory Committee Notes

~~Under Section 78B-5-824 a party will not be awarded prejudgment interest on special damages in a Tier 1 action for personal injury or wrongful death arising on or after July 1, 2014 if:~~

~~(1) the party does not make a settlement offer;~~

~~(2) the settlement offer is tendered less than 60 days before trial; or~~

~~(3) the settlement offer is greater than or equal to one and one-third times the judgment awarded at trial.~~

~~Although the statute does not directly affect settlement offers made under Rule 68, parties should be aware of the limitation a settlement offer has on prejudgment interest in some cases.~~

Rule 69A – no advisory committee notes

Rule 69B – no advisory committee notes

Rule 69C – no advisory committee notes

Rule 70 – no advisory committee notes

Rule 71 – no advisory committee notes

Rule 72 – no advisory committee notes

Tab 4

Utah State Courts

Nancy Sylvester <nancyjs@utcourts.gov>

Multi-district case management

11 messages

Judge Kent Holmberg Thu, Jan 3, 2019 at 8:54 AM
To: Nancy Sylvester <nancyjs@utcourts.gov>, "Jonathan O. Hafen" <jhafen@parrbrown.com>

The issue of consolidation of cases across district lines is not addressed in the Utah Rules of Civil Procedure. Rule 42 is the Rule on consolidation and it is silent on cross-District consolidation. This issue has arisen in the state-wide opioid litigation. Although it may not be of any assistance to the opioid litigation, in the interest of efficient use of court resources and litigant cost containment, the Rules should provide for management of similar cases across district lines.

Here is a rule which has been in use in Minnesota since 1994 (which at that time had a population and a bar of similar size as Utah is now):

> **Rule 113.03. Assignment of Cases in More Than One District to a Single Judge**
>
> **(a) Assignment by Chief Justice.** When two or more cases pending in more than one judicial district involve one or more common questions of fact or are otherwise related cases in which there is a special need for or desirability of central or coordinated judicial management, a motion by a party or a court's request for assignment of the cases to a single judge may be made to the chief justice of the supreme court.
>
> **(b) Procedure.** The motion shall identify by court, case title, case number, and judge assigned, if any, each case for which assignment to a single judge is requested. The motion shall also indicate the extent to which the movant anticipates that additional related cases may be filed. The motion shall be filed with the clerk of appellate courts and shall be served on other counsel and any self-represented litigants in all cases for which assignment is requested and shall be served on the chief judge of each district in which such an action is pending. Any party may file and serve a response within 5 days after service of the motion. Any reply shall be filed and served within 2 days of service of the response. Except as otherwise provided in this rule, the motion and any response shall comply with the requirements of Minn. R. Civ. App. P. 127 and 132.02.
>
> **(c) Mechanics and Effect of Transfer.** When such a motion is made, the chief justice may, after consultation with the chief judges of the affected districts and the state court administrator, assign the cases to a judge in one of the districts in which any of the cases is pending or in any other district. If the motion is to be granted, in selecting a judge the chief justice may consider, among other things, the scope of the cases and their possible impact on judicial resources, the availability of adequate judicial resources in the affected districts, and the ability, interests, training and experience of the available judges. As necessary, the chief justice may assign an alternate or back-up judge or judges to assist in the management and disposition of the cases. The assigned judge may refer any case to the chief judge of the district in which the case was pending for trial before a judge of that district selected by the chief judge.
>
> MN ST GEN PRAC Rule 113.03

Note that this rule in Minnesota is not a part of the Minnesota Rules of Civil Procedure but is part of what they call the General Rules of Practice for the District Courts and is somewhat analogous to Utah's Rules of Judicial Administration.

I have circulated this Rule among some of the Third District Court judges including those on the Board of District Court Judges and the Judicial Counsel and have not received any negative feedback. I am waiting for Brent Johnson to get back to me with his thoughts.

Do you think this is something to address with the Supreme Court before presenting it to the Rules Committee or should I just present it to the Rules Committee? Perhaps it is more appropriate as a Utah Rule of Judicial Administration? What are your thoughts?

Kent