

Agenda

Advisory Committee on Rules of Civil Procedure

November 17, 2004
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, Suite N31

Approval of minutes.	Fran Wikstrom
Rule 62. Cap on supersedeas bonds	Fran Wikstrom
Rule 7. Motion to reconsider	Cullen Battle
Electronic Filing demonstration. Rules regulating e-filing.	Kim Allard Paul Barron Jerome Battle Dallas Powell Tim Shea Susie Sundberg

Meeting Schedule

January 26, 2005
February 23, 2005
March 23, 2005
April 27, 2005
May 25, 2005
July 27, 2005
September 28, 2005
October 26, 2005
November 16, 2005

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, October 27, 2004
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Glenn Hanni, Cullen Battle, Francis J. Carney, David W. Scofield, Terrie T. McIntosh, Virginia S. Smith, R. Scott Waterfall, James T. Blanch, Lance Long, Honorable Lyle R. Anderson (via telephone)

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Janet H. Smith, Leslie W. Slaugh, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Honorable David Nuffer, Paula Carr, Thomas R. Karrenberg, Todd M. Shaughnessy, Debora Threedy

GUESTS: Gary Thorup
Keith Teel (via telephone)

I. APPROVAL OF MINUTES.

Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the September 22, 2004 meeting were reviewed, and R. Scott Waterfall moved that they be approved as submitted. The Motion was seconded by James T. Blanch, and approved unanimously.

II. RULE 7. MOTION TO RECONSIDER.

Cullen Battle led a discussion of proposed Rule 7, which was drafted as a way to recognize a motion for reconsideration while at the same time restricting briefing. The primary focus of the discussion was whether this rule is needed, and/or whether having this rule would simply legitimize frivolous motions. Committee members commented that these motions are already being filed under other guises, and liked the fact that the proposed rule would prohibit responses until authorized by the judge. Members also discussed how this proposed rule would impact administrative law. After discussion, it was agreed that Lance Long will conduct research to determine whether and how other states have dealt with motions for reconsideration. The proposed rule will be discussed again at the next Committee meeting.

III. RULE 62: CAP ON SUPERSEDEAS BONDS.

The Committee discussed revisions to Rule 62 which are intended to limit the monetary amount of supersedeas bonds. Keith Teel, an attorney with the law firm of Covington & Burling, and who addressed the Committee at the September 22, 2004, meeting, questioned the practicality of part (j)(1)(A) of proposed Rule 62. He suggested that there is little likelihood that a judge who oversees a trial will believe that a defendant has a “likelihood of success on appeal.” Several members disagreed, commenting that a judge may not always agree with a jury’s verdict.

The principal focus of discussion about proposed Rule 62 was part (j)(3)(A), which would allow the trial judge to prohibit payment of dividends in situations where a bond of less than the total judgment (except for punitive damages) is allowed. Several members commented that for a judge to prohibit a corporation’s paying dividends could be devastating to publicly held corporations. David Scofield commented that there is no point in prohibiting payment of dividends for publicly held corporations, whereas there is reason to do so for closely held corporations. Mr. Wikstrom commented that shareholders are not entitled to dividends, and questioned why dividends should be paid when a company has a large judgment pending. Virginia Smith and Mr. Battle commented that they believe that companies should not be prohibited from paying dividends.

After extensive discussion, Tim Shea stated that he will work on redrafting the proposed rule to comport with the members’ consensus from today’s meeting.

IV. RULE 9. NAMING PERSONS FOR ALLOCATION OF FAULT.

Mr. Shea stated that the only real change in the version of Rule 9 that is before the Committee today is from the beginning of line 67 to the end of that paragraph. Members discussed whether: (1) 90 days is sufficient time for filing a supplemental answer to identify those to whom fault would be allocated; (2) whether “reasonable diligence” is a strong enough standard; and (3) whether “supplemental answer” should be changed to “notice” in line 67. Committee members voted unanimously to adopt proposed Rule 9 with the only change being to change “supplemental answer” to “notice” in line 67.

V. RULE 47. PEREMPTORY CHALLENGES FOR MULTIPLE PARTIES.

Frank Carney gave the background for the proposed changes to Rule 47. He stated that Judge David Nuffer had recommended looking to the comparable federal rule for guidance. Mr. Carney stated that after reviewing the federal rule, he deleted confusing language from proposed Rule 47 and included language from the federal rule and Utah case law in lines 36-37. The Committee voted unanimously to adopt the proposed changes and the proposed rule.

VI. RULE 101. MOTIONS BEFORE COURT COMMISSIONERS.

The Committee discussed proposed Rule 101. Terrie McIntosh recommended that the word “new” be deleted from the phrase “new matters raised in the response” in line 15. Virginia Smith moved that the proposed rule be approved, with the one change, and submitted for

comment. James Blanch seconded the motion, which was approved unanimously.

VII. RULE 106. TEMPORARY ORDERS DURING MODIFICATION OF DIVORCE DECREES.

Mr. Shea stated that the revision of Rule 106 is an attempt to clarify confusing issues in case law. Mr. Scofield recommended that line 4 be changed to read “service of the petition or motion upon.” It was agreed that this change should be made. Mr. Carney moved that the proposed rule, as modified, be approved and submitted for comment. Glenn Hanni seconded the motion, which was approved unanimously.

VII. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, November 17, 2004, at the Administrative Office of the Courts.

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1 Rule 62. Stay of proceedings to enforce a judgment.

2 (a) Stay upon entry of judgment. Execution or other proceedings to enforce a judgment may
3 issue immediately upon the entry of the final judgment, unless the court in its discretion and on
4 such conditions for the security of the adverse party as are proper, otherwise directs.

5 (b) Stay on motion for new trial or for judgment. In its discretion and on such conditions for
6 the security of the adverse party as are proper, the court may stay the execution of, or any
7 proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter
8 or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or
9 order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a
10 directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for
11 additional findings made pursuant to Rule 52(b).

12 (c) Injunction pending appeal. When an appeal is taken from an interlocutory order or final
13 judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend,
14 modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as
15 it considers proper for the security of the rights of the adverse party.

16 (d) Stay upon appeal. When an appeal is taken, the appellant by giving a supersedeas bond
17 may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may
18 be given at or after the time of filing the notice of appeal. The stay is effective when the
19 supersedeas bond is approved by the court.

20 (e) Stay in favor of the state, or agency thereof. When an appeal is taken by the United
21 States, the state of Utah, or an officer or agency of either, or by direction of any department of
22 either, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other
23 security shall be required from the appellant.

24 (f) Stay in quo warranto proceedings. Where the defendant is adjudged guilty of usurping,
25 intruding into or unlawfully holding public office, civil or military, within this state, the
26 execution of the judgment shall not be stayed on an appeal.

27 (g) Power of appellate court not limited. The provisions in this rule do not limit any power of
28 an appellate court or of a judge or justice thereof to stay proceedings or to suspend, modify,
29 restore, or grant an injunction, or extraordinary relief or to make any order appropriate to
30 preserve the status quo or the effectiveness of the judgment subsequently to be entered.

31 (h) Stay of judgment upon multiple claims. When a court has ordered a final judgment on
32 some but not all of the claims presented in the action under the conditions stated in Rule 54(b),
33 the court may stay enforcement of that judgment until the entering of a subsequent judgment or
34 judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the
35 party in whose favor the judgment is entered.

36 (i) Form of supersedeas bond; deposit in lieu of bond; waiver of bond; jurisdiction over
37 sureties to be set forth in undertaking.

38 (i)(1) A supersedeas bond given under Subdivision (d) may be either a commercial bond
39 having a surety authorized to transact insurance business under Title 31A, or a personal bond
40 having one or more sureties who are residents of Utah having a collective net worth of at least
41 twice the amount of the bond, exclusive of property exempt from execution. Sureties on personal
42 bonds shall make and file an affidavit setting forth in reasonable detail the assets and liabilities of
43 the surety.

44 (i)(2) Upon motion and good cause shown, the court may permit a deposit of money in court
45 or other security to be given in lieu of giving a supersedeas bond under Subdivision (d).

46 (i)(3) The parties may by written stipulation waive the requirement of giving a supersedeas
47 bond under Subdivision (d) or agree to an alternate form of security.

48 (i)(4) A supersedeas bond given pursuant to Subdivision (d) shall provide that each surety
49 submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the
50 surety's agent upon whom any papers affecting the surety's liability on the bond may be served,
51 and that the surety's liability may be enforced on motion and upon such notice as the court may
52 require without the necessity of an independent action.

53 (j) Amount of supersedeas bond.

54 (j)(1) A court shall set the supersedeas bond in an amount that adequately protects the
55 judgment creditor against loss or damage occasioned by the appeal and assures payment in the
56 event the judgment is affirmed. In setting the amount, the court may consider any relevant factor,
57 including:

58 (j)(1)(A) the judgment debtor's ability to pay the judgment;

59 (j)(1)(B) the existence and value of security;

60 (j)(1)(C) the judgment debtor's opportunity to dissipate assets;

61 (j)(1)(D) the judgment debtor's likelihood of success on appeal; and

62 (j)(1)(E) the respective harm to the parties from setting a higher or lower amount.

63 (j)(2) Notwithstanding subsection (j)(1):

64 (j)(2)(A) the presumptive amount of a bond for compensatory damages is the amount of the
65 compensatory damages plus costs and attorney fees, as applicable, plus 3 years of interest at the
66 applicable interest rate;

67 (j)(2)(B) the bond for compensatory damages shall not exceed \$25 million in an action by
68 plaintiffs certified as a class under Rule 23 or in an action by multiple plaintiffs in which
69 compensatory damages are not proved for each plaintiff individually; and

70 (j)(2)(C) no bond shall be required for punitive damages.

71 (j)(3) If the court permits a bond that is less than the presumptive amount of compensatory
72 damages, the court may enter such orders as are necessary to protect the judgment creditor
73 during the appeal.¹

74 (j)(4) If the court finds that the judgment debtor has violated an order or has otherwise
75 dissipated assets, the court may set the bond under subsection (j)(1) without regard to the limits
76 in subsection (j)(2).

77 ~~(j)(k)~~ Objecting to sufficiency or amount of security. Any party whose judgment is stayed or
78 sought to be stayed pursuant to Subdivision (d) may object to the sufficiency of the sureties on
79 the supersedeas bond or the amount thereof, or to the sufficiency or amount of other security
80 given to stay the judgment by filing and giving notice of such objection. The party so objecting
81 shall be entitled to a hearing thereon upon five days notice or such shorter time as the court may
82 order. The burden of justifying the sufficiency of the sureties or other security and the amount of
83 the bond or other security, shall be borne by the party seeking the stay, unless the objecting party
84 seeks a bond greater than the presumed limits of this rule. The fact that a supersedeas bond, its

¹ Advisory Committee Note. The judge's objective is to protect the ability of the judgment creditor to collect a judgment affirmed on appeal. The creditor's interests may be damaged as much by the inability of the debtor to conduct business in the ordinary course as by the fraudulent dissipation of assets. Therefore, if the judge enters any order, the order should include only the least restrictive measures that protect the creditor's interests. Among the options the judge might consider are:

- (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.

85 surety or other security is generally permitted under this rule shall not be conclusive as to its
86 sufficiency or amount.

87

From: "Gary Thorup" <Gary.Thorup@hro.com>
To: <Tims@email.utcourts.gov>
Date: 11/1/04 9:48AM
Subject: Suggestions re proposed changes to URCP 62

Tim -

I have reviewed your latest draft and propose the following clarifying amendments:

1. On Line 54, before the word "A," insert "Except as provided in Subsections (j)(2) and (j)(3),"
2. On Line 61, after "(j)(1)(D)", insert "with respect to jury verdicts, whether there is a likelihood" , then delete the " 's" from "debtor's" and delete "likelihood of success", inserting in its place, "will succeed"
3. On Line 72, after "may", insert "also"

I have conferred with Keith Teel, and he is in agreement with these suggestions. I will let you know if I have any other thoughts.

Gary

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CC: "Teel, Keith" <KTeel@cov.com>

1 Rule 7(h). Motions for reconsideration of non-final orders on grounds that the court has
2 overlooked points of law or fact.

3 (h)(1) Motion disfavored; time for filing; contents; response; oral argument not permitted.
4 Motions for reconsideration of non-final orders or decisions on the grounds that the court has
5 overlooked points of law or fact are strongly disfavored. Such motions may be filed only under
6 exceptional circumstances and not later than 10 days after the entry of the order or decision for
7 which reconsideration is sought. The motion shall state with particularity the points of law or
8 fact the movant claims the court has overlooked or misapprehended. Counsel for movant must
9 certify that the motion is presented in good faith and not for delay. Oral argument in support of
10 the motion will not be permitted. No response to a motion for reconsideration will be received
11 unless requested by the court. A response shall be filed within 14 days after the entry of the
12 order requesting the response. A motion for reconsideration will not be granted in the absence of
13 a request for a response.

14 (h)(2) Action by court if granted. If a motion for reconsideration is granted, the court may
15 make a final disposition of the cause without reargument, or may restore it to the calendar for
16 reargument or resubmission, or may make such other orders as are deemed appropriate under the
17 circumstances of the particular case.

18 (h)(3) Attorneys fees. If the court denies a motion for reconsideration after requesting a
19 response, the court shall award to the responding party reasonable attorneys fees in preparing the
20 response.

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

2 (a) Service: When required.

3 (a)(1) Except as otherwise provided in these rules or as otherwise directed by the court, every
4 judgment, every order required by its terms to be served, every pleading subsequent to the
5 original complaint, every paper relating to discovery, every written motion other than one heard
6 ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper
7 shall be served upon each of the parties.

8 (a)(2) No service need be made on parties in default except that:

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

10 (a)(2)(B) a party in default for any reason other than for failure to appear shall be served with
11 all pleadings and papers;

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

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

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

18 (a)(3) In an action begun by seizure of property, ~~whether through arrest, attachment,~~
19 ~~garnishment or similar process,~~ in which no person ~~need be or~~ is named as defendant, any service
20 required to be made prior to ~~the~~ filing of an answer, claim or appearance shall be made upon the
21 person having custody or possession of the property at the time of its seizure.

22 (b) Service: How made ~~and by whom~~.

23 (b)(1) ~~Whenever under these rules service is required or permitted to be made upon~~ If a party
24 ~~is~~ represented by an attorney, ~~the~~ service shall be ~~made~~ upon the attorney unless service upon the
25 party is ordered by the court. ~~Service upon the attorney or upon a party shall be made by~~
26 ~~delivering a copy or by mailing a copy to the last known address or, if no address is known, by~~
27 ~~leaving it with the clerk of the court.~~

28 (b)(1)(A) ~~Delivery of a copy within this rule means: Handing~~ The judge may require service
29 ~~by email. A party shall serve notice of a hearing scheduled 5 days or less from the date of service~~
30 ~~by the method most likely to give actual notice. Otherwise, a party shall serve a document by:~~

31 ~~(b)(1)(A)(i) handing it to the attorney or to the party person; or~~

32 (b)(1)(A)(ii) leaving it at the person's office with a ~~clerk or~~ person in charge ~~thereof; or, if~~
33 ~~there is no one in charge, leaving it or~~ in a conspicuous place ~~therein; or, if the office is closed or~~
34 ~~the person to be served has no office,~~

35 (b)(1)(A)(iii) leaving it at the person's dwelling house ~~or usual place of abode~~ with some
36 person of suitable age and discretion ~~then residing therein; or, if consented to in writing by the~~
37 ~~person to be served, delivering a copy by electronic or other means;~~

38 (b)(1)(A)(iv) mailing it to the person's last known address;

39 (b)(1)(A)(v) faxing it to the person's last known fax number;

40 (b)(1)(A)(vi) sending it by email to the person's last known email address; or

41 (b)(1)(A)(vii) upon any person with an electronic filing account, who is a party or attorney in
42 the case, by submitting the document for electronic filing.

43 (b)(1)(B) Service by mail is complete upon mailing. ~~If the paper served is notice of a hearing~~
44 ~~and if the hearing is scheduled 5 days or less from the date of service, service shall be by~~
45 ~~delivery or other method of actual notice. Service by electronic means is complete on~~
46 ~~transmission if transmission is completed during normal business hours at the place receiving the~~
47 ~~service; otherwise, service is complete on the next business day.~~ Service by fax or email is
48 complete upon sending unless the method of transmission indicates the transmission has failed.

49 (b)(2) Unless otherwise directed by the court:

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

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

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

55 (c) Service: Numerous defendants. In any action in which there is an unusually large number
56 of defendants, the court, upon motion or of its own initiative, may order that service of the
57 pleadings of the defendants and replies thereto need not be made as between the defendants and
58 that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense
59 contained therein shall be deemed to be denied or avoided by all other parties and that the filing
60 of any such pleading and service thereof upon the plaintiff constitutes ~~due~~ notice of it to the
61 parties. A copy of every such order shall be served upon the parties in such manner and form as
62 the court directs.

63 (d) Filing. All papers after the complaint required to be served upon a party shall be filed
64 with the court either before or within a reasonable time after service. The papers shall be
65 accompanied by a certificate of service showing the date and manner of service completed by the
66 person effecting service. Rule 26(i) governs the filing of papers related to discovery.

67 (e) Filing with the court defined. ~~The filing of pleadings and other papers with the court as~~
68 ~~required by these rules shall be made by filing them with the clerk of the court, except that the~~
69 ~~judge may accept the papers, note thereon the filing date and forthwith transmit them to the~~
70 ~~office of the clerk. A person may file with the court using any means of delivery permitted by the~~
71 ~~court, including personal, courier, mail, fax or electronic. The judge may require parties to file~~
72 ~~electronically. Filing is complete upon acceptance by the clerk of court.~~

73

1 Rule 10. Form of ~~pleadings and other~~ papers.

2 (a) Caption; names of parties; other necessary information. All ~~pleadings and other~~ papers
3 filed with the court shall conform to the following. Papers shall contain a caption setting forth
4 the name of the court, the title of the action, the file number, the name of the pleading or other
5 paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is
6 assigned. In the complaint, the title of the action shall include the names of all the parties, but
7 other ~~pleadings and~~ papers need only state the name of the first party on each side with an
8 indication that there are other parties. A party whose name is not known shall be designated by
9 any name and the words "whose true name is unknown." In an action in rem, unknown parties
10 shall be designated as "all unknown persons who claim any interest in the subject matter of the
11 action." ~~Every pleading and other paper filed with the court~~ Papers shall ~~also~~ state in the top left
12 hand corner of the first page the name, address, email address, telephone number and bar number
13 of ~~any the~~ attorney representing the party filing the paper, ~~which information shall appear in the~~
14 ~~top left hand corner of the first page.~~ ~~Every pleading~~ Papers shall state in the lower left hand
15 corner of the last page the name ~~and address~~ of the party for whom it is filed; ~~this information~~
16 ~~shall appear in the lower left hand corner of the last page of the pleading.~~ The plaintiff shall file
17 ~~together~~ with the complaint a completed cover sheet substantially similar in form and content to
18 the cover sheet approved by the Judicial Council.

19 (b) Paragraphs; separate statements. All averments of claim or defense shall be made in
20 numbered paragraphs, the contents ~~of each~~ of which shall be limited as far as practicable to a
21 ~~statement of a~~ single set of circumstances; and a paragraph may be referred to by number in all
22 succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each
23 defense other than denials shall be stated in a separate count or defense whenever a separation
24 facilitates the clear presentation of the matters set forth.

25 (c) Adoption by reference; exhibits. Statements in a ~~pleading paper~~ may be adopted by
26 reference in a different part of the same ~~pleading~~ or ~~in another pleading, or in any motion paper.~~
27 An exhibit to a ~~pleading paper~~ is a part thereof for all purposes.

28 (d) Paper quality, size, style and printing. ~~All pleadings and other papers filed with the court,~~
29 ~~except printed documents or Papers~~ other than exhibits; shall be typewritten, printed or
30 photocopied in black type on good, white, unglazed paper of letter size (8 1/2" x 11"), with a top
31 margin of not less than 2 inches above any typed material, a left hand margin of not less than 1

32 inch, a right hand margin of not less than one half inch, and a bottom margin of not less than one
33 half inch. All ~~typing or printing text~~ shall be clearly legible, ~~shall be~~ double spaced; except for
34 matters customarily single spaced ~~or indented~~, and shall not be smaller than 12-point size.
35 ~~Typing or printing Text~~ shall appear on one side of the page only.

36 (e) Signature line. ~~Names~~ The name of the person signing shall be typed or printed under all
37 that person's signature lines, and all signatures shall be made in permanent black or blue ink.

38 (f) Enforcement by clerk; waiver for pro se parties. The clerk of the court shall ~~examine all~~
39 ~~pleadings and other papers filed with the court. If they are~~ accept for filing papers not prepared in
40 conformity with this rule, ~~the clerk shall accept the filing~~ but may require counsel to substitute
41 properly prepared papers for nonconforming papers. The clerk or the court may ~~waive the~~
42 ~~requirements of this rule for~~ permit parties appearing pro se to file nonconforming papers. For
43 good cause shown, the court may ~~relieve any party of any requirement of this rule~~ permit any
44 party to file nonconforming papers.

45 (g) Replacing lost pleadings or papers. If an original ~~pleading or~~ paper filed ~~in any action or~~
46 ~~proceeding with the court~~ is lost, the court may, upon motion, with or without notice, authorize a
47 copy thereof to be filed and used in lieu of the original.

48 (h) Electronic documents.

49 (h)(1) Any reference in these rules to a writing, recording or image includes the electronic
50 version thereof.

51 (h)(2) A document digitally signed and electronically filed is the original.

52 (h)(3) An electronic copy of a document, recording or image may be filed as though it were
53 the original. Proof of the original, if necessary, is governed by the Utah Rules of Evidence.

54 (h)(4) The graphic representation of a document digitally signed and electronically filed shall
55 conform to the format requirements for paper documents. An electronic copy of a document shall
56 conform to the format of the original.

57 (h)(5) An electronically filed document may contain links only to other documents filed
58 simultaneously or already on file with the court.

59

1 Rule 11. Signing of pleadings, motions, and other papers; representations to court; sanctions.

2 (a) Signature.

3 (a)(1) Every pleading, written motion, and other paper filed with the court shall be signed by
4 at least one attorney of record in the attorney's individual name, or, if the party is not represented
5 by an attorney, shall be signed by the party. Each paper shall state the signer's address and
6 telephone number, if any.

7 (a)(2) A person may sign a document using any form of signature recognized by law as
8 binding.

9 (a)(3) Except when otherwise specifically provided Unless required by rule or statute,
10 pleadings need not be have a notarized, verified or accompanied by affidavit acknowledged
11 signature. A digital signature is not the equivalent of a notarized, verified or an acknowledged
12 signature, but if a rule or statute requires a notarized, verified or an acknowledged signature, a
13 digital signature satisfies that requirement.

14 (a)(4) An unsigned paper shall be stricken unless omission of the signature is corrected
15 promptly after being called to the attention of the attorney or party.

16 (b) Representations to court. By presenting a ~~pleading, written motion, or other~~ paper to the
17 court (whether by signing, filing, submitting, or ~~later~~ advocating), an attorney or unrepresented
18 party is certifying that to the best of the person's knowledge, information, and belief, formed
19 after an inquiry reasonable under the circumstances,

20 (b)(1) it is not being presented for any improper purpose, such as to harass or to cause
21 unnecessary delay or needless increase in the cost of litigation;

22 (b)(2) the claims, defenses, and other legal contentions ~~therein~~ are warranted by existing law
23 or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the
24 establishment of new law;

25 (b)(3) the ~~allegations and other~~ factual contentions have evidentiary support or, if specifically
26 so identified, are likely to have evidentiary support after a reasonable opportunity for further
27 investigation or discovery; and

28 (b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so
29 identified, are reasonably based on a lack of information or belief.

30 (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines
31 that subdivision (b) has been violated, the court may, subject to the conditions stated below,

32 impose an appropriate sanction upon the attorneys, law firms, or parties that have violated
33 subdivision (b) or are responsible for the violation.

34 (c)(1) How initiated.

35 (c)(1)(A) By motion. A motion for sanctions under this rule shall be made separately from
36 other motions or requests and shall describe the specific conduct alleged to violate subdivision
37 (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court
38 unless, within 21 days after service of the motion (or such other period as the court may
39 prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not
40 withdrawn or appropriately corrected. ~~If warranted, the court may award to the party prevailing~~
41 ~~on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the~~
42 ~~motion. In appropriate circumstances, a law firm may be held jointly responsible for violations~~
43 ~~committed by its partners, members, and employees.~~

44 (c)(1)(B) On court's initiative. On its own initiative, the court may enter an order describing
45 the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or
46 party to show cause why it has not violated subdivision (b) ~~with respect thereto.~~

47 (c)(2) Nature of sanction; limitations. If warranted, the court may award to the party
48 prevailing on the motion the costs and reasonable attorney fees incurred in presenting or
49 opposing the motion. A sanction imposed for violation of this rule shall be limited to what is
50 sufficient to deter repetition ~~of such conduct or comparable conduct by others similarly situated.~~
51 Subject to the limitations in subparagraphs (A) and (B), the sanction may ~~consist of, or~~ include,
52 directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion
53 and warranted for effective deterrence, an order directing payment to the movant of some or all
54 of the costs and reasonable attorney fees ~~and other expenses~~ incurred as a direct result of the
55 violation. In appropriate circumstances, a law firm may be held jointly responsible for violations
56 committed by its partners, members, and employees.

57 (c)(2)(A) Monetary sanctions may not be awarded against a represented party for a violation
58 of subdivision (b)(2).

59 (c)(2)(B) Monetary sanctions may not be awarded on the court's initiative unless the court
60 issues its order to show cause before a voluntary dismissal or settlement of the claims ~~made by or~~
61 ~~against the party which is, or whose attorneys are, to be sanctioned.~~

62 (c)(3) Order. When imposing sanctions, the court shall describe the conduct determined to
63 constitute a violation of this rule and explain the basis for the sanction ~~imposed~~.

64 (d) Inapplicability to discovery. ~~Subdivisions (a) through (c) of this~~ This rule does not apply
65 to disclosures and discovery requests, responses, objections, and motions that are subject to ~~the~~
66 ~~provisions of~~ Rules 26 through 37.

67