137 would make no changes to the appearance of the document from when it was
138 filed.

139 Some members asked whether the requirement to note the filing date on the
140 paper was necessary. Mr. Slaugh noted that the provision should still be there
141 to direct the handling of paper filings. He added that the provision would be
142 especially important in the circumstances where a judge agreed to accept a pa-
143 per for filing. Mr. Whittaker pointed out that the language of the federal rule
144 explicitly provided that a judge who accepted a paper for filing was to note the
145 filing date on the paper and promptly deliver it to the clerk.

146 Mr. Shea noted that as Rule 10(i)(2) provides that a paper electronically signed
147 and filed is the original, the metadata appended to the electronic file is suffi-
148 cient to comply with the existing rule, and so no changes need to be made.
149 Committee members suggested that if the language were kept, that it should
150 be noted in an advisory committee note that appending of metadata to the
151 electronic file by the electronic filing system constitutes "noting on the paper"
152 for purposes of Rule 5(e).

153 Mr. Hafen expressed his opinion that the potential for confusion with respect
154 to whether electronic papers were in compliance with Rule 5(e) outweighed
155 any benefits of leaving the language in, and advocated deleting the language.

156 **Committee Action.** Upon Mr. Hafen's motion, the committee agreed to delete
157 the sentence "The filing date shall be noted on the paper" from (e).

158 ### *E. Style Amendments*

159 Mr. Shea next asked whether the committee would like to consider style
160 amendments to the rule. The committee agreed to table the proposed revision
161 until the next meeting to allow a draft to be prepared for review that incorpo-
162 rates the changes listed above and that restyles the language of the rule as
163 appropriate.

164 ## III. RULE 10

165 ### *A. Margins*

166 **Discussion.** The committee next considered the proposed revision to Rule 10.
167 Debra Moore, the District Court Administrator for the Administrative Office of
168 Courts, introduced subdivision (d) of the proposed revision, which would
169 change the margin requirements for pleadings and papers to one inch, except

170 for the first page of proposed orders and other documents signed by the court,
171 which would be two inches. Ms. Moore noted that with the introduction of e-
172 filing, the clerks no longer needed the extra space at the top to punch holes in
173 the paper for inclusion in the file. However, because the electronic signature of
174 judges is placed at the top of the first page, there must be extra space at the
175 top of the first page.

176 Mr. Whittaker noted that in order to create a different margin for the first
177 page than for subsequent pages, a section break must be inserted. There is a
178 high likelihood that the particular formatting would render improperly when
179 converted into RTF and opened with a different word processing program than
180 the program that created the file. Mr. Slaugh suggested that, as the proposed
181 orders were being submitted in RTF format, perhaps the clerks could edit the
182 document to put in the needed space. Ms. Moore responded that editing is of-
183 ten too time consuming and opening the file for editing often "breaks" the ex-
184 isting formatting. Mr. Battle suggested that rather than setting a special mar-
185 gin for the first page, the rule could require a two-inch top margin on all pages
186 of a proposed order. That way, there would be no problem with the margin
187 formatting rendering improperly.

188 Judge Blanch noted that the electronic signature line was rather small and
189 asked how much space was needed on the top margin. Judge Toomey sug-
190 gested that perhaps a 1.5-inch top margin was sufficient. Mr. Whittaker
191 pointed out that a 1.5-inch top margin was the current standard in the federal
192 district court for all documents. Mr. Hafen said that 1.5 inches should be
193 enough room for the electronic signature line, and would have the benefit of
194 conforming to the federal rule. Ms. Moore said that a top margin of 1.5 inches
195 would be fine as long as it is big enough to accommodate the signature line.

196 **Committee Action.** It was moved and seconded that, subject to Ms. Moore
197 verifying that a 1.5-inch top margin would be sufficient space for the signature
198 line, Rule 10(d) be amended to require all pleadings and papers to have a top
199 margin of not less than 1.5 inches and a bottom margin of not less than one
200 inch. The motion carried on voice vote; while a dissenting vote was noted, no
201 division was requested.

202 ***B. Signature Block***

203 **Discussion.** Ms. Moore next introduced subdivision (e) of the proposed revi-
204 sion, which would require e-filed proposed orders to include the words "signa-

205 ture at top of first page" in place of the signature block at the end of the order
206 and would forbid graphic signatures on e-filed pleadings and papers.

207 Judge Blanch noted that he regularly edits proposed orders to delete signature
208 blocks as well as certificates of service to eliminate confusion between serving
209 the proposed order and the order. He also noted that in about 25% of the cases,
210 editing the proposed order would cause the formatting to render improperly.
211 He asked if there was a way either to get rid of the certificate of service so that
212 he could reduce the number of orders he has to edit, or to advise practitioners
213 so that the proposed orders they submit did not have formatting problems. Ms.
214 Moore responded that the e-filing program was set up to detect certain codes
215 within an RTF document that are most likely to cause the formatting to render
216 improperly and to automatically reject documents that contain those codes.
217 However, the system does not detect all formatting problems.

218 Judge Shaughnessy questioned to what extent formatting issues should be
219 dealt with in the rules. As the rules take time to amend, he suggested that
220 perhaps it would be wiser to just refer in Rule 10 to a style guide that the Ad-
221 ministrative Office of Courts could maintain and alter as needed without com-
222 ing to the committee to make changes. Several members expressed their
223 agreement with this suggestion. Mr. Shea pointed out that (d) and (e) could be
224 eliminated if a style guide were adopted. Ms. Moore said that the Administra-
225 tive Office of Courts is working on producing and compiling a style guide, but
226 suggested that in the meantime the committee should amend the rule to ad-
227 dress the immediate problems.

228 Mr. Slaugh suggested adding the words "language substantially similar to" be-
229 fore "signature at top of first page." He noted that other phrases such as "end
230 of document" and "end of order—signature on top of first page" had been rec-
231 ommended by the Board of District Court Judges and the federal district court,
232 and it should not matter exactly how it is worded so long as the concept is con-
233 veyed.

234 Mr. Hafen asked whether language similar to "end of document" should be in-
235 cluded. Ms. Moore noted that as the approval as to form and/or the certificate
236 of service would come after that language, "end of document" would probably
237 not be appropriate. Judge Blanch observed that the certificate of service on
238 proposed orders leads to confusion, as it is unclear whether it was the proposed
239 order or order that was served. He stated that he usually deletes them before
240 signing orders. While some members suggested submitting a certificate of

241 service of proposed order as a separate document, others objected, as it would
242 clutter the docket and require the judge to find and review an extra document
243 that, unlike the proposed order, was not submitted to him or her automati-
244 cally.

245 **Committee Action.** It was moved and seconded that Rule 10(e) be amended
246 to add the following language at the end of the subdivision: "If a proposed
247 document ready for signature by a court official is electronically filed, the order
248 must not include the official's signature line and must, at the end of the docu-
249 ment, indicate that the signature appears at the top of the first page." The mo-
250 tion carried unanimously on voice vote.

251 ***C. Graphic Signatures***

252 The committee turned its attention to eliminating graphic signatures. Ms.
253 Moore explained that many practitioners are submitting scanned PDFs rather
254 than native PDFs in order to have their signatures appear on the document.
255 Documents submitted by e-filing should be searchable, and while it is possible
256 to process a scanned file by OCR to make it searchable, those types of PDFs
257 create other file-handling problems and are not preferred.

258 Mr. Whittaker observed that Adobe Acrobat and other PDF handling programs
259 allow a user to insert a graphic signature onto a native PDF after it was con-
260 verted. Mr. Smith noted that his firm inserts graphic signatures onto native
261 PDFs by including them as part of his Microsoft Word document before con-
262 verting the file to PDF. He felt it was more secure than using a typed signa-
263 ture, as the access to his signature graphic was more restricted. He also noted
264 that some third parties question the validity of a typed signature on docu-
265 ments such as subpoenas, and that it is easier just to use a graphic signature
266 for all court documents.

267 Mr. Whittaker was concerned that the proposed amendment addressed the
268 symptom rather than the problem. If the problem was scanned PDFs, then the
269 rule should require documents to be in native PDF format. Ms. Moore re-
270 sponded that the Electronic Filing Guide requires a signed document submit-
271 ted electronically to be in a searchable PDF format, but practitioners are justi-
272 fying their submission of scanned or OCR-processed documents by pointing to
273 the current rule allowing graphic signatures. While there are ways to put a
274 graphic signature on a native PDF, most people who are insisting on graphic
275 signatures do not submit them that way, and changing the rule would remove
276 an impediment to the clerks being able to insist on native PDFs.

277 **Committee Action.** It was moved and seconded that Rule 10(e) be amended
278 as proposed in lines 45-47 of the proposed revision to Rule 10 contained in the
279 meeting materials. The motion carried on voice vote; while a dissenting vote
280 was noted, no division was requested.

281 ***D. Other Items and Final Approval***

282 Mr. Hafen asked for any other proposed changes to the proposed revision be-
283 fore submitting it for public comment. Mr. Slaugh moved that Rule 10(f) be
284 amended to change the sentence "the clerk of the court shall examine all plead-
285 ings and other papers filed with the court" to "the clerk of the court *may* exam-
286 ine *the* pleadings and other papers filed with the court." He explained that
287 since the advent of e-filing, pleadings and papers are being filed without the
288 direct involvement of the clerks. This amendment would conform to current
289 practice. The motion was seconded and carried unanimously on voice vote.

290 As no other changes were proposed, the proposed revision of Rule 10 as con-
291 tained in the meeting materials, with such amendments as noted above, was
292 thereby approved for submission to the Administrative Office of Courts for
293 publication and distribution pursuant to UCJA 11-103(2)-(3).

294 **IV. RULE 43**

295 ***A. Admissible Evidence***

296 The committee next considered the proposed revision to Rule 43. The commit-
297 tee first turned its attention to the last sentence of (a), which currently states:
298 "All evidence shall be admitted which is admissible under the Utah Rules of
299 Evidence or other rules adopted by the Supreme Court." Judge Toomey moved
300 that the sentence be removed. She noted that the sentence was tautological
301 and serves no purpose—it just provides that admissible evidence is admissible.
302 Mr. Hafen added that the sentence as constructed is wrong—admissible evi-
303 dence that a party chooses not to present need not be admitted. The motion
304 was seconded and carried unanimously on voice vote.

305 ***B. Originals of Affidavits***

306 **Discussion.** Ms. Moore next introduced subdivision (b) of the proposed revi-
307 sion, which would require a party or attorney filing an affidavit with the typed
308 signature of the affiant to keep the "wet-signature" original of the affidavit in
309 his or her possession until the action is concluded. The revision would also re-

310 quire a clerk to scan and an original of an affidavit filed as a hard copy and re-
311 turn it to the party that filed it. Mr. Hafen noted that the language should also
312 include a declaration.

313 Mr. Whittaker pointed out that current law does not require the existence of
314 an original with a wet signature. Utah Code Ann. § 46-4-201 allows a person to
315 sign a document electronically. Likewise, under §§ 46-1-16(7) & 46-4-205, a no-
316 tary can sign and notarize an affidavit electronically. In such a circumstance,
317 there would be no "wet signature" original for the party or attorney to keep.

318 Judge Blanch expressed his opinion that as affidavits and declarations are
319 evidence, there should be a hard copy with an actual wet signature. The party
320 filing the document should be able to indicate the affiant's signature electroni-
321 cally on the filed document, but should indicate on that the wet-signature
322 original is in his or her possession. He added that there should be some sort of
323 a process that impresses upon the affiant that he or she is under oath or mak-
324 ing a promise to tell the truth under penalties of law. Other members noted
325 that an electronic signature lacks distinction, and so an affidavit or declaration
326 that is only signed electronically by a non-party poses an evidentiary prob-
327 lem—an affiant who made a false statement would have an easier time deny-
328 ing that he or she actually signed the instrument.

329 Mr. Slaugh remarked that current law allows him to email a draft declaration
330 to a witness and have him or her read it and "sign" the document via confirma-
331 tory email. Judge Blanch noted that he would need to keep the email on file.

332 Mr. Slaugh also suggested replacing the phrase "until the proceedings are con-
333 cluded," as the term "proceedings" could refer to the action or the particular
334 motion for which the affidavit was submitted. The committee agreed that the
335 phrase should read "until the action is concluded," as the term "action" is de-
336 fined in Rule 2.

337 **Committee Action.** Mr. Hafen asked for unanimous consent to table the pro-
338 posal until the next meeting so that a draft can be prepared that removes the
339 last sentence of (a) and takes into account the provisions of Title 46 of the
340 Utah Code. No objection was made.

341 **V. RULES 74 & 75**

342 **Discussion.** The committee next considered the proposed revisions to Rules
343 74 and 75, which would give a judge discretion to permit an attorney to orally

344 announce his or her limited appearance and/or withdrawal on the record. Ms.
345 Moore explained that the purpose of these revisions is to accommodate the Pro
346 Bono Project of the Utah State Bar. Currently, the judicial council has given
347 the Pro Bono Project a temporary exemption from the electronic filing re-
348 quirement to allow participating lawyers to file limited appearances and with-
349 drawals at the time of a hearing. This revision would obviate the need for that
350 exemption.

351 Mr. Slaugh suggested amending the proposed revision to Rules 74(b)(2) and
352 75(b) to remove the clause "in a proceeding in which all parties are present or
353 represented." He reasoned that since this practice would only be allowed at the
354 judge's discretion, there was no reason to limit the judge's discretion if the op-
355 posing party was not present at the hearing. The committee generally agreed
356 with this suggestion.

357 **Committee Action.** It was moved and seconded that Rules 74 and 75 be re-
358 vised as proposed in the proposed revisions contained in the meeting materi-
359 als, incorporating Mr. Slaugh's suggested amendments noted above. The mo-
360 tion carried unanimously on voice vote.

361 Mr. Hafen asked for any other proposed changes to the proposed revision be-
362 fore submitting it for public comment. As no changes were proposed, the pro-
363 posed revision of Rules 74 and 75 as contained in the meeting materials, with
364 such amendments as noted above, was thereby approved for submission to the
365 Administrative Office of Courts for publication and distribution pursuant to
366 UCJA 11-103(2)-(3).

367 VI. RULE 6

368 The committee next considered the proposed revisions to Rule 6, which would
369 establish the "days are days" approach to counting time as followed in the fed-
370 eral rules. The proposal would also change deadlines of 30 days or less in many
371 of the rules to conform with a uniform length of 7, 14, 21, or 28 days. Mr. Shea
372 noted that this proposal had been submitted for comment previously, but that
373 the general consensus at the time was to delay adoption of the revision until e-
374 filing was implemented.

375 Mr. Slaugh suggested replacing the list of holidays in lines 69-82 of the draft
376 with a reference to the corresponding provision of the Utah Code, in case the
377 legislature were to add, remove, or change the name of any of the listed holi-
378 days. Other members felt it was convenient to have a list in the rules, and that

379 the catchall provision on 81-82 would cover any eventualities. Mr. Slaugh
380 withdrew his suggestion.

381 Mr. Whittaker raised a concern about the language of lines 65-66 of the draft,
382 as it did not account for the existence of 24-hour filing boxes. Ms. Moore re-
383 sponded that the practice of filing by 24-hour filing box is being discontinued
384 and the boxes are scheduled to be removed. Mr. Whittaker withdrew his con-
385 cern.

386 Mr. Bell observed that the reference to local rules in lines 38 and 62 should
387 probably be deleted. Judge Toomey pointed out that there are still local rules
388 incorporated in Chapter 10 of the Code of Judicial Administration, and Rule 6
389 should say that it governs the computation of time in those rules. Mr. Slaugh
390 agreed and said that the reference to local rules in line 38 should be retained.
391 However, the reference in line 62, which would allow Rule 6 to be superceded
392 by local rule, should be deleted. The committee generally agreed with Mr.
393 Slaugh's suggestion.

394 The committee then discussed whether the "three extra days for service by
395 mail" provision in lines 92-94 should be revised or deleted. Mr. Bell argued
396 against deleting the provision, noting that unlike other forms of service, serv-
397 ice by mail takes at least 24 hours from time of service to time of receipt. That
398 means that the recipient has less time to respond to a document served by
399 mail, justifying the extra time granted in the rule.

400 Mr. Shea pointed out that the federal rule retained the provision, as well as
401 granting extra time for service by e-filing, email, and every other method of
402 service besides hand delivery. Judge Blanch observed that the provision in the
403 state rule was very different than the one in the federal rule, and had been for
404 several years. While one of the committee's principles of rulemaking is to de-
405 part from the federal procedures only when there is a sound reason for doing
406 so, he felt that the fact that a document is actually received at the time of serv-
407 ice for every method except mailing justified the different procedure. Judge
408 Shaughnessy agreed, and observed that the federal rule was not born out of
409 logic but compromise—the federal rules committee was concerned that practi-
410 tioners would oppose e-filing if the three days of extra time were removed. By
411 the time Utah adopted e-filing, everyone was used to the concept of receiving
412 filings in his or her email inbox and practitioners had much more confidence in
413 the technology.

414 Mr. Hafen asked for the sense of the committee on whether (c) should be re-
415 tained. The committee generally agreed that it should be retained. Mr. Mars-
416 den suggested that an advisory committee note explaining the differences be-
417 tween the state rule would be a good idea. Mr. Hafen asked Mr. Marsden if he
418 would draft that note for the committee to review concurrently with its consid-
419 eration of public comment on the proposed revision. Mr. Marsden agreed to do
420 so.

421 Ms. McIntosh pointed out that the references to certain subdivisions of Rules
422 50, 52, and 59 were incorrect. Mr. Shea responded that he would double-check
423 the references and make any necessary alterations before sending the pro-
424 posed revision out for comment.

425 **Committee Action.** It was moved and seconded that Rule 6 be revised as
426 proposed in the proposed revisions contained in the meeting materials, incor-
427 porating the suggested amendments noted above. The motion carried unani-
428 mously on voice vote. The proposed revisions to Rule 6 were thereby approved
429 for submission to the Administrative Office of Courts for publication and dis-
430 tribution pursuant to UCJA 11-103(2)-(3).

431 **VII. RULEMAKING PRINCIPLES**

432 The committee next considered the draft document "principles of rulemaking,"
433 which was revised based on the comments and suggestions made at the com-
434 mittee's October meeting. Mr. Hafen explained that the point of this document
435 was to provide guidance for him and other committee members to refer to
436 when discussing and approving revisions to the rules to ensure that the com-
437 mittee's revisions are based on a consistent set of principles and that compet-
438 ing principles are considered and reconciled to the extent possible before final
439 action is taken on a committee. Mr. Hafen asked for comment on the current
440 draft.

441 Judge Toomey observed that the statement describing priority currently pro-
442 vided that "requests from the legislature and supreme court will take priority"
443 over other proposals. She suggested adding the board of district court judges to
444 that list.

445 With respect to the statement describing stability, Mr. Slaugh commented that
446 saying that "the rules should not be amended unless there is a need" was
447 vague. He noted that a "need" of some sort would always exist and suggested
448 that a modifier be added to the word "need" to focus on the nature of the need

449 the amendment would fulfill. Mr. Hafen asked whether saying "sufficient
450 need" would be adequate. Mr. Slaugh agreed that it would.

451 Mr. Marsden asked what was meant by the statement describing
452 comprehensiveness, which reads, "The rules should include all procedures to
453 avoid unwritten rules." Judge Blanch suggested amending the sentence to
454 read, "Practitioners should be able to find in the rules the answers to their
455 procedural questions." Mr. Carney added that the inverse statement would
456 also be a valuable component of comprehensiveness—procedures that are not
457 in the rules should not be used.

458 Mr. Hafen thanked the committee members for their comments so far and
459 asked them to submit any other comments they may have to him and Mr. Shea
460 by email so that a final draft could be prepared for discussion and approval at
461 January's meeting.

462 **V. RULE 37**

463 **Discussion.** The committee next considered the proposed revision to Rule 37.
464 In September's meeting, the committee directed that a draft of this rule be
465 prepared for review that incorporated the expedited procedures for discovery
466 motions previously published for comment as part of Rule 7, eliminated re-
467 dundancies between the proposed revisions and the existing provisions of Rule
468 37, included references to the procedure in Rules 7, 26 and 45, and clarified
469 that a motion for sanctions for failure to comply with a discovery order would
470 be brought in the form prescribed by Rule 7 rather than using the expedited
471 procedures. Having prepared that draft, Mr. Shea presented it to the commit-
472 tee. The committee generally approved of the draft as fit for purpose.

473 Mr. Shea referred the committee to the alternate language located in line 57 of
474 the draft and noted that Mr. Whittaker had previously suggested that instead
475 of enumerating a list of things for a nonmoving party to address in its response
476 to a motion, the provision could just say that the response "must address the
477 issues raised in the motion." Mr. Whittaker pointed out that this language fol-
478 lows the language of UCJA 4-502 and is simpler. The committee generally
479 agreed to adopt the alternate language in the brackets of line 57 of the draft
480 and to delete the language after the brackets in line 57 as well as the language
481 in lines 58-60.

482 Mr. Hafen asked for other comments on the rule. Mr. Whittaker felt that the
483 language of lines 17-21 of the draft (paragraph (a)(2) of the current rule) was

484 unclear. While it appears that the intent of this provision was to direct that
485 motions relating to nonparties were to be heard by the court in the county
486 where the subpoena was served while motions only dealing with parties were
487 to be heard by the court where the action is pending, the language was un-
488 clear. Several members expressed their unfamiliarity with this provision and
489 commented that it did not reflect current practice. Mr. Marsden and Mr.
490 Slaugh both noted that the rule appeared to be modeled after the federal rule,
491 but it made no sense to apply it within the state, as a district court has state-
492 wide jurisdiction. Several members suggested taking out the provision entirely
493 or changing the provision to read, "a motion must be made to the court in
494 which the action is pending."

495 Mr. Bell theorized that the provision had been inserted to accommodate non-
496 parties by allowing them to bring a motion to quash or defend against a motion
497 to compel close to their homes. Several members agreed that this was probably
498 the case. Judge Blanch argued that even if that was the intent of the provision,
499 it appeared that it was not often complied with and that it would be better to
500 have the rule reflect actual practice. The committee agreed to remove the pro-
501 vision completely (as well as any corresponding language in Rule 45) and note
502 the removal in an advisory committee note, which Mr. Whittaker agreed to
503 draft.

504 Mr. Hafen asked whether the draft was logically ordered, especially with re-
505 spect to subdivisions (a) and (b). Included in Mr. Hafen's question was whether
506 a motion to compel or for a protective order (which are defined in (a)) was
507 brought under (b), or whether the expedited discovery motion was a prerequi-
508 site to bringing a motion to compel or for a protective order. If the latter was
509 the case, he thought that the rule should be reordered to make that clear. Af-
510 ter some discussion, the committee concluded that an expedited discovery mo-
511 tion was a means for bringing a motion to compel or for a protective order, not
512 a separate prerequisite for bringing such a motion. The committee also deter-
513 mined that it made sense to have the grounds for bringing an expedited dis-
514 covery motion in (a) and the procedure for bringing the motion in (b).

515 Mr. Marsden asked whether a motion to compel brought under the expedited
516 procedures could include a request for expenses and/or sanctions. Other mem-
517 bers of the committee were of the opinion that it could not. Mr. Marsden ob-
518 served that this was a change in existing practice and that the committee may
519 want to indicate that in an advisory committee note. Mr. Whittaker was asked
520 to prepare a note explaining this change for the committee's review.

521 **Committee Action.** Mr. Hafen asked for any other proposed changes to the
522 proposed revision before submitting it for public comment. As no changes were
523 proposed, the proposed revision of Rule 37 as contained in the meeting materi-
524 als, with such amendments as noted above, was thereby approved for submis-
525 sion to the Administrative Office of Courts for publication and distribution
526 pursuant to UCJA 11-103(2)-(3).

527 VI. ADJOURNMENT

528 The meeting adjourned at 6:03 p.m. The next meeting will be held on January
529 22, 2014 at 4:00 p.m. at the Administrative Office of the Courts.

UNAPPROVED DRAFT--DO NOT QUOTE OR CITE

Tab 2

Rule 30. Depositions upon oral questions.

(a) **When depositions may be taken; when leave required.** A party may depose a party or witness by oral questions. A witness may not be deposed more than once in standard discovery. An expert who has prepared a report disclosed under Rule 26(a)(4)(B) may not be deposed.

(b) **Notice of deposition; general requirements; special notice; non-stenographic recording; production of documents and things; deposition of organization; deposition by telephone.**

(b)(1) The party deposing a witness shall give reasonable notice in writing to every other party. The notice shall state the date, time and place for the deposition and the name and address of each witness. If the name of a witness is not known, the notice shall describe the witness sufficiently to identify the person or state the class or group to which the person belongs. The notice shall designate any documents and tangible things to be produced by a witness. The notice shall designate the officer who will conduct the deposition.

(b)(2) The notice shall designate the method by which the deposition will be recorded. With prior notice to the officer, witness and other parties, any party may designate a recording method in addition to the method designated in the notice. Depositions may be recorded by sound, by sound-and-visual, or ~~stenographic means~~ by a certified court reporter as defined by Utah Code Section 58-74-102, and the party designating the recording method shall bear the cost of the recording. The appearance or demeanor of witnesses or attorneys shall not be distorted through recording techniques.

(b)(3) A deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the witness; (D) the administration of the oath or affirmation to the witness; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A) through (C) at the beginning of each unit of the recording medium. At the end of the

31 deposition, the officer shall state on the record that the deposition is complete and
32 shall state any stipulations.
33 (b)(4) The notice to a party witness may be accompanied by a request under
34 Rule 34 for the production of documents and tangible things at the deposition. The
35 procedure of Rule 34 shall apply to the request. The attendance of a nonparty
36 witness may be compelled by subpoena under Rule 45. Documents and tangible
37 things to be produced shall be stated in the subpoena.
38 (b)(5) A deposition may be taken by remote electronic means. A deposition taken
39 by remote electronic means is considered to be taken at the place where the witness
40 is located.
41 (b)(6) A party may name as the witness a corporation, a partnership, an
42 association, or a governmental agency, describe with reasonable particularity the
43 matters on which questioning is requested, and direct the organization to designate
44 one or more officers, directors, managing agents, or other persons to testify on its
45 behalf. The organization shall state, for each person designated, the matters on
46 which the person will testify. A subpoena shall advise a nonparty organization of its
47 duty to make such a designation. The person so designated shall testify as to
48 matters known or reasonably available to the organization.
49 (c) **Examination and cross-examination; objections.**
50 (c)(1) Questioning of witnesses may proceed as permitted at the trial under the
51 Utah Rules of Evidence, except Rules 103 and 615.
52 (c)(2) All objections shall be recorded, but the questioning shall proceed, and the
53 testimony taken subject to the objections. Any objection shall be stated concisely
54 and in a non-argumentative and non-suggestive manner. A person may instruct a
55 witness not to answer only to preserve a privilege, to enforce a limitation on
56 evidence directed by the court, or to present a motion for a protective order under
57 Rule 37. Upon demand of the objecting party or witness, the deposition shall be
58 suspended for the time necessary to make a motion. The party taking the deposition
59 may complete or adjourn the deposition before moving for an order to compel
60 discovery under Rule 37.

(d) **Limits.** During standard discovery, oral questioning of a nonparty shall not exceed four hours, and oral questioning of a party shall not exceed seven hours.

(e) **Submission to witness; changes; signing.** Within 28 days after being notified by the officer that the transcript or recording is available, a witness may sign a statement of changes to the form or substance of the transcript or recording and the reasons for the changes. The officer shall append any changes timely made by the witness.

(f) **Record of deposition; certification and delivery by officer; exhibits; copies.**

(f)(1) The officer shall record the deposition or direct another person present to record the deposition. The officer shall sign a certificate, to accompany the record, that the witness was under oath or affirmation and that the record is a true record of the deposition. The officer shall keep a copy of the record. The officer shall securely seal the record endorsed with the title of the action and marked "Deposition of (name). Do not open." and shall promptly send the sealed record to the attorney or the party who designated the recording method. An attorney or party receiving the record shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

(f)(2) Every party may inspect and copy documents and things produced for inspection and must have a fair opportunity to compare copies and originals. Upon the request of a party, documents and things produced for inspection shall be marked for identification and added to the record. If the witness wants to retain the originals, that person shall offer the originals to be copied, marked for identification and added to the record.

(f)(3) Upon payment of reasonable charges, the officer shall furnish a copy of the record to any party or to the witness. An official transcript of a recording made by non-stenographic means shall be prepared ~~under Utah Rule of Appellate Procedure 11(e)~~ by a certified court reporter as defined by Utah Code Section 58-74-102.

(g) **Failure to attend or to serve subpoena; expenses.** If the party giving the notice of a deposition fails to attend or fails to serve a subpoena upon a witness who fails to attend, and another party attends in person or by attorney, the court may order

91 the party giving the notice to pay to the other party the reasonable costs, expenses and
92 attorney fees incurred.
93 (h) **Deposition in action pending in another state.** Any party to an action in
94 another state may take the deposition of any person within this state in the same
95 manner and subject to the same conditions and limitations as if such action were
96 pending in this state. Notice of the deposition shall be filed with the clerk of the court of
97 the county in which the person whose deposition is to be taken resides or is to be
98 served. Matters required to be submitted to the court shall be submitted to the court in
99 the county where the deposition is being taken.
100 (i) **Stipulations regarding deposition procedures.** The parties may by written
101 stipulation provide that depositions may be taken before any person, at any time or
102 place, upon any notice, and in any manner and when so taken may be used like other
103 depositions.
104

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

(a) ~~**Service:**~~ **When service is required.**

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

(a)(1)(A) ~~every~~ a judgment~~,~~;

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

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

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

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

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

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

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

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

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

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

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

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

31 claim or appearance ~~shall~~ must be made upon the person ~~having~~ who had custody
32 or possession of the property ~~at the time of its seizure~~ when it was seized.
33 (b) **~~Service:~~ How service is made.**
34 (b)(1) **Whom to serve.** If a party is represented by an attorney, ~~service shall be~~
35 ~~made~~ a paper served under this rule must be served upon the attorney unless the
36 court orders service upon the party ~~is ordered by the court~~. ~~If an attorney has filed a~~
37 ~~Notice of Limited Appearance under Rule 75 and the papers being served relate to a~~
38 ~~matter within the scope of the Notice, service shall~~ Service must be made upon the
39 attorney and the party if
40 (b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule 75
41 and the papers being served relate to a matter within the scope of the Notice; or
42 (b)(1)(B) a final judgment has been entered in the action and more than 90
43 days has elapsed from the date a paper was last served on the attorney.
44 ~~(b)(1)(A)~~ (b)(2) **When to serve.** If a hearing is scheduled ~~5~~ 7 days or less from
45 the date of service, ~~the~~ a party ~~shall use the method~~ must serve a paper related to
46 the hearing by the method most likely to ~~give prompt actual notice of the hearing~~ be
47 promptly received. Otherwise, ~~a party shall serve a paper under this rule:~~ a paper
48 that is filed with the court must be served before or on the same day that it is filed.
49 (b)(3) **Methods of service.** A paper served under this rule may be served by:
50 ~~(b)(1)(A)(i) upon any person with an electronic filing account who is a party or~~
51 ~~attorney in the case by~~ (b)(3)(A) submitting ~~the paper~~ it for electronic filing if the
52 person being served has an electronic filing account;
53 ~~(b)(1)(A)(ii) by sending it by email to the person's last known email address~~
54 (b)(3)(B) emailing it to the email address provided by the party or attorney or to
55 the email address on file with the Utah State Bar, if ~~that~~ the person has agreed to
56 accept service by email or has an electronic filing account;
57 ~~(b)(1)(A)(iii) by faxing it to the person's last known fax number if that person~~
58 ~~has agreed to accept service by fax;~~
59 ~~(b)(1)(A)(iv) by~~ (b)(3)(C) mailing it to the person's last known address;
60 ~~(b)(1)(A)(v) by~~ (b)(3)(D) handing it to the person;

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

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

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

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

~~(b)(2)(A)~~ (b)(5)(A) an order ~~signed by the court and~~ required by its terms to be served or a judgment ~~signed by the court shall~~ must be served by the party preparing it;

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

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

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

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

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

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

90 (c)(4) A a copy of every such the order shall must be served upon the parties in such
91 manner and form as the court directs.
92 (d) **Filing.** All papers after the complaint required to be served upon a party shall be
93 filed with the court either before or within a reasonable time after service.
94 (e) **Filing with the court defined.** A party may file with the clerk of court using any
95 means of delivery permitted by the court. The court may require parties to file
96 electronically with an electronic filing account. Filing is complete upon the earliest of
97 acceptance by the electronic filing system, the clerk of court or the judge. The filing date
98 shall be noted on the paper.
99 (f) (d) **Certificate of service.** Every pleading, order or A paper required by this rule
100 to be served, including electronically filed papers, shall must include a signed certificate
101 of service showing the name of the document served, the date and manner of service
102 and on whom it was served.
103 (e) **Filing.** Except as provided in Rule 7(f) and Rule 26(f), all papers after the
104 complaint that are required to be served must be filed with the court. Parties with an
105 electronic filing account must file a paper electronically. A party without an electronic
106 filing account may file a paper by delivering it to the clerk of the court or to a judge of the
107 court. Filing is complete upon the earliest of acceptance by the electronic filing system,
108 the clerk of court or the judge.
109 (f) **Filing an affidavit or declaration of someone other than the filer.** If a person
110 files an affidavit or declaration of a person other than the filer, the filer may:
111 (f)(1) electronically file the original affidavit with a notary acknowledgment as
112 provided by Utah Code Section 46-1-16(7);
113 (f)(2) electronically file a scanned image of the affidavit or declaration;
114 (f)(3) electronically file an RTF of the affidavit or declaration with a conformed
115 signature; or
116 (f)(4) present the original affidavit or declaration to the clerk of the court, and the
117 clerk will electronically file a scanned image and return the original to the filer.

118 The filer must keep the original affidavit or declaration safe and available for inspection
119 upon request until the action is concluded, including any appeal or until the time in
120 which to appeal has expired.
121 (g) **Service by the court.** The court may serve papers by email on a party to the
122 email address provided by the party or on an attorney to the email address on file with
123 the Utah State Bar.
124 **Advisory Committee Notes**
125 Rule 5(d) is amended to give the trial court the option, either on an ad hoc basis or
126 by local rule, of ordering that discovery papers, depositions, written interrogatories,
127 document requests, requests for admission, and answers and responses need not be
128 filed unless required for specific use in the case. The committee is of the view that a
129 local rule of the district courts on the subject should be encouraged.
130 The 1999 amendment to subdivision (b)(1)(B) does not authorize the court to
131 conduct a hearing with less than 5 days notice, but rather specifies the manner of
132 service of the notice when the court otherwise has that authority.
133 2001 amendments
134 Paragraph (b)(1)(A) has been changed to allow service by means other than U.S.
135 Mail and hand delivery if consented to in writing by the person to be served, i.e. the
136 attorney of the party. Electronic means include facsimile transmission, e-mail and other
137 possible electronic means.
138 While it is not necessary to file the written consent with the court, it would be
139 advisable to have the consent in the form of a stipulation suitable for filing and to file it
140 with the court.
141 Paragraph (b)(1)(B) establishes when service by electronic means, if consented to in
142 writing, is complete. The term "normal business hours" is intended to mean 8:00 a.m. to
143 5:00 p.m. Monday through Friday, excluding legal holidays. If a fax or e-mail is received
144 after 5:00 p.m., the service is deemed complete on the next business day.
145

Tab 5

Rule 43. Evidence.

(a) ~~**Form**~~ **Evidence at trial.** In all trials, the testimony of witnesses shall be taken ~~orally~~ in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. ~~All evidence shall be admitted which is admissible under the Utah Rules of Evidence or other rules adopted by the Supreme Court~~.

(b) **Evidence on motions.** ~~When~~ If a motion is based on facts ~~not appearing of~~ outside the record, the court may hear the matter on affidavits, ~~presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral~~ declarations, testimony or depositions.

Tab 6

Rule 37. Discovery and disclosure motions; Sanctions.

(a) ~~**Motion for order compelling disclosure or discovery**~~ **Grounds for expedited discovery motion**. Following the procedures of paragraph (b):

(a)(1) ~~A~~ a party or the person from whom disclosure is required or discovery is sought may move for a protective order

(a)(2) a party may move to quash a subpoena or to compel compliance with a subpoena under Rule 45;

(a)(3) a party may move for extraordinary discovery under Rule 26; and

(a)(4) a party may move to compel disclosure or response to a discovery request ~~and for appropriate sanctions~~ if another party:

~~(a)(1)(A)~~ (a)(4)(A) fails to disclose, fails to respond to a discovery request, or makes an evasive or incomplete disclosure or response to a request for discovery;

~~(a)(1)(B)~~ (a)(4)(B) fails to disclose, fails to respond to a discovery request, fails to supplement a disclosure or response or makes a supplemental disclosure or response without an adequate explanation of why the additional or correct information was not previously provided;

~~(a)(1)(C)~~ (a)(4)(C) objects to a discovery request ;

~~(a)(1)(D)~~ (a)(4)(D) impedes, delays, or frustrates the fair examination of a witness; or

~~(a)(1)(E)~~ (a)(4)(E) otherwise fails to make full and complete disclosure or discovery.

~~(a)(2) A motion may be made to the court in which the action is pending, or, on matters relating to a deposition or a document subpoena, to the court in the district where the deposition is being taken or where the subpoena was served. A motion for an order to a nonparty witness shall be made to the court in the district where the deposition is being taken or where the subpoena was served.~~

~~(a)(3) The moving party must attach a copy of the request for discovery, the disclosure, or the response at issue. The moving party must also attach a certification that the moving party has in good faith conferred or attempted to confer~~

~~with the other affected parties in an effort to secure the disclosure or discovery without court action and that the discovery being sought is proportional under Rule 26(b)(2).~~

~~(b) **Motion for protective order.**~~

~~(b)(1) A party or the person from whom disclosure is required or discovery is sought may move for an order of protection. The moving party shall attach to the motion a copy of the request for discovery or the response at issue. The moving party shall also attach a certification that the moving party has in good faith conferred or attempted to confer with other affected parties to resolve the dispute without court action.~~

~~(b)(2) If the motion raises issues of proportionality under Rule 26(b)(2), the party seeking the discovery has the burden of demonstrating that the information being sought is proportional.~~

(b) **Expedited procedures for discovery motions.**

(b)(1) **Motion length and content.** The motion must be no more than four pages, not including permitted attachments, and must include in the following order:

(b)(1)(A) the relief sought and the grounds for the relief sought stated succinctly and with particularity;

(b)(1)(B) a certification that the requesting party has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without court action;

(b)(1)(C) a statement regarding proportionality under Rule 26(b)(2); and

(b)(1)(D) if the motion is a motion for extraordinary discovery, a statement certifying that the party has reviewed and approved a discovery budget.

(b)(2) **Response length and content.** No more than 7 days after the moving party has filed the motion, the nonmoving party may file a response. The response must be no more than four pages, not including permitted attachments, and must address the issues raised in the motion.

60 (b)(3) **Attachments.** Unless other attachments are required by law, the moving
61 party must attach to the motion only a copy of the request for discovery, the
62 disclosure, or the response at issue. The nonmoving party must attach to its
63 response any required attachments that were omitted by the moving party.
64 (b)(4) **Proposed order.** Each party must file a proposed order concurrently with
65 its motion or response.
66 (b)(5) **Decision.** Upon filing of the response or expiration of the time to do so,
67 either party may and the moving party must file a Request to Submit for Decision
68 under Rule 7(d). The court will promptly:
69 (b)(5)(A) decide the motion on the pleadings and papers;
70 (b)(5)(B) schedule a hearing by telephone conference or other electronic
71 communication; or
72 (b)(5)(C) order additional briefing and establish a briefing schedule.
73 (b)(6) **Request for expenses or sanctions prohibited.** A motion or response
74 under this paragraph may not include a request for sanctions.
75 (b)(7) **Motion does not toll discovery time.** A motion or response under this
76 paragraph does not suspend or toll the time to complete standard discovery.
77 (c) **Orders.** The court may make orders regarding disclosure or discovery or to
78 protect a party or person from discovery being conducted in bad faith or from
79 annoyance, embarrassment, oppression, or undue burden or expense, or to achieve
80 proportionality under Rule 26(b)(2), including one or more of the following:
81 (c)(1) that the discovery not be had;
82 (c)(2) that the discovery may be had only on specified terms and conditions,
83 including a designation of the time or place;
84 (c)(3) that the discovery may be had only by a method of discovery other than
85 that selected by the party seeking discovery;
86 (c)(4) that certain matters not be inquired into, or that the scope of the discovery
87 be limited to certain matters;
88 (c)(5) that discovery be conducted with no one present except persons
89 designated by the court;

90 (c)(6) that a deposition after being sealed be opened only by order of the court;
91 (c)(7) that a trade secret or other confidential information not be disclosed or be
92 disclosed only in a designated way;
93 (c)(8) that the parties simultaneously file specified documents or information
94 enclosed in sealed envelopes to be opened as directed by the court;
95 (c)(9) that a question about a statement or opinion of fact or the application of law
96 to fact not be answered until after designated discovery has been completed or until
97 a pretrial conference or other later time; or
98 (c)(10) that the costs, expenses and attorney fees of discovery be allocated
99 among the parties as justice requires.
100 ~~(c)(11) If a protective order terminates a deposition, it shall be resumed only upon~~
101 ~~the order of the court in which the action is pending.~~
102 (d) **Expenses and ~~sanctions~~ attorney fees for motions.** If the motion to compel or
103 for a protective order is granted or denied, or if a party provides disclosure or discovery
104 or withdraws a disclosure or discovery request after a motion is filed, the court may
105 order the party, witness or attorney to pay the reasonable expenses and attorney fees
106 incurred on account of the motion if the court finds that the party, witness, or attorney
107 did not act in good faith or asserted a position that was not substantially justified. ~~A~~
108 ~~motion to compel or for a protective order does not suspend or toll the time to complete~~
109 ~~standard discovery.~~
110 (e) **~~F~~Sanctions for failure to comply with order.**
111 ~~(e)(1) Sanctions by court in district where deposition is taken. Failure~~ Other than
112 failure to submit to a physical or mental examination, failure to follow an order of the
113 court ~~in the district in which the deposition is being taken or where the document~~
114 ~~subpoena was served~~ is contempt of ~~that~~ court.
115 ~~(e)(2) Sanctions by court in which action is pending.~~ Unless the court finds that the
116 failure was substantially justified, ~~the court in which the action is pending~~ it may impose
117 appropriate sanctions for ~~the failure to follow its orders~~ contempt of court, including the
118 following:

119 ~~(e)(2)(A)~~ (e)(1) deem the matter or any other designated facts to be established
120 in accordance with the claim or defense of the party obtaining the order;
121 ~~(e)(2)(B)~~ (e)(2) prohibit the disobedient party from supporting or opposing
122 designated claims or defenses or from introducing designated matters into evidence;
123 ~~(e)(2)(C)~~ (e)(3) stay further proceedings until the order is obeyed;
124 ~~(e)(2)(D)~~ (e)(4) dismiss all or part of the action, strike all or part of the pleadings,
125 or render judgment by default on all or part of the action;
126 ~~(e)(2)(E)~~ (e)(5) order the party or the attorney to pay the reasonable expenses,
127 including attorney fees, caused by the failure;
128 ~~(e)(2)(F) treat the failure to obey an order, other than an order to submit to a~~
129 ~~physical or mental examination, as contempt of court;~~ and
130 ~~(e)(2)(G)~~ (e)(7) instruct the jury regarding an adverse inference.
131 (f) **Expenses on failure to admit.** If a party fails to admit the genuineness of ~~any~~ a
132 document or the truth of ~~any~~ a matter as requested under Rule 36, and if the party
133 requesting the admissions proves the genuineness of the document or the truth of the
134 matter, the party requesting the admissions may apply to the court for an order requiring
135 the other party to pay the reasonable expenses incurred in making that proof, including
136 reasonable attorney fees. The court ~~shall~~ must make the order unless it finds that:
137 (f)(1) the request was held objectionable pursuant to Rule 36(a);
138 (f)(2) the admission sought was of no substantial importance;
139 (f)(3) there were reasonable grounds to believe that the party failing to admit
140 might prevail on the matter;
141 (f)(4) that the request ~~is~~ was not proportional under Rule 26(b)(2); or
142 (f)(5) there were other good reasons for the failure to admit.
143 (g) **Failure of party to attend at own deposition.** The court on motion may take
144 any action authorized by paragraph (e)~~(2)~~ if a party or an officer, director, or managing
145 agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf
146 of a party fails to appear before the officer taking the deposition, after proper service of
147 the notice. The failure to act described in this paragraph may not be excused on the

148 ground that the discovery sought is objectionable unless the party failing to act has
149 applied for a protective order under paragraph (b).
150 (h) **Failure to disclose.** If a party fails to disclose a witness, document or other
151 material, or to amend a prior response to discovery as required by Rule 26(d), that party
152 ~~shall~~ may not ~~be permitted to~~ use the witness, document or other material at any
153 hearing unless the failure to disclose is harmless or the party shows good cause for the
154 failure to disclose. In addition to or in lieu of this sanction, the court on motion may take
155 any action authorized by paragraph (e)~~(2)~~.
156 (i) **Failure to preserve evidence.** Nothing in this rule limits the inherent power of the
157 court to take any action authorized by paragraph (e)~~(2)~~ if a party destroys, conceals,
158 alters, tampers with or fails to preserve a document, tangible item, electronic data or
159 other evidence in violation of a duty. Absent exceptional circumstances, a court may not
160 impose sanctions under these rules on a party for failing to provide electronically stored
161 information lost as a result of the routine, good-faith operation of an electronic
162 information system.
163 **Advisory Committee Notes**
164 [Add to existing notes]
165 2014 Amendment.
166 Paragraph (b) adopts the expedited procedures for discovery motions formerly
167 approved by the Judicial Council. The expedited procedures are intended to be
168 complete, without the need to refer to Rule 7, unless the judge directs that Rule 7
169 applies.
170 Rule 37(a)(2), which directed a motion for a discovery order against a nonparty
171 witness to be filed in the judicial district where the subpoena was served or deposition
172 was to be taken, has been deleted. A discovery-related motion brought by or against a
173 nonparty served or deposed within the state must be filed in the court in which the
174 action is pending.
175

Tab 7

1 **Rule 56. Summary judgment.**

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

9 (a)(1) Instead of a statement of the facts under Rule 7(c)(2), a motion for
10 summary judgment must contain a statement of material facts claimed not to be
11 genuinely disputed. Each fact must be separately stated in numbered paragraphs
12 and supported by citing to materials in the record under paragraph (c)(1) of this rule.

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

19 (a)(3) The motion and the memorandum opposing the motion may contain a
20 concise statement of facts and allegations for the limited purpose of providing
21 background and context for the case, dispute, and motion. The statement of facts or
22 allegations may cite supporting evidence.

23 (a)(4) Each fact set forth in the motion or in the memorandum opposing the
24 motion that is not disputed is deemed admitted for the purposes of the motion.

25 (b) **Time to file a motion.** A party may file a motion for summary judgment at any
26 time until 30 days after the close of all discovery.

27 (c) **Procedures.**

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

30 (c)(1)(A) citing to particular parts of materials in the record, including
31 depositions, documents, electronically stored information, affidavits or
32 declarations, stipulations (including those made for purposes of the motion only),
33 admissions, interrogatory answers, or other materials; or
34 (c)(1)(B) showing that the materials cited do not establish the absence or
35 presence of a genuine dispute, or that an adverse party cannot produce
36 admissible evidence to support the fact.
37 (c)(2) **Objection that a fact is not supported by admissible evidence**. A party
38 may object that the material cited to support or dispute a fact cannot be presented in
39 a form that would be admissible in evidence.
40 (c)(3) **Materials not cited**. The court need consider only the cited materials, but it
41 may consider other materials in the record.
42 (c)(4) **Affidavits or declarations**. An affidavit or declaration used to support or
43 oppose a motion must be made on personal knowledge, must set out facts that
44 would be admissible in evidence, and must show that the affiant or declarant is
45 competent to testify on the matters stated.
46 (d) **When facts are unavailable to the nonmovant.** If a nonmovant shows by
47 affidavit or declaration that, for specified reasons, it cannot present facts essential to
48 justify its opposition, the court may:
49 (d)(1) defer considering the motion or deny it;
50 (d)(2) allow time to obtain affidavits or declarations or to take discovery; or
51 (d)(3) issue any other appropriate order.
52 (e) **Failing to properly support or address a fact.** If a party fails to properly
53 support an assertion of fact or fails to properly address another party's assertion of fact
54 as required by Rule 56(c), the court may:
55 (e)(1) give an opportunity to properly support or address the fact;
56 (e)(2) consider the fact undisputed for purposes of the motion;
57 (e)(3) grant summary judgment if the motion and supporting materials—including
58 the facts considered undisputed—show that the movant is entitled to it; or
59 (e)(4) issue any other appropriate order.

60 (f) **Judgment independent of the motion.** After giving notice and a reasonable time
61 to respond, the court may:
62 (f)(1) grant summary judgment for a nonmovant;
63 (f)(2) grant the motion on grounds not raised by a party; or
64 (f)(3) consider summary judgment on its own after identifying for the parties
65 material facts that may not be genuinely in dispute.
66 (g) **Failing to grant all the requested relief.** If the court does not grant all the relief
67 requested by the motion, it may enter an order stating any material fact—including an
68 item of damages or other relief—that is not genuinely in dispute and treating the fact as
69 established in the case.
70 (h) **Affidavit or declaration submitted in bad faith.** If satisfied that an affidavit or
71 declaration under this rule is submitted in bad faith or solely for delay, the court—after
72 notice and a reasonable time to respond—may order the submitting party to pay the
73 other party the reasonable expenses, including attorney's fees, it incurred as a result.
74 ~~An~~ The court may also hold an offending party or attorney ~~may also be held~~ in contempt
75 or ~~subjected to~~ order other appropriate sanctions.
76 **Advisor Committee Notes**
77 The object of the 2014 amendment is to adopt the style of Federal Rule of Civil
78 Procedure 56 without changing the substantive Utah law. The 2014 amendment also
79 moves to this rule the special briefing requirements of motions for summary judgment
80 formerly found in Rule 7.
81 Nothing in these changes should be interpreted as changing the line of Utah cases
82 that the party with the burden of proof on an issue must meet its initial burden to present
83 materials in the record establishing that no genuine issue of material fact exists and that
84 the party with the burden of proof is entitled to judgment as a matter of law. Only then
85 must the party without the burden of proof demonstrate that there is a genuine dispute
86 as to a material fact. Orvis v. Johnson, 2008 UT 2, Harline v. Barker, 912 P.2d 433 (Utah
87 1996), K & T, Inc. v. Koroulis, 888 P.2d 623, (Utah 1994)—contrary to the holding in
88 Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).
89

Tab 8

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

(a) **Separate document.** Every judgment and amended judgment must be set out in a separate document, but, unless a separate document is requested by a party, a separate document is not required for an order disposing of a motion:

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

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

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

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

(a)(5) for attorney's fees under Rule 73.

~~(a) **Judgment upon the verdict of a jury.**~~ (b) **Without the court's direction.** Unless the court otherwise directs and subject to Rule 54(b), the prevailing party, without awaiting the court's direction, must promptly prepare the judgment when:

(b)(1) the jury returns a general verdict;

(b)(2) the court awards only costs or a sum certain; or

(b)(3) the court denies all relief.

~~the~~ The clerk ~~shall~~ must promptly sign and ~~file~~ record the judgment ~~upon the verdict of a jury~~ in the register of actions.

(c) **Court's approval required.** If ~~there is~~ the court grants relief not described in paragraph (b) or if the jury returns a special verdict or a general verdict ~~accompanied by~~ with answers to ~~interrogatories returned by a jury~~ questions, the court ~~shall direct the appropriate~~ must promptly approve the form of the judgment, which the clerk ~~shall~~ must promptly ~~sign and file~~ record in the register of actions.

~~(b) **Judgment in other cases.**~~ (d) **Judge's signature; judgment filed with the clerk.** Except as provided in paragraphs ~~(a)~~ (b) and ~~(f)~~(h) and Rule 55(b)(1), all judgments ~~shall~~ must be signed by the judge and filed with the clerk.

~~(c)~~ (e) **When judgment entered; recording.**

(e)(1) If a separate document is not required, ~~A~~ a judgment is complete and ~~shall be deemed~~ is entered for all purposes, except the creation of a lien on real property, when it is signed and ~~filed as provided in paragraphs (a) or (b)~~ recorded in the

register of actions.~~The clerk shall immediately record the judgment in the register of actions and the register of judgments.~~

(e)(2) If a separate document is required, a judgment is complete and is entered for all purposes, except the creation of a lien on real property, when it is recorded in the register of actions and the earlier of these events occurs:

(e)(a)(A) the judgment is set out in a separate document; or

(e)(2)(B) 150 days have run from the clerk recording the judgment in the register of actions.

~~(d)~~ (f) **Notice of judgment.** The party preparing the judgment ~~shall~~ must 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.

~~(e)~~ (g) **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.

~~(f)~~ (h) **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, to the following effect:

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

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

~~(f)(3)~~ (h)(3) It must authorize the entry of judgment for the specified sum.

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

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

58 ~~(g)(1)~~ (i)(1) identifies the court, the case name, the case number, the judge or
59 clerk that signed the judgment, the date the judgment was signed, and the date the
60 judgment was recorded in the registry of actions and the registry of judgments;
61 ~~(g)(2)~~ (1)(2) states whether the time for appeal has passed and whether an
62 appeal has been filed;
63 ~~(g)(3)~~ (i)(3) states whether the judgment has been stayed and when the stay will
64 expire; and
65 ~~(g)(4)~~ (i)(4) if the language of the judgment is known to the clerk, quotes verbatim
66 the operative language of the judgment or attaches a copy of the judgment.
67

Tab 9

1 **Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.**
2 (a) **Pleadings.** Only these pleadings are allowed:
3 (a)(1) a complaint;
4 (a)(2) an answer to a complaint;
5 (a)(3) an answer to a counterclaim designated as a counterclaim;
6 (a)(4) an answer to a cross claim;
7 (a)(5) a third party complaint
8 (a)(6) an answer to a third party complaint; and
9 (a)(7) a reply to an answer if permitted by the court.
10 (b) **Motions.** A request for an order must be made by motion. The motion must be in
11 writing, unless made during a hearing or trial, must state the relief requested, and must
12 state the grounds for the relief requested. Except for the following, a motion must be
13 made in accordance with this rule.
14 (b)(1) A motion made in proceedings before a court commissioner must follow the
15 procedures of Rule 101.
16 (b)(2) A motion under Rule 26 for extraordinary discovery must follow the
17 procedures of Rule 37(b).
18 (b)(3) A motion under Rule 37 for a protective order or for an order compelling
19 disclosure or discovery—but not a motion for sanctions—must follow the procedures
20 of Rule 37(b).
21 (b)(4) A motion under Rule 45 to quash a subpoena must follow the procedures
22 of Rule 37(b).
23 (b)(5) A motion for summary judgment must follow the procedures of this rule,
24 supplemented by the requirements of Rule 56.
25 (c) **Form, name and content of motion.** The rules governing captions and other
26 matters of form in pleadings apply to motions and other papers. The movant must title
27 the motion substantially as: “Motion to [short phrase describing the relief requested].”
28 The motion may not exceed 15 pages, not counting relevant portions of documents
29 cited in the motion. An approved over-length motion must include a table of contents

30 and a table of authorities with page references. The motion must include under
31 appropriate headings and in the following order:
32 (c)(1) a concise statement of the relief requested and the grounds for the relief
33 requested;
34 (c)(2) one or more sections that include a concise statement of the relevant facts
35 as claimed by the party and argument citing authority for the relief requested; and
36 (c)(3) relevant portions of documents cited, such as affidavits or discovery
37 materials or opinions, statutes or rules.
38 (d) **Name and content of memorandum responding to the motion.** A nonmovant
39 may file a memorandum responding to the motion within 14 days after the motion is
40 filed. The nonmovant must title the memorandum substantially as: “Memorandum
41 responding to the motion to [short phrase describing the relief requested].” The
42 memorandum may not exceed 15 page, not counting objections to evidence and
43 relevant portions of documents cited in the memorandum. An approved over-length
44 memorandum must include a table of contents and a table of authorities with page
45 references. The memorandum must include under appropriate headings and in the
46 following order:
47 (d)(1) a concise statement of the party’s preferred disposition of the motion and
48 the grounds supporting that disposition;
49 (d)(2) one or more sections that include a concise statement of the relevant facts
50 as claimed by the party and argument citing authority for that disposition;
51 (d)(3) objections to evidence in the motion, citing authority for the objection; and
52 (d)(4) relevant portions of documents cited in the memorandum, such as
53 affidavits or discovery materials or opinions, statutes or rules.
54 (e) **Name and content of reply memorandum.** Within 7 days after the
55 memorandum responding to the motion is filed, the movant may file a reply
56 memorandum, which must be limited to rebuttal of new matters raised in the
57 memorandum responding to the motion. The movant must title the memorandum
58 substantially as “Memorandum replying to the memorandum responding to the motion
59 to [short phrase describing the relief requested].” The memorandum may not exceed 5

60 pages, not counting objections to evidence, response to objections, and relevant
61 portions of documents cited in the memorandum. The memorandum must include under
62 appropriate headings and in the following order:
63 (e)(1) a concise statement of the new matter raised in the memorandum
64 responding to the motion;
65 (e)(2) one or more sections that include a concise statement of the relevant facts
66 as claimed by the party and argument citing authority rebutting the new matter;
67 (e)(3) objections to evidence in the memorandum responding to the motion, citing
68 authority for the objection; and
69 (e)(4) response to objections made in the memorandum responding to the
70 motion, citing authority for the response;
71 (e)(5) relevant portions of documents cited in the memorandum, such as
72 affidavits or discovery materials or opinions, statutes or rules.
73 (f) **Response to objections made in the reply memorandum.** If the reply
74 memorandum includes an objection to evidence, the nonmovant may file a response to
75 the objection no later than 7 days after the reply memorandum is filed.
76 (g) **Request to submit for decision.** When briefing is complete or the time for
77 briefing has expired, either party may and the movant must file a “Request to Submit for
78 Decision.” The request to submit for decision must state the date on which the motion
79 was filed, the date the memorandum responding to the motion, if any, was filed, the date
80 the reply memorandum, if any, was filed, and whether a hearing has been requested. If
81 no party files a request, the motion will not be submitted for decision.
82 (h) **Hearings.** The court may hold a hearing on any motion. A party may request a
83 hearing in the motion, in a memorandum or in the request to submit for decision. A
84 request for hearing must be separately identified in the caption of the document
85 containing the request. The court must grant a request for a hearing on a motion under
86 Rule 56 or a motion that would dispose of the action or any claim or defense in the
87 action unless the court finds that the motion or response to the motion is frivolous or the
88 issue has been authoritatively decided.

(i) **Notice of supplemental authority.** A party may file notice of citation to significant authority that comes to the party's attention after the party's motion or memorandum has been filed or after oral argument but before decision. The notice must state—without argument—citation to the authority, the page of the motion or memorandum or the point orally argued to which the authority applies, and the reason for the authority. Any other party may promptly file a response, but the court may rule on the motion without a response. The response must comply with this paragraph.

(j) **Orders.**

(j)(1) **Signed, written decision is an order.** A written decision of the court signed by a judge however denominated—including "order," "ruling," "memorandum decision," "opinion," or "minute entry"—is an order. An order must state whether it is entered upon trial, stipulation, motion or the court's initiative. Except as provided in Rule 58A(a) and except as directed by the court, an order must be prepared as a separate document and must not incorporate any matter by reference.

(j)(2) **Appealable orders.** The order is a final judgment that can be appealed if it satisfies Rule 54(b) and Rule 58A.

(j)(3) **Order to pay money.** An order for the payment of money can be enforced in the same manner as if it were a judgment.

(j)(4) **Ex parte orders.** Except as otherwise provided by these rules, an order made without notice to the other parties can be vacated or modified by the judge who made it with or without notice.

(j)(5) **Preparing and serving a proposed order.** Within 14 days after the court's decision, the prevailing party must prepare a proposed order conforming to the decision and serve the proposed order on the other parties for review and approval as to form. The court may direct that a party other than the prevailing party prepare and serve the proposed order. The court may prepare and serve the order. If the prevailing party or the party assigned to prepare the order fails to serve a proposed order within 14 days, any party may prepare and serve a proposed order.

117 (j)(6) **Approval as to form.** A party's approval as to the form of a proposed order
118 certifies that the proposed order accurately reflects the court's descision. Approval
119 as to form does not waive any objections.
120 (j)(7) **Objecting to a proposed order.** A party may object to the form of the
121 proposed order by filing an objection within 7 days after the order is served.
122 (j)(8) **Filing proposed order.** The party preparing a proposed order must file it:
123 (j)(8)(A) after the order has been approved as to form by all parties; (The
124 party preparing the proposed order must indicate whether the approval was
125 received in person, by telephone, by signature, by email or by other means.)
126 (j)(8)(B) after the time to file an objection to the form of the order has expired;
127 (The party preparing the proposed order must also file a certificate of service of
128 the proposed order conforming to Rule 5.) or
129 (j)(8)(B) within two days after a party has filed an objection to the form of the
130 order. (The party preparing the proposed order may also file a response to the
131 objection.)
132 (j)(9) **Proposed order before decision prohibited; exceptions.** Except as
133 provided, a party may not file a proposed order concurrently with a motion or
134 memorandum or with a request to submit for decision. A proposed order must be
135 filed with the request to submit for decision a motion in which a memorandum
136 responding to the motion has not been filed. A proposed order must also be filed with
137 the following motions:
138 (j)(9)(A) an ex parte motion;
139 (j)(9)(B) a stipulated motion; and
140 (j)(9)(C) a discovery motion with expedited procedures under Rule 37(b).
141 (k) **Stipulated motions.** A party seeking relief that has been agreed to by the
142 other parties may file a stipulated motion which must:
143 (k)(1) be titled substantially as: "Stipulated motion to [short phrase describing
144 the relief requested];
145 (k)(2) include a concise statement of the relief requested and the grounds for
146 the relief requested;

147 (k)(3) include the signed stipulation in or attached to the motion; and
148 (k)(4) be accompanied by a proposed order that has been approved as to
149 form by the other parties.
150 (l) **Ex parte motions.** If a statute or rule permits a motion to be filed without
151 serving the motion on the other parties, the party seeking relief may file a an ex
152 parte motion which must:
153 (l)(1) be titled substantially as: “Ex parte motion to [short phrase describing the
154 relief requested];
155 (l)(2) include a concise statement of the relief requested and the grounds for the
156 relief requested;
157 (l)(3) include the statute or rule authorizing the ex parte motion; and
158 (l)(4) be accompanied by a proposed order.
159 (m) **Motion in responding memorandum or reply memorandum prohibited.** A
160 party may not make a motion in a memorandum. A party who objects to evidence in
161 another party’s motion or memorandum must not file a motion to strike that evidence.
162 The proper procedure is to include in the subsequent memorandum an objection to the
163 evidence.
164 (n) **Over-length motion or memorandum.** The court may permit a party to file an
165 over-length motion or memorandum upon ex parte motion and a showing of good
166 cause.
167 (o) **Limited statement of facts and authority.** No statement of facts and legal
168 authorities beyond the concise statement of the relief requested and the grounds for the
169 relief requested required in paragraph (c) is required for the following motions:
170 (o)(1) motion to allow an over-length motion or memorandum;
171 (o)(2) motion to extend the time to perform an act, if the motion is filed before the
172 time to perform the act has expired;
173 (o)(3) motion to continue a hearing;
174 (o)(4) motion to appoint a guardian ad litem;
175 (o)(5) motion to substitute parties;
176 (o)(6) motion to refer the action to or withdraw it from the court's ADR program;

177 (o)(7) motion for a settlement conference; and
178 (o)(8) motion to approve a stipulation of the parties.
179 (p) **Limit on order to show cause.** motion for an order to show cause may be filed
180 only for enforcement of an existing order or for sanctions for violating an existing order.
181 A motion for an order to show cause must be supported by an affidavit or declaration
182 under Utah Code Section 78B-5-705 sufficient to show cause to believe a party has
183 violated a court order.
184 **Advisory Committee Notes**
185 [Add to existing notes]
186 The purpose of the 2014 amendments is to:
187 (1) combine a motion and its supporting memorandum in one document, as in the
188 federal court;
189 (2) eliminate motions to strike evidence relied upon to support or respond to a
190 motion;
191 (3) substantially reduce proposed orders;
192 (4) bring regularity to motion practice; and
193 (5) return the analysis of whether an appeal from an order is proper to the traditional
194 analysis under Rule 54 and Rule 58A, notwithstanding the holdings in:
195 Central Utah Water Conservancy District v. King, 2013 UT 13;
196 Giusti v. Sterling Wentworth Corp., 2009 UT 2; and
197 Code v. Utah Dept of Health, 2007 UT 43, and.
198