

# Agenda

## Advisory Committee on Rules of Civil Procedure

September 21, 2005  
4:00 to 6:00 p.m.

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

Approval of minutes.	Fran Wikstrom
Introduction of new member: Jonathan Hafen	Fran Wikstrom
Supreme Court action on draft rules	Fran Wikstrom
Rule 45. Subpoena.	Tim Shea
Rule 71B. Proceedings where parties not summoned.	Tim Shea
Rule 6(e).	David Nuffer
URSCP 13. Representation.	Tim Shea
E-filing: Rules 5, 10 & 11	Tim Shea

### **Meeting Schedule**

October 26, 2005  
November 16, 2005  
January 25, 2006  
February 22, 2006  
March 22, 2006  
April 26, 2006  
May 24, 2006  
June 28, 2006  
September 27, 2006  
October 25, 2006  
November 29, 2006 (5th Wednesday)

Committee Web Page: <http://www.utcourts.gov/committees/civproc/>

## **MINUTES**

### **UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE**

**Wednesday, July 27, 2005  
Administrative Office of the Courts**

**Francis M. Wikstrom, Presiding**

**PRESENT:** Francis M. Wikstrom, Francis J. Carney, James T. Blanch, Honorable David Nuffer, Virginia S. Smith, R. Scott Waterfall, Paula Carr, Debora Threedy, Todd M. Shaughnessy, Terrie T. McIntosh

**EXCUSED:** Honorable Anthony W. Schofield, Matty Branch, Lance Long, Honorable Anthony B. Quinn, David W. Scofield, Janet H. Smith, Tom Lee, Cullen Battle, Leslie W. Slaugh, Honorable Lyle R. Anderson, Thomas R. Karrenberg

**STAFF:** Tim Shea, Trystan Smith

#### **I. APPROVAL OF MINUTES.**

Mr. Wikstrom called the meeting to order at 4:05 p.m. Mr. Wikstrom thanked Lance Long for his service during Mr. Lee's absence. Mr. Wikstrom entertained a motion to approve the May 25, 2005 minutes as submitted. The Committee unanimously approved the minutes.

#### **II. COMMENTS TO DRAFT RULES. FINAL RECOMMENDATIONS.**

Mr. Shea presented the comments to the proposed amendments of Rules 7, 9, 26, 47, 62, and 101.

The sole comment to Rule 7 suggested an increase of the pages limits from 10 pages to 15-20 pages. After a brief discussion, the comment received no support from the Committee.

The Committee noted two comments supporting the amendments to Rules 9 and 26.

The Committee revised the third sentence of Rule 47(e) to include a period after "three peremptory challenges" striking the remainder of the sentence.

Mr. Slaugh (via email) suggested the Committee delete the phrase "with a response" from the third sentence of Rule 101(d)(1). Mr. Slaugh indicated the language as stated implied there would be two documents filed to oppose a motion — a response and a memorandum. The Committee discussed striking in their entirety the second and third sentences of Rule 101(d)(1).

Next, the Committee examined Rule 101(b). The Committee discussed whether a moving party should serve the opposing party or his/her counsel if more than 90 days passed

since entry of the most recent appealable order. Judge Nuffer indicated many domestic practitioners withdraw their representation immediately after a Decree of Divorce is entered. The Rule as proposed would require a moving party to serve an opposing party directly if more than 90 days passed since entry of a Decree of Divorce or last appealable order. This would avoid the need for counsel to attempt to locate previous clients.

Judge Nuffer suggested a revision to the last two sentences of subsection (b): “If service is more than 90 days after the date of entry of the most recent appealable order, service may not be made through counsel.” The Committee with the exception of Mr. Blanch expressed support for the revision.

Mr. Shea suggested the Committee revise the language of the second sentence of Rule 106(b)(1) to state: “The Court may make the modification retroactive to the date on which the petition was filed and served.” The Committee discussed the different time periods associated with when a petition is filed as opposed to served. Mr. Wikstrom suggested the Committee replace “filed” with “served.” The Committee supported Mr. Wikstrom’s suggestion.

Finally, Mr. Shea suggested the second sentence of Rule 106(a) should be revised to state: “Service of the petition, or motion *pursuant to Utah Code Ann. 30-3-37*, and summons upon the opposing party shall be in accordance with Rule 4.” The Committee expressed its approval to the revision.

After discussion of the comments to the proposed amendments and consideration of the above revisions and modifications, Mr. Carney moved to approve the proposed amendments for Rules 7, 9, 26, 47, 62, and 101. Mr. Blanch seconded the motion, and the motion was unanimously approved.

### **III. RULE 45. SUBPOENA**

Mr. Wikstrom suggested the Committee table discussion of Rule 45 for September’s meeting.

### **IV. RULE 71B. PROCEEDINGS WHERE PARTIES NOT SUMMONED**

Mr. Shea brought Rule 71B before the Committee. Mr. Shea indicated the Third District Court asked for clarification regarding the process to be followed when presented with a pleading seeking relief under the Rule.

Mr. Wikstrom indicated his concerns relative to the language in Rule 71B(b) which seemed to require a party not originally served to show cause why he should not be bound by a judgment entered against a co-defendant. Several Committee members indicated the rule and the process seemed antiquated. The Committee asked Mr. Shea to trace the history of the rule and report back for further discussion at September’s meeting.

**V. RULE 6(e).**

Judge Nuffer brought Rule 6(e) to the Committee. Judge Nuffer suggested an amendment to Rule 6(e) to allow the identical 3 days of additional time after electronic service that we now allow for service by mail. The proposed amendment would be consistent with the federal rules.

Mr. Wikstrom asked the Committee to table the proposed amendment and discussion thereon for September's meeting.

**VII. ADJOURNMENT.**

The meeting adjourned at 5:05 p.m. The next committee meeting will be held on Wednesday, September 21, 2005, at the Administrative Office of the Courts.

I:\My Documents\Committees\Civil Pro\Meeting Materials\Minutes\2005-07-27.wpd

1        Rule 45. Subpoena.

2        (a) Form; issuance.

3        (a)(1) Every subpoena shall:

4            (a)(1)(A) issue from the court in which the action is pending;

5            (a)(1)(B) state the title of the action, the name of the court from which it is issued, the  
6        name and address of the party or attorney serving the subpoena, and its civil action  
7        number;

8            (a)(1)(C) command each person to whom it is directed

9            (a)(1)(C)(i) to appear ~~to and~~ give testimony at trial, or at hearing, or at deposition, or

10          (a)(1)(C)(ii) to appear and produce ~~or to permit for~~ inspection and copying ~~of~~  
11        documents or tangible things in the possession, custody or control of that person, or

12          (a)(1)(C)(iii) to copy and mail to the party issuing the subpoena documents or  
13        tangible things in the possession, custody or control of that person, or

14          (a)(1)(C)(iv) to permit inspection of premises, ~~at a time and place therein specified~~;

15          (a)(1)(D) if an appearance is required, specify the date, time and place for the  
16        appearance; and

17          (a)(1)(D)-(a)(1)(E) set forth the text of Notice to Persons Served with a Subpoena, in  
18        substantially similar form to the subpoena form appended to these rules.<sup>1</sup>

19          (a)(2) A command to copy and mail documents or tangible things or to produce ~~or to~~  
20        ~~permit for~~ inspection and copying ~~of~~ documents or tangible things, or to permit  
21        inspection of premises, may be joined with a command to appear at trial, or at hearing,  
22        or at deposition, or may be issued separately.

23          (a)(3) The clerk shall issue a subpoena, signed but otherwise in blank, to a party  
24        requesting it, who shall complete it before service. An attorney admitted to practice in  
25        the court in which the action is pending may also issue and sign a subpoena as an  
26        officer of the court.

27          (b) Service; scope.

28          (b)(1) Generally.

29          (b)(1)(A) A subpoena may be served by any person who is not a party and is not  
30        less than 18 years of age. Service of a subpoena upon a person named therein shall be

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<sup>1</sup> Changes to the rule may necessitate changes to the form.

31 made as provided in Rule 4(d) for the service of process and, if the person's  
32 appearance is commanded, by tendering to that person the fees for one day's  
33 attendance and the mileage allowed by law. When the subpoena is issued on behalf of  
34 the United States, or this state, or any officer or agency of either, fees and mileage need  
35 not be tendered. Prior notice of any commanded production or inspection of documents  
36 or tangible things or a command to copy and mail documents or tangible things or to  
37 produce or to permit for inspection and copying of documents or tangible things, or to  
38 permit inspection of premises before trial shall be served on each party in the manner  
39 prescribed by Rule 5(b) at least ten days before the subpoena is served.

40 ~~(b)(1)(B) Proof of service when necessary shall be made by filing with the clerk of~~  
41 ~~the court from which the subpoena is issued a statement of the date and manner of~~  
42 ~~service and of the names of the persons served, certified by the person who made the~~  
43 ~~service.~~<sup>2</sup>

44 ~~(b)(1)(C) (b)(2)~~ Service of a subpoena outside of this state, ~~for the taking of a~~  
45 ~~deposition or production or inspection of documents or tangible things or inspection of~~  
46 ~~premises outside this state,~~ shall be made in accordance with the requirements of the  
47 jurisdiction in which such service is made.

48 ~~(b)(2) Subpoena for appearance at trial or hearing.~~ A subpoena commanding a  
49 witness to appear at a trial or at a hearing pending in this state may be served at any  
50 place within the state.

51 (b)(3) Subpoena for taking deposition.

52 ~~(b)(3)(A)~~ A person who resides in this state may be required to appear at deposition  
53 only in the county where the person resides, or is employed, or transacts business in  
54 person, or at such other place as the court may order. A person who does not reside in  
55 this state may be required to appear at deposition only in the county in this state where  
56 the person is served with a subpoena, or at such other place as the court may order.

57 ~~(b)(3)(B) A subpoena commanding the appearance of a witness at a deposition may~~  
58 ~~also command the person to whom it is directed to produce or to permit inspection and~~  
59 ~~copying of documents or tangible things relating to any of the matters within the scope~~

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<sup>2</sup> Covered by Rule 4(e) and Rule 5(d).

60 ~~of the examination permitted by Rule 26(b), but in that event the subpoena will be~~  
 61 ~~subject to the provisions of Rule 30(b) and paragraph (c) of this rule.~~<sup>3</sup>

62 (b)(4) Subpoena for production or inspection of documents or tangible things or  
 63 inspection of premises. ~~A subpoena to command a person who is not a party to produce~~  
 64 ~~or to permit inspection and copying of documents or tangible things or to permit~~  
 65 ~~inspection of premises may be served at any time after commencement of the action.~~  
 66 ~~The scope and procedure shall comply with Rule 34, except that the person must be~~  
 67 ~~allowed at least 14 days to comply as stated in subparagraph (c)(2)(A) of this rule.~~<sup>4</sup> The  
 68 party serving the subpoena shall pay the reasonable cost of producing or copying the  
 69 documents or tangible things. Upon the request of any other party and the payment of  
 70 reasonable costs, the party serving the subpoena shall provide to the requesting party  
 71 copies of all documents obtained in response to the subpoena.

72 (c) Protection of persons subject to subpoenas.

73 (c)(1) A party or an attorney responsible for the issuance and service of a subpoena  
 74 shall take reasonable steps to avoid imposing an undue burden or expense on a person  
 75 subject to that subpoena. The court from which the subpoena was issued shall enforce  
 76 this duty and impose upon the party or attorney in breach of this duty an appropriate  
 77 sanction, which may include, but is not limited to, lost earnings and a reasonable  
 78 attorney's fee.

79 ~~(c)(2)(A)-(c)(2)~~ A subpoena served upon a person who is not a party to copy and  
 80 mail documents or tangible things or to produce ~~or to permit for~~ inspection and copying  
 81 ~~of~~ documents or tangible things or to permit inspection of premises, ~~whether or not~~  
 82 ~~joined with a command to appear at trial, or at hearing, or at deposition,~~ must allow the  
 83 person at least 14 days after service to comply, unless a shorter time has been ordered  
 84 by the court for good cause shown.<sup>5</sup>

85 ~~(c)(2)(B)-(c)(3)~~ A person commanded to copy and mail documents or tangible things  
 86 or to produce ~~or to permit for~~ inspection and copying ~~of~~ documents or tangible things or

<sup>3</sup> Covered by Rule 45(a)(2).

<sup>4</sup> Covered by Rule 34 and Rule 45(c)(2).

<sup>5</sup> This provision should be part of Rule 34 and deleted here.

87 to permit inspection of premises need not appear in person at the place of production or  
88 inspection unless also commanded to appear at trial, at hearing, or at deposition.<sup>6</sup>

89       (c)(2)(C)-(c)(4) A person commanded to copy and mail documents or tangible things  
90 or to produce or to permit for inspection and copying of documents or tangible things or  
91 inspection of premises may, before the time specified for compliance with the subpoena,  
92 serve upon the party or attorney designated in the subpoena written objection to inspection or  
93 copying of any or all of the documents or tangible things or inspection of the premises. If  
94 objection is made, the party serving the subpoena shall not be entitled to inspect and copy the  
95 materials or inspect the premises except pursuant to an order of the court. If objection has  
96 been made, the party serving the subpoena may, upon notice to the person commanded to produce,  
97 move at any time for an order to compel the production. Such an order to compel production shall  
98 protect any person who is not a party or an officer of a party from significant expense resulting from  
99 the inspection and copying commanded.

100       (c)(3)(A)-(c)(5) On timely motion, the court from which a subpoena was issued shall  
101 may quash or modify the subpoena if it: If the party serving the subpoena shows a  
102 substantial need for the testimony or material that cannot otherwise be met without  
103 undue hardship and assures that the person to whom the subpoena is addressed will be  
104 reasonably compensated, the court may order the appearance or production upon  
105 specified conditions. The court may enter an order to protect a person subject to or  
106 affected by the subpoena if it:

107           (c)(3)(A)(i)-(c)(5)(A) fails to allow reasonable time for compliance;

108           (c)(3)(A)(ii) requires a resident of this state who is not a party to appear at deposition  
109 in a county in which the resident does not reside, or is not employed, or does not  
110 transact business in person; or requires a non-resident of this state to appear at  
111 deposition in a county other than the county in which the person was served (c)(5)(B) is  
112 contrary to this rule;

113           (c)(3)(A)(iii)-(c)(5)(C) requires disclosure of privileged or other protected non-public  
114 matter and no exception or waiver applies;

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<sup>6</sup> Is this paragraph still needed if the rule gives the issuing party the decision to require production or copying?

116       (c)(3)(A)(iv) (c)(5)(D) subjects a person to undue burden; or  
117       (c)(3)(B) If a subpoena:  
118       (c)(3)(B)(i) requires disclosure of a trade secret or other confidential research,  
119       development, or commercial information;  
120       (c)(3)(B)(ii) (c)(5)(E) requires disclosure of an unretained expert's opinion or  
121       information not describing specific events or occurrences in dispute and resulting from  
122       the expert's study made not at the request of any party;  
123       (c)(3)(B)(iii) requires a resident of this state who is not a party to appear at  
124       deposition in a county in which the resident does not reside, or is not employed, or does  
125       not transact business in person; or  
126       (c)(3)(B)(iv) requires a non-resident of this state who is not a party to appear at  
127       deposition in a county other than the county in which the person was served;  
128       the court may, to protect a person subject to or affected by the subpoena, quash or  
129       modify the subpoena or, if the party serving the subpoena shows a substantial need for  
130       the testimony or material that cannot otherwise be met without undue hardship and  
131       assures that the person to whom the subpoena is addressed will be reasonably  
132       compensated, the court may order appearance or production only upon specified  
133       conditions.

134       (d) Duties in responding to subpoena.

135       (d)(1) A person commanded to copy and mail documents or tangible things or to  
136       produce for inspection and copying documents or tangible things shall serve on the  
137       party issuing the subpoena an affidavit stating in substance:

138       (d)(1)(A) that the affiant has knowledge of the facts contained in the affidavit;  
139       (d)(1)(B) that the documents or tangible things produced or copied are a full and  
140       complete response to the subpoena;

141       (d)(1)(C) that the documents or tangible things are the originals or that the copy is a  
142       true copy of the originals; and

143       (d)(1)(D) an accounting of the actual cost of producing or copying the documents or  
144       tangible things.

145       (d)(1)-(d)(2) A person responding to a subpoena to copy and mail documents or  
146       tangible things or to produce for inspection and copying documents or tangible things

147 shall copy or produce them as they are kept in the usual course of business or shall  
148 organize and label them to correspond with the categories in the demand subpoena.

149 (d)(2)-(d)(3) When information subject to a subpoena is withheld on a claim that it is  
150 privileged or subject to protection as trial preparation materials, the claim shall be made  
151 expressly and shall be supported by a description of the nature of the documents,  
152 communications, or things not produced that is sufficient to enable the demanding party  
153 to contest the claim.

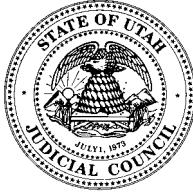
154 (e) Contempt. Failure by any person without adequate excuse to obey a subpoena  
155 served upon that person may be deemed a contempt of the court from which the  
156 subpoena issued. An adequate cause for failure to obey exists when a subpoena  
157 purports to require a nonparty to appear or produce at a place not within the limits  
158 provided by subparagraph (c)(3)(A)(ii) this rule.

159 (f) Procedure where witness conceals himself or fails to attend. If a witness evades  
160 service of a subpoena, or fails to attend after service of a subpoena, the court may  
161 issue a warrant to the sheriff of the county to arrest the witness and bring the witness  
162 before the court.

163 (g) Procedure when witness is confined in jail. If the witness is a prisoner confined in  
164 a jail or prison within the state, a party may move without notice for an order for  
165 examination to examine the witness in the jail; or prison upon deposition or, in the  
166 discretion of the court, for temporary removal and production to produce the witness  
167 before the court or officer for the purpose of being orally examined, may be made upon  
168 motion, with or without notice, by a justice of the Supreme Court, or by the district court  
169 of the county in which the action is pending.

170 (h) Subpoena unnecessary; when. A person present in court, or before a judicial  
171 officer, may be required to testify in the same manner as if the person were in  
172 attendance upon a subpoena.

173



## Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

### MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

To: Civil Procedures Committee  
From: Tim Shea *S Shea*  
Date: September 12, 2005  
Re: Rule 71B

I've traced Rule 71B back through the sands of time. It has remained essentially unchanged for over a century.

Revised States of Utah	1898	Sections 3201 through 3206.
Compiled Laws of Utah	1907	Sections 3201 through 3206.
Compiled Laws of Utah	1917	Sections 6874 through 6879.
Utah Code Annotated	1943	Sections 104-31-1 through 104-31-6.
	(Repealed. Laws of Utah 1951, Ch 58, §3.)	
Utah Rules of Civil Procedure	1953	Rule 71B.

An annotation to the 1953 rule cites an 1897 case that would leave the rule in doubt.

No personal judgment could be rendered against the defendants not served. If the court should attempt to assume jurisdiction over the joint obligor not served with process, and should render judgment against him, such judgment, so far at least as the defendant not served is concerned, would be absolutely void.

...

A judgment appearing from the record to have been entered against a defendant without service of process or appearance is void on its face, and may be set aside at any time by the court. It is absolutely void. *Blyth v Wells Fargo Co.* 15 Utah 345, 49 P. 1027 (1897).

The only part of Rule 71B that can be given effect appears to be paragraph (a):

Where the action is against two or more defendants and the summons is served on one or more, but not all of them, the plaintiff may proceed against the defendants served in the same manner as if they were the only defendants.

**The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.**

If there is any doubt about the obviousness of that sentence, we could add it to Rule 4(b) and repeal Rule 71B.

(b)(i) Time of service. In an action commenced under Rule 3(a)(1), the summons together with a copy of the complaint shall be served no later than 120 days after the filing of the complaint unless the court allows a longer period of time for good cause shown. If the summons and complaint are not timely served, the action shall be dismissed, without prejudice on application of any party or upon the court's own initiative.

(b)(ii) In any action brought against two or more defendants on which service has been timely obtained upon one of them: ~~within the 120 days or such longer period as may be allowed by the court, (A) the plaintiff may proceed against those served; and (B)~~ the ~~other or~~ others may be served or appear at any time prior to trial.

# Administrative Office of the Courts

Chief Justice Christine M. Durham  
Utah Supreme Court  
Chair, Utah Judicial Council

## MEMORANDUM

Daniel J. Becker  
State Court Administrator  
Myron K. March  
Deputy Court Administrator

To: Tim Shea, Senior Counsel  
*BK*  
From: Brent Johnson, General Counsel  
Re: Rule 71B, Utah Rules of Civil Procedure  
Date: May 31, 2005

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The Third District Court has recently had an experience with Rule 71B. The rule has created some confusion and it might be helpful if the Civil Procedure Committee were to review this rule and clarify the process to be followed.

Confusion has arisen from the process which seems to combine a summons and an order to show cause. A summons seeks a written response to the allegations, while an order to show cause generally seeks a personal appearance. One the one-hand, the rules seems to contemplate a personal appearance by stating that a person served with a summons is "to appear and show cause why he should be bound by the judgment." At the same time, the rule contemplates that a defendant would be able to answer the summons and have the case proceed the same as any other proceeding. The use of a summons would also suggest that the defendant can be defaulted. However, defaults are unusual for an order to show cause.

I would imagine that there is logic behind the rule, but it will be helpful to court personnel to clarify the process. Please let me know if you have any questions about this.

The mission of the Utah judiciary is to provide the people an open, fair,  
efficient, and independent system for the advancement of justice under the law.

Mark T. Olson (5529)  
 Chip Shaner (10082)  
 OLSON ASSOCIATES, P.C.  
 Attorneys for Plaintiff  
 10 West Broadway, Suite 750  
 Salt Lake City, UT 84101  
 Telephone: (801) 363-9966  
 Reference No. 123936-101705

FILED  
 DISTRICT COURT

05 APR 20 PM 4:26

SALT LAKE DEPARTMENT

BY DEPUTY CLERK *Handed out give name*

*KA Dick Gaskin*  
 4/13/05

*Res*

1:32 pm

IN THE THIRD DISTRICT COURT, SALT LAKE CITY DEPARTMENT  
 SALT LAKE COUNTY, STATE OF UTAH

N.A.R., INC.

S U M M O N S

Plaintiff,

v.

RUSSELL S JACKSON

Case No. 040917801

ALISHA JACKSON

Defendant(s).

JUDGE COLLECTION JUDGE

THE STATE OF UTAH TO ALISHA JACKSON, ABOVE-NAMED

DEFENDANT:

A judgment was obtained on 09/23/2004, in the amount of \$1042.97,  
 on behalf of DR STEVE H LAZAR DMD, the original  
 creditor. Pursuant to Rule 71(b) you are hereby summoned and  
 required to appear before the above-entitled court:

THIRD DISTRICT COURT 450 S STATE STREET  
 SALT LAKE CITY, UTAH 84111-

within 20 days and show cause why you should not be bound by  
 such judgment. If you fail to do so, you may be bound by the  
 above-referenced judgment.

This is a communication from a debt collector.

DATED this 8 of April, 2005.

OLSON ASSOCIATES, P.C.

By *Chip Shaner*  
 Attorneys for Plaintiff

Return of Summons and Proof of Service @V



14 VD17012066  
 040917801 JACKSON,RUSSELL S

STATE OF UTAH ) AFFIDAVIT OF SERVICE  
 COUNTY OF SALT LAKE )

I hereby make return and certify that I am a resident of the State of Utah and not a party to this action and over 21 years of age.

I received the following process on 9/12/2005 and served the within and hereto annexed:

- Summons & Complaint (PO Day)  Small Claims Aff. & Order  
 Subpoena  Notice of Agency Action

upon Aisha Jordan the within named Defendant, by delivering to and leaving said process with

Defendant personally, DESCRIPTION: HEIGHT: A AGE: 30y  
 (APPROX) WEIGHT: A HAIR: SBr  
 OTHER: Guc

Man would not give name (Resident), a person of suitable age and discretion, residing at the listed residence of said Defendant,

at 743 E. 700 S. SL C CITY Utah on 4/13/2005.

I further certify that at the time of service of the said article(s), I endorsed the date and place of service and added my name and official title, if any, thereto.

  
 AFFIANT: DICK GARNER

MILES 1 WAY: \_\_\_\_\_

# OF TRIPS : \_\_\_\_\_

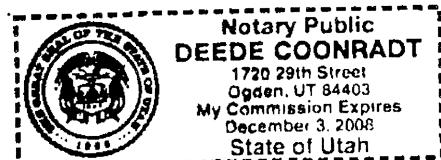
TOTAL MILES: \_\_\_\_\_

SUBSCRIBED TO BEFORE ME THIS

13 DAY OF April, 2005.

  
 NOTARY PUBLIC

SERVICE FEE: \$ 6.00



MILEAGE FEE: \$ 4

TOTAL-----: \$ 10

## SUPPLEMENTAL REPORT

PLAINTIFF: NAR

DATE: 4/13/05

DEFENDANT: AUSITA JACKSON

ACT #: (X409179C)

Man was out front, verified she lived there, he does  
not. He would not give a name and would not take  
the papers. I put them on the steps of the house and  
put a flower pot on top so the papers could not blow  
away.

REPORTED BY: Dick Garner

SERIALIZED: DICK GARNER

NOTARY PUBLIC



Notary Public  
DEEDE COONRADT  
1720 29th Street  
Ogden, UT 84403  
My Commission Expires  
December 3, 2008  
State of Utah

DATED

4/14/05

Mark T. Olson (5529)  
 Chip Shaner (10082)  
 OLSON ASSOCIATES, P.C.  
 Attorneys for Plaintiff  
 10 West Broadway, Suite 750  
 Salt Lake City, UT 84101  
 Telephone: (801) 363-9966  
 Reference No. 123936-101705

FILED  
 DISTRICT COURT  
 05 APR 20 PM 4:26  
 SALT LAKE DEPARTMENT  
 BY DEPUTY CLERK

IN THE THIRD DISTRICT COURT, SALT LAKE CITY DEPARTMENT  
 SALT LAKE COUNTY, STATE OF UTAH

N.A.R., INC.	AFFIDAVIT OF CLARA LOUGY
Plaintiff,	
v.	
RUSSELL S JACKSON	Case No. 040917801
ALISHA JACKSON	
Defendant(s).	JUDGE COLLECTION JUDGE

SALT LAKE COUNTY )  
 :ss.  
 STATE OF UTAH )

I, Clara Lougy, Clerical Supervisor for N.A.R., INC.,  
 being duly sworn upon oath, deposes and states as follows:

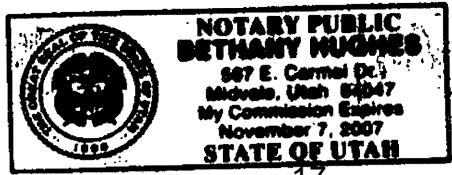
- That the amount of the judgment which remains unsatisfied in the above-referenced case, including post judgment interest and costs is \$1113.82.
- That DR STEVE H LAZAR DMD assigned this debt to N.A.R., INC.

DATED this 13 day of April, 2005.

Clara M. Lougy  
 CLARA LOUGY

Subscribed and sworn this 13th day of April, 2005.

Bethany Hughes  
 NOTARY PUBLIC



3RD DISTRICT COURT - SALT LAKE  
SALT LAKE COUNTY, STATE OF UTAH

NAR INC vs. RUSSELL S JACKSON

CASE NUMBER 040917801 Debt Collection

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CURRENT ASSIGNED JUDGE  
JUDGE COLLECTION

PARTIES

Plaintiff - NAR INC  
10 W BROADWAY  
SLC, UT 84101  
Represented by: MARK T OLSON

Defendant - RUSSELL S JACKSON  
651 E ROOSEVELT  
SLC, UT 84105

Defendant - ALISHA JACKSON  
3049 S 700 E  
SLC, UT 84106

ACCOUNT SUMMARY

TOTAL REVENUE	Amount Due:	50.00
	Amount Paid:	50.00
	Credit:	0.00
	Balance:	0.00

REVENUE DETAIL - TYPE: COMPLAINT 0K-2K

Amount Due:	50.00
Amount Paid:	50.00
Amount Credit:	0.00
Balance:	0.00

CASE NOTE

PROCEEDINGS

08-20-04 Case filed by susanc	susanc
08-20-04 Filed: Complaint 0-2K	susanc
08-20-04 Filed return: Summons (Ten Day)	susanc
Party Served: Russell S Jackson	
Service Type: Personal	
Service Date: August 16, 2004	

08-23-04 Judge COLLECTION assigned. susanc  
08-23-04 Fee Account created Total Due: 50.00 susanc  
08-23-04 COMPLAINT OK-2K Payment Received: 50.00 susanc  
Note: Code Description: COMPLAINT OK-2K  
09-23-04 Filed: Memorandum of Costs @V autumnc  
09-23-04 Filed: Certificate of Default (Russell S. Jackson) @V floris  
09-23-04 Filed: Affidavit of Chip Shaner @V autumnc  
09-23-04 Filed: Default Judgement @J autumnc  
09-24-04 Judgment #1 Entered floris  
Creditor: NAR INC  
Debtor: RUSSELL S JACKSON  
58.54 Interest  
674.43 Principal  
50.00 Filing Fees  
250.00 Attorneys Fees  
10.00 Process Service Fee  
1,042.97 Judgment Grand Total  
09-24-04 Filed judgment: Default Judgment - Clerk @J floris  
Clerk autumnc  
Signed September 23, 2004  
09-24-04 Case Disposition is Judgment floris  
Disposition Judge is JUDGE COLLECTION floris  
09-28-04 Filed: Notice of Default @V debbiem  
04-20-05 Filed return: Return of Summons and Proof of Service @V debbiem  
Party Served: unknown name for Alisha Jackson  
Service Type: Personal  
Service Date: April 13, 2005  
05-31-05 Notice - NOTICE for Case 040917801 ID 6300228 susies  
We are unable to enter the default judgment/certificate in this  
case for the following reasons:  
Notes: Service does not comply with Rule 4 - you have not advised  
the defendant that she must file a written answer within 20 days.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
District Court Clerk

05-31-05 Filed: Affidavit of Chip Shaner @V susies  
05-31-05 Filed: Memo of Costs @V susies

1        Rule 71B. Proceedings where parties not summoned.

2        (a) Effect of failure to serve all defendants. Where the action is against two or more

3        defendants and the summons is served on one or more, but not all of them, the plaintiff

4        may proceed against the defendants served in the same manner as if they were the

5        only defendants.

6        (b) Proceedings after judgment against parties not originally served. When a

7        judgment has been recovered against one or more, but not all, of several persons jointly

8        indebted upon an obligation, the plaintiff may require any person not originally served

9        with the summons to appear and show cause why he should not be bound by the

10      judgment in the same manner as though he had been originally served with process.

11      (c) Summons and affidavit; contents and service. The plaintiff shall issue a

12      summons, describing the judgment, and requiring the defendant to appear within the

13      time required for appearance in response to an original summons, and show cause why

14      he should not be bound by such judgment. The summons, together with a copy of an

15      affidavit on behalf of the plaintiff to the effect that the judgment, or some part thereof

16      remains unsatisfied, and specifying the amount actually due thereon, shall be served

17      upon the defendant and returned in the same manner as the original summons.

18      (d) What constitutes the pleadings. The pleadings shall consist of plaintiff's affidavit,

19      the summons, and the answer of the defendant, if any; provided that if defendant denies

20      his liability on the obligation upon which the judgment was originally recovered, a copy

21      of the original complaint and judgment shall be included.

22      (e) Hearing; judgment. The matter may be tried as other cases; but if the issues are

23      found against the defendant, the judgment shall not exceed the amount of the original

24      judgment remaining unsatisfied, with interest and costs.

COMMITTEE ON RULES OF PRACTICE AND PROCEDURE  
OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES  
WASHINGTON, D.C. 20544

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EVIDENCE RULES

To: Honorable David F. Levi, Chair, Standing Committee on  
Rules of Practice and Procedure

From: Honorable Lee H. Rosenthal, Chair, Advisory Committee on  
Federal Rules of Civil Procedure

Date: May 17, 2004

Re: Report of the Civil Rules Advisory Committee

*Introduction*

\* \* \* \* \*

Part I of this report presents action items. Part I A recommends transmission for approval of amendments to Civil Rules 6(e), 27, and 45, as well as Supplemental Rules B and C. These proposals were published for comment in August 2003. A new Rule 5.1 and conforming amendments to Rule 24(c) also were published last August, but the Advisory Committee has tabled discussion of these proposals for further work.

\* \* \* \* \*

*I Action Items*

**A. Rules for Adoption: 6(e), 27, 45; Supplemental Rules B, C**

**Rule 6(e)**

The Advisory Committee recommends approval for adoption of amended Rule 6(e) as follows on the next page:

**PROPOSED AMENDMENTS TO THE  
FEDERAL RULES OF CIVIL PROCEDURE\***

**Rule 6. Time**

1

\* \* \* \* \*

2       (e) Additional Time After Certain Kinds of Service

3       ~~Under Rule 5(b)(2)(B), (C), or (D).~~ Whenever a party has  
4       the right or is required to do some act or take some  
5       proceedings must or may act within a prescribed period after  
6       the service of a notice or other paper upon the party and the  
7       notice or paper is served upon the party service and service is  
8       made under Rule 5(b)(2)(B), (C), or (D), 3 days shall be are  
9       added to after the prescribed period would otherwise expire  
10      under subdivision (a).

**Committee Note**

Rule 6(e) is amended to remove any doubt as to the method for extending the time to respond after service by mail, leaving with the clerk of court, electronic means, or other means consented to by the party served. Three days are added after the prescribed period otherwise expires under Rule 6(a). Intermediate Saturdays, Sundays, and legal holidays are included in counting these added three days.

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\* New material is underlined; matter to be omitted is lined through.

If the third day is a Saturday, Sunday, or legal holiday, the last day to act is the next day that is not a Saturday, Sunday, or legal holiday. The effect of invoking the day when the prescribed period would otherwise expire under Rule 6(a) can be illustrated by assuming that the thirtieth day of a thirty-day period is a Saturday. Under Rule 6(a) the period expires on the next day that is not a Sunday or legal holiday. If the following Monday is a legal holiday, under Rule 6(a) the period expires on Tuesday. Three days are then added — Wednesday, Thursday, and Friday as the third and final day to act. If the period prescribed expires on a Friday, the three added days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the third and final day to act.

Application of Rule 6(e) to a period that is less than eleven days can be illustrated by a paper that is served by mailing on a Friday. If ten days are allowed to respond, intermediate Saturdays, Sundays, and legal holidays are excluded in determining when the period expires under Rule 6(a). If there is no legal holiday, the period expires on the Friday two weeks after the paper was mailed. The three added Rule 6(e) days are Saturday, Sunday, and Monday, which is the third and final day to act unless it is a legal holiday. If Monday is a legal holiday, the next day that is not a legal holiday is the final day to act.

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Rule 6(e) as Published

This recommendation modifies the version of Rule 6(e) that was published for comment as follows:

**(e) Additional Time After Certain Kinds of Service Under Rule 5(b)(2)(B), (C), or (D).** Whenever a party has the right or is required to do some act or take some proceedings must or may

~~act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party service and service is made under Rule 5(b)(2)(B), (C), or (D), 3 days shall be are added to after the prescribed period.~~

The changes from the published version eliminate ambiguities that were detected in the published version. Since the primary purpose of the amendment is to eliminate ambiguities, recognizing that the actual number of days allowed is a secondary concern, the changes do not require republication.

#### Discussion

Publication of any day-counting amendment inevitably attracts suggestions that all the time periods in the rules should be reconsidered. Improvements are urged both in expression and in function. The most satisfactory approach to this large task is likely to involve all the sets of procedural rules, establishing uniform methods that can be relied upon in all federal-court settings. The Standing Committee has recognized these pleas; the long-range agenda includes a joint project to reconsider the time rules. Until that project matures, room remains for smaller-scale improvements in individual sets of rules. The Appellate Rules Committee is considering changes to Appellate Rule 26(c) to parallel the proposed Rule 6(e) changes — indeed, it was the Appellate Rules Committee that referred these questions to the Civil Rules Committee for consideration. The proposal made here reflects helpful advice and comments made by the Appellate Rules Committee and its Reporter, Professor Schiltz. Both Professor Schiltz and the Reporter to the Bankruptcy Rules Committee, Professor Morris, are in agreement with the approach the Civil Rules Committee is taking.

Cases and commentary have recognized four possible means of calculating the three days added by present Rule 6(e). Practicing

attorneys report that much time is devoted to nervous counting and recounting the days. Achieving a clear answer is the first concern. In the abstract, there is much to be said for counting the three added days before the prescribed period is counted — the underlying theory is that a paper served by mail or the other means incorporated in Rule 6(e) may take up to three days to arrive. But an informal survey of practicing attorneys revealed that almost all add the three days at the end. Transition to a clear new rule will work best if the new rule conforms closely to what most attorneys have been doing anyway.

The premise that three days should be added at the end of the prescribed period could be implemented in different ways. The shortest extension would be provided by adding three days after counting the days in the original period without regard to any Saturday, Sunday, or legal holiday. If the last prescribed day is a Saturday, for example, day 1 would be Sunday, day 2 would be Monday even if Monday is a legal holiday, and day 3 would be Tuesday. The act would be due on Tuesday; in this illustration, the 3 added days would not extend the time to act. An intermediate extension could be provided by looking to the last day to act under Rule 6(a) before counting the three added days. In the example just given the original period would expire on Tuesday, the first day that is not a Saturday, Sunday, or legal holiday. Wednesday, Thursday, and Friday would be the three added days.

In determining how to express in the rule the method of calculating the addition of three days, the Civil Rules Committee has attempted to be clear, resolving the ambiguities that the public comment had pointed out; consistent with proposed Appellate Rule 26(c) and with the corresponding Bankruptcy Rules; and to provide the maximum time to act that meets these goals. The method of calculation that achieves all these objectives is to count to the end of the prescribed period under Rule 6(a), using all the time-counting rules except the three-day extension, and then add three days. The

## FEDERAL RULES OF CIVIL PROCEDURE 5

rule language set out above is clear and consistent with the Appellate Rules. After the end of the prescribed period is identified, three days are added. The Notes provide explicit direction on how to treat intermediate Saturdays, Sundays, and legal holidays. The last day to act is the third day, unless the third day is a Saturday, Sunday, or legal holiday. The last day to act in that case is the next day that is not a Saturday, Sunday, or legal holiday.<sup>1</sup>

This formulation is consistent with the Appellate Rule calculation and as generous as that consistency allows. Application is illustrated in the Committee Note. One way to explain the result is that no Saturday, Sunday, or legal holiday is to be counted against more than one exclusion. Adoption of this recommendation reflects the view that such an extension will not often interfere with the real-world pace of litigation.

Rule 6(a) states that the last of the counted days is included in calculating time limits unless, among other things, the required act is filing a paper in court and the day is one on which weather or other conditions have made the clerk's office inaccessible. There is no

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<sup>1</sup> In April 2004, the Civil Rules Committee agreed on language that would have excluded intermediate Saturdays, Sundays, and legal holidays in the calculation of the three days following the expiration of the prescribed period.

The full Committee has agreed unanimously to revise that language. The revision resulted from the recognition that the Committee mistakenly believed its approach was consistent with the approach of proposed Appellate Rule 26. The Appellate Rule approach is simply to count the prescribed period, making use of all of the timecounting rules save the three-day extension. After the end of the prescribed period is identified, three "real" (i.e., calendar) days are added. The effect of the language the Civil Rules Committee first adopted in April 2004 excluded intermediate Saturdays, Sundays, or holidays in calculating the three days, which was inconsistent with the Appellate Rules approach.

## FEDERAL RULES OF CIVIL PROCEDURE

apparent reason to address this circumstance in Rule 6(e). If the clerk's office is inaccessible on the last day counted under Rule 6(e), the time to act is extended by Rule 6(a). Inaccessibility during the period before the last day counted under Rule 6(e) does not warrant any additional extension.

### Changes Made After Publication and Comment

Changes were made to clarify<sup>27</sup> further the method of counting the three days added after service under Rule 5(b)(2)(B), (C), or (D).

## **Proposed Revisions to Rule 6(e)**

(e) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mailmeans specified in Rule (5)(b)(1)(A)(iv), (v), (vi) or (vii), 3 days shall be added to the end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and legal holidays shall be included in the computation of any 3-day period under this subsection, except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or a legal holiday.

## **Proposed Rule 5 (with e-filing amendments)**

(b) Service: How made.

(b)(1) If a party is represented by an attorney, service shall be upon the attorney unless service upon the party is ordered by the court.

(b)(1)(A) The judge may require in a specific case service under this rule by email. A party shall use the method most likely to give actual notice of a hearing scheduled 5 days or less from the date of service. Otherwise, a party shall serve a paper under this rule by:

(b)(1)(A)(i) handing it to the person;

(b)(1)(A)(ii) leaving it at the person's office with a person in charge, in a receptacle intended for receiving deliveries or in a conspicuous place;

(b)(1)(A)(iii) leaving it at the person's dwelling house with some person of suitable age and discretion;

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

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

(b)(1)(A)(vi) sending it by **email** to the person's last known email address if that person has agreed to accept service by email or if that person has an electronic filing account; or

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

**Existing Federal Rule 6(e):**

(e) Additional Time After Service under Rule 5(b)(2)(B), (C), or (D). Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party under Rule 5(b)(2)(B), (C), or (D), 3 days shall be added to the prescribed period.

**Existing Federal Rule 5(b)(1) and (2):**

(b) Making Service.

(1) Service under Rules 5(a) and 77(d) on a party represented by an attorney is made on the attorney unless the court orders service on the party.

(2) Service under Rule 5(a) is made by:

(A) Delivering a copy to the person served by:

- (i) handing it to the person;
- (ii) leaving it at the person's office with a clerk or other person in charge, or if no one is in charge leaving it in a conspicuous place in the office; or
- (iii) if the person has no office or the office is closed, leaving it at the person's dwelling house or usual place of abode with someone of suitable age and discretion residing there.

(B) Mailing a copy to the last known address of the person served. Service by mail is complete on mailing.

(C) If the person served has no known address, leaving a copy with the clerk of the court.

(D) Delivering a copy by any other means, including electronic means, consented to in writing by the person served. Service by electronic means is complete on transmission; service by other consented means is complete when the person making service delivers the copy to the agency designated to make delivery. If authorized by local rule, a party may make service under this subparagraph (D) through the court's transmission facilities.

1      Rule 13. Representation.

2      A party in a small claims action may be self-represented, represented by an attorney  
3      admitted to practice law in Utah, represented by an employee, or, with the express  
4      approval of the court, represented by any other person who is not compensated for the  
5      representation.

6

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  
4 court, every judgment, every order required by its terms to be served, every pleading  
5 subsequent to the original complaint, every paper relating to discovery, every written  
6 motion other than one heard ex parte, and every written notice, appearance, demand,  
7 offer of judgment, and similar paper 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  
11 served with 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  
14 party;

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

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

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

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

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

31       (b)(1)(A) Delivery of a copy within this rule means: Handing The judge may require  
32       in a specific case service under this rule by email. A party shall use the method most  
33       likely to give actual notice of a hearing scheduled 5 days or less from the date of  
34       service. Otherwise, a party shall serve a paper under this rule by:

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

36       (b)(1)(A)(ii) leaving it at the person's office with a clerk or person in charge, thereof;  
37       or, if there is no one in charge, leaving it in a receptacle intended for receiving deliveries  
38       or in a conspicuous place therein; or, if the office is closed or the person to be served  
39       has no office,

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

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

44       (b)(1)(A)(v) faxing it to the person's last known fax number if that person has agreed  
45       to accept service by fax;

46       (b)(1)(A)(vi) sending it by email to the person's last known email address if that  
47       person has agreed to accept service by email or if that person has an electronic filing  
48       account; or

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

51       (b)(1)(B) Service by mail is complete upon mailing. If the paper served is notice of a  
52       hearing and if the hearing is scheduled 5 days or less from the date of service, service  
53       shall be by delivery or other method of actual notice. Service by electronic means is  
54       complete on transmission if transmission is completed during normal business hours at  
55       the place receiving the service; otherwise, service is complete on the next business day  
56       Service by mail is complete upon mailing. Service by fax or email is not effective if the  
57       party making service learns that the attempted service did not reach the person to be  
58       served.

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

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

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

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

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

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

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

85

1        Rule 10. Form of pleadings and other papers.

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

27        (b) Paragraphs; separate statements. All averments of claim or defense shall be  
28        made in numbered paragraphs, ~~the contents of each of which. Each averment~~ shall be  
29        limited as far as practicable to a ~~statement of a~~ single set of circumstances; and a  
30        paragraph may be referred to by number in all succeeding pleadings. Each claim  
31        founded upon a separate transaction or occurrence and each defense other than

32 denials shall be stated in a separate count or defense whenever a separation facilitates  
33 the clear presentation of the matters set forth.

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

37 (d) Paper quality, size, style and printing. All pleadings and other papers filed with  
38 the court, except printed documents or other exhibits, shall be typewritten, printed or  
39 photocopied in black type on good, white, unglazed paper of letter size (8 1/2" x 11"),  
40 with a top margin of not less than 2 inches above any typed material, a left hand margin  
41 of not less than 1 inch, a right hand margin of not less than one half inch, and a bottom  
42 margin of not less than one half inch. All typing or printing shall be clearly legible, shall  
43 be double spaced, except for matters customarily single spaced or indented, and shall  
44 not be smaller than 12-point size. Typing or printing shall appear on one side of the  
45 page only. Paper format. All pleadings and other papers filed with the court, other than  
46 exhibits, shall be formatted 8½ inches wide x 11 inches long, on white background, with  
47 a top margin of not less than 2 inches, a right and left margin of not less than 1 inch and  
48 a bottom margin of not less than one-half inch, with text or images only on one side. All  
49 text or images shall be clearly legible, shall be double spaced, except for matters  
50 customarily single spaced or indented, and shall not be smaller than 12-point size.

51 (e) Signature line. Names The name of the person signing shall be typed or printed  
52 under all that person's signature lines, and all signatures shall be made in permanent  
53 black or blue ink. If a paper is digitally signed, the paper may contain the typed or  
54 printed name of the signer with or without a graphic signature.

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

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

66       (h) Electronic papers.

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

69       (h)(2) A paper digitally signed and electronically filed is the original.

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

73       (h)(4) An electronic copy of a paper shall conform to the format of the original.

74       (h)(5) An electronically filed paper may contain links only to other papers filed  
75 simultaneously or already on file with the court.

76

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

3            (a) Signature.

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

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

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

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

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

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

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

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

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

31       (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court  
32 determines that subdivision (b) has been violated, the court may, subject to the  
33 conditions stated below, impose an appropriate sanction upon the attorneys, law firms,  
34 or parties that have violated subdivision (b) or are responsible for the violation.

35       (c)(1) How initiated.

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

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

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

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

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

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

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

72