Agenda
Advisory Committee on Rules of Civil Procedure

September 26, 2007
4:00 to 6:00 p.m.

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

Approval of minutes	Tab 1	Fran Wikstrom
Discovery survey	Tab 2	Leslie Slaugh
Overall evaluation of URCP		Fran Wikstrom
Efiling rules	Tab 3	Tim Shea
Amendments to recognize a self authenticating declaration instead of an affidavit	Tab 4	Tim Shea
Rules 7 and 101. Limits on order to show cause	Tab 5	Tim Shea
Rule 40. Scheduling and postponing a trial	Tab 6	Tim Shea
URSCP 3	Tab 7	Tim Shea

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

Meeting Schedule

October 24, 2007
November 28, 2007
January 23, 2008
February 27, 2008
March 26, 2008
April 23, 2008
May 28, 2008
September 24, 2008
October 22, 2008
November 19, 2008 (3d Wednesday)

Tab 1

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, May 23, 2007
Administrative Office of the Courts

Francis J. Carney, Presiding

PRESENT: James T. Blanch, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slaugh, Judge David O. Nuffer, Thomas R. Lee, Cullen Battle, Barbara Townsend, David W. Scofield, Todd M. Shaughnessy, Judge Anthony B. Quinn, Steven Marsden, Judge R. Scott Waterfall

EXCUSED: Francis M. Wikstrom, Janet H. Smith, Judge Lyle R. Anderson, Debora Threedy, Lori Woffinden, Judge Derek Pullan, Jonathan Hafen, Judge Anthony W. Schofield, Matty Branch, Trystan B. Smith

STAFF: Tim Shea

I. APPROVAL OF MINUTES.

Mr. Carney called the meeting to order at 4:05 and entertained comments concerning the April 25, 2007 minutes. Mr. Blanch moved to approve the minutes. The motion was seconded by Mr. Slaugh and passed unanimously.

II. RECOMMENDATIONS ON RULES PUBLISHED FOR COMMENT.

Mr. Carney noted Mr. Havas' comment in support of Rule 37 on spoliation. Mr. Carney said he spoke with Mr. Havas about creating a duty to preserve evidence, that the committee had considered it but decided that it was outside the scope of the rules.

Mr. Shea noted Mr. Johnson's comment requesting that unopposed motions before commissioners not be scheduled for a hearing. Mr. Shea had spoken with several court commissioners. The practice is to strike the matter from the calendar if there is a stipulation, but, absent that, the commissioners cannot tell whether a motion is unopposed. Mr. Shea will respond to Mr. Johnson.

Mr. Lee moved to recommend the rules as drafted to the Supreme Court for adoption. The motion was seconded by Mr. Shaughnessy and passed unanimously.

The committee discussed the need to educate the Bar about the electronic discovery changes. Judge Nuffer noted that the topic had been on several Bar conferences because of the federal changes.

III. RULE 10. SANCTIONS FOR UNCIVIL MATERIALS.

Mr. Lee summarized Rule 10 for the committee. He indicated that this simple approach was probably the best way to express judicial authority without inviting satellite litigation. Mr. Shea indicated that the district court judges had briefly discussed the text at their recent conference and no one had raised any concerns. Mr. Blanch said he liked the way the rule identified judicial authority without discussing motions. Presumably a party could file a motion asking the judge to exercise that authority.

Judge Quinn moved to publish the rule for comment. The motion was seconded and passed unanimously.

III. RULES 7 & 101. MOTIONS.

Mr. Shea brought Rules 7 and 101 back to the committee. Mr. Shea had drafted revisions based on the discussion from last month.

After discussion, the committee decided to phrase paragraph (b)(2) more closely to (b)(1). Also, Mr. Battle noted that the draft would require an affidavit and motion for an order to show cause, when, in practice, the judge sometimes issues the order without a motion.

The committee discussed several drafts and decided upon:

An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show probable cause to believe a party has violated a court order.

Mr. Shea will make the same change to Rule 101 and bring the rules back to the committee.

IV. RULE 40. ASSIGNMENT OF CASES FOR TRIAL; CONTINUANCE.

Mr. Carney brought Rule 40 back to the committee, stating that there were no local rules for putting cases on the trial calendar. Mr. Blanch felt that the entire rule was unneccessary. Mr. Marsden felt the same. Others felt that parties and attorneys needed to know how to put cases on the trial calendar and how to postpone a case. It was observed that Rule 16 requires a certificate of readiness for trial. After discussion, the committee decided that Rule 40 should include the certificate of readiness or a court order for scheduling a trial, should have the method for postponing a trial, including any conditions, and should contain a provision for preserving evidence.

V. RULE 41. DISMISSAL OF ACTIONS.

Mr. Shea brought Rule 41 to the committee. He explained that the reference to Rule 66(I) needed to be deleted because that paragraph had been deleted. The remainder of the changes

were an attempt to rewrite the rule in a simpler style without changing the substance of the rule. After discussion the committee decided to delete only the reference to Rule 66(I).

VI. STYLE AMENDMENTS.

The committee agreed to address style amendments at the next meeting.

VII. CODE V. DOH.

The committee discussed the recent Supreme Court opinion interpreting Rule 7, which requires the prevailing party to submit a proposed order unless the judge expressly states that such is not needed. Mr. Slaugh said there may still be a circumstance not resloved by the rule and opinion, but that the Committee did not need to address it.

VIII. RULE 35. MEDICAL EVALUATIONS.

Mr. Carney reported that he and Mr. Lee had met with plaintiff and defense lawyers, and that any amendments would likely be controversial, but that it was still worth the effort.

IX. ADJOURNMENT.

The meeting adjourned at 5:30 p.m. The next committee meeting will be held at 4:00 p.m. on Wednesday, September 26, 2007, at the Administrative Office of the Courts.

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Tab 2

Survey of Discovery Rules of Utah

1. Number of years in practice			
		Response Percent	**Response Count**
0-4		15.4%	35
5-8		16.3%	37
9-12		12.8%	29
13-16		11.5%	26
17-20		9.3%	21
21 or more.		**34.8%**	79
	answered question		**227**
	skipped question		**1**

2. Type of practice			
		Response Percent	**Response Count**
generally represent plaintiffs in civil litigation		19.9%	45
generally represent defendants in civil litigation		29.7%	67
civil practice with approximately equal representation of plaintiffs and defendants		**42.5%**	96
primarily criminal law practice		0.4%	1
transactional law practice		1.3%	3
judge		1.3%	3
education		0.4%	1
corporate		1.3%	3
other		3.1%	7
	answered question		**226**
	skipped question		**2**

3. Number of lawyers in organization.

	Response Percent	Response Count
1-3	21.9%	49
4-10	25.5%	57
11-15	11.6%	26
16-30	6.7%	15
31 or more	**34.4%**	77
	answered question	**224**
	skipped question	**4**

4. Please review the statements below and select the option for each statement that best represents your viewpoint.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Has no effect	No Opinion	**Rating Average**	**Response Count**
1. The discovery rules simplify discovery.	2.9% (6)	**57.0% (118)**	22.7% (47)	11.1% (23)	2.4% (5)	3.9% (8)	2.65	207
2. The discovery rules promote full disclosure of discoverable information.	3.4% (7)	**60.4% (125)**	19.3% (40)	8.7% (18)	6.8% (14)	1.4% (3)	2.59	207
3. The discovery rules make litigation more expensive.	24.3% (50)	**31.6% (65)**	29.1% (60)	2.9% (6)	6.8% (14)	5.3% (11)	2.52	206
4. The discovery rules promote the just, speedy, and inexpensive determination of lawsuits.	1.4% (3)	29.5% (61)	**39.6% (82)**	17.4% (36)	5.8% (12)	6.3% (13)	3.15	207
5. The requirement of an attorney planning meeting improves the prompt resolution of lawsuits.	2.9% (6)	26.9% (56)	**33.2% (69)**	17.8% (37)	16.8% (35)	2.4% (5)	3.26	208
6. The requirement of an attorney planning meeting reduces disagreements over discovery.	1.0% (2)	30.3% (63)	**35.1% (73)**	16.8% (35)	12.0% (25)	4.8% (10)	3.23	208
7. Attorneys generally treat the attorney planning conference as a procedural hurdle rather than as an opportunity to discuss the issues and create a discovery plan suited to the particular case.	37.7% (78)	**46.4% (96)**	12.1% (25)	0.5% (1)	1.0% (2)	2.4% (5)	1.88	207
8. Initial disclosures often provide much of the information I would otherwise seek in discovery thus reducing or eliminating the need for	2.9% (6)	25.7% (53)	**42.2% (87)**	26.7% (55)	1.5% (3)	1.0% (2)	3.01	206

further discovery.								
9. The requirement that the disclosure of expert witnesses be accompanied by a written report outlining the expert's anticipated testimony generally reduces or eliminates the need for further discovery regarding the expert's opinions.	3.8% (8)	26.4% (55)	**42.8% (89)**	17.8% (37)	2.4% (5)	6.7% (14)	3.09	208
10. The limitation on the number of interrogatories has reduced discovery abuse.	8.7% (18)	**40.8% (84)**	22.8% (47)	13.6% (28)	7.3% (15)	6.8% (14)	2.90	206
11. I am often required to seek judicial intervention in establishing an initial discovery plan.	2.4% (5)	9.7% (20)	**64.1% (132)**	15.5% (32)	3.4% (7)	4.9% (10)	3.22	206
12. Attorneys are generally willing to agree to appropriate variations from the default discovery limits and deadlines specified in the rules.	6.7% (14)	**72.2% (151)**	10.5% (22)	3.3% (7)	1.9% (4)	5.3% (11)	2.37	209
13. Judges are generally willing to order appropriate variations from the default discovery limits and deadlines.	4.3% (9)	**59.3% (124)**	8.6% (18)	5.3% (11)	1.9% (4)	20.6% (43)	3.03	209
							answered question	**210**
							skipped question	**18**

Tab 3

Rule 1. General provisions.

(a) Scope of rules. These rules shall govern the procedure in the courts of the state of Utah in all actions, suits, and proceedings of a civil nature, whether cognizable at law or in equity, and in all special statutory proceedings, except as governed by other rules promulgated by this court or enacted by the Legislature and except as stated in Rule 81. They shall be liberally construed to secure the just, speedy, and inexpensive determination of every action.

(b) Effective date. These rules shall take effect on January 1, 1950; and thereafter all laws in conflict therewith shall be of no further force or effect. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

~~(c) Electronic filing. Notwithstanding these rules, the court may permit electronic transactions among the parties and with the court in court-supervised pilot projects approved by the Judicial Council.~~

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

(a) Service: When required.

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

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

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

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

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

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

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

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

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

(b)(1) ~~Whenever under these rules service is required or permitted to be made upon~~ If a party is represented by an attorney, ~~the~~ service shall be made upon the attorney unless service upon the party is ordered by the court. If an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice, service shall be made upon the attorney and the party. ~~Service upon the attorney or upon a party shall be made by delivering a copy or by~~

~~mailing a copy to the last known address or, if no address is known, by leaving it with the clerk of the court.~~

(b)(1)(A) ~~Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at the person's office with a clerk or person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or, if consented to in writing by the person to be served, delivering a copy by electronic or other means.~~ If a hearing is scheduled 5 days or less from the date of service, the party shall use the method most likely to give actual notice of the hearing. Otherwise, a party shall serve a paper under this rule:

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

(b)(1)(A)(ii) by sending it by email to the person's last known email address if that person has agreed to accept service by email;

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

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

(b)(1)(A)(v) by handing it to the person;

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

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

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

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

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

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

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

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

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

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

Rule 6. Time.

(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time provided under subsection (e), is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

(b) Enlargement. When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.

(c) Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action that has been pending before it.

(d) Notice of hearings. Notice of a hearing shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application.

(e) Additional time after service by mail, email or fax. 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 ~~mail~~ the means specified in Rule 5 (b)(1)(A)(i), (ii), (iii) or (iv), 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.

Rule 10. Form of pleadings and other papers.

(a)(1) Caption; names of parties; other necessary information. All pleadings and other papers filed with the court shall contain a caption setting forth the name of the court, the title of the action, the file number, the name of the pleading or other paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is assigned.

(a)(2) In the complaint, the title of the action shall include the names of all the parties, but other pleadings and papers need only state the name of the first party on each side with an indication that there are other parties. A party whose name is not known shall be designated by any name and the words "whose true name is unknown." In an action in rem, unknown parties shall be designated as "all unknown persons who claim any interest in the subject matter of the action."

(a)(3) Every pleading and other paper filed with the court shall ~~also~~ state in the top left hand corner of the first page the name, address, email address, telephone number and bar number of ~~any~~ the attorney ~~representing the~~ or party filing the paper, ~~which information shall appear in the top left-hand corner of the first page. Every pleading shall state~~ and, if filed by an attorney, the name and address of the party for whom it is filed~~; this information shall appear in the lower left-hand corner of the last page of the pleading~~. The plaintiff shall file ~~together~~ and serve with the complaint a completed cover sheet substantially similar in form and content to the cover sheet approved by the Judicial Council. The clerk shall destroy the coversheet after recording the information it contains.

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

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

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

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

(f) ~~Enforcement by clerk; waiver for pro se parties.~~ Non-conforming papers. The clerk of the court shall examine all pleadings and other papers filed with the court. If they are not prepared in conformity with ~~this rule~~ subdivisions (a) – (e), the clerk shall accept the filing but ~~may~~ shall require counsel to substitute properly prepared papers for nonconforming papers. The clerk or the court may waive the requirements of this rule for parties appearing pro se. For good cause shown, the court may relieve any party of any requirement of this rule.

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

(h) No improper content. The court may strike and disregard all or any part of a pleading or other paper that contains redundant, immaterial, impertinent or scandalous matter.

(i) Electronic papers.

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

(i)(2) A paper electronically signed and filed is the original.

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

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

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

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

(a) Signature.

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

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

~~Except when otherwise specifically provided~~ Unless required by ~~rule or~~ statute, ~~pleadings~~ a paper need not be ~~verified or~~ accompanied by affidavit or have a notarized, verified or acknowledged signature. If a rule requires an affidavit or a notarized, verified or acknowledged signature, the person may submit a self-authenticated declaration under penalty of Utah Code Section 46-5-101. If a statute requires an affidavit or a notarized, verified or acknowledged signature and the party electronically files the paper, the signature shall be notarized according to Utah Code Section 46-1-16.

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

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

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

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

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

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

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

(c)(1) How initiated.

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

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

(c)(2) Nature of sanction; limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

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

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

(c)(2)(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

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

Rule 64D. Writ of garnishment.

(a) Availability. A writ of garnishment is available to seize property of the defendant in the possession or under the control of a person other than the defendant. A writ of garnishment is available after final judgment or after the claim has been filed and prior to judgment. The maximum portion of disposable earnings of an individual subject to seizure is the lesser of:

(a)(1) 50% of the defendant's disposable earnings for a writ to enforce payment of a judgment for failure to support dependent children or 25% of the defendant's disposable earnings for any other judgment; or

(a)(2) the amount by which the defendant's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable.

(b) Grounds for writ before judgment. In addition to the grounds required in Rule 64A, the grounds for a writ of garnishment before judgment require all of the following:

(b)(1) that the defendant is indebted to the plaintiff;

(b)(2) that the action is upon a contract or is against a defendant who is not a resident of this state or is against a foreign corporation not qualified to do business in this state;

(b)(3) that payment of the claim has not been secured by a lien upon property in this state;

(b)(4) that the garnishee possesses or controls property of the defendant; and

(b)(5) that the plaintiff has attached the garnishee fee established by Utah Code Section 78-7-44.

(c) Statement. The application for a post-judgment writ of garnishment shall state:

(c)(1) if known, the nature, location, account number and estimated value of the property and the name, address and phone number of the person holding the property;

(c)(2) whether any of the property consists of earnings;

(c)(3) the amount of the judgment and the amount due on the judgment;

(c)(4) the name, address and phone number of any person known to the plaintiff to claim an interest in the property; and

(c)(5) that the plaintiff has attached or will serve the garnishee fee established by Utah Code Section 78-7-44.

(d) Defendant identification. The plaintiff shall submit with the affidavit or self-authenticated statement under Utah Code Section 46-5-101 or application a copy of the judgment information statement described in Utah Code Section 78-22-1.5 or the defendant's name and address and, if known, the defendant's social security number and driver license number and state of issuance.

(e) Interrogatories. The plaintiff shall submit with the affidavit or self-authenticated statement or application interrogatories to the garnishee inquiring:

(e)(1) whether the garnishee is indebted to the defendant and the nature of the indebtedness;

(e)(2) whether the garnishee possesses or controls any property of the defendant and, if so, the nature, location and estimated value of the property;

(e)(3) whether the garnishee knows of any property of the defendant in the possession or under the control of another, and, if so, the nature, location and estimated value of the property and the name, address and phone number of the person with possession or control;

(e)(4) whether the garnishee is deducting a liquidated amount in satisfaction of a claim against the plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;

(e)(5) the date and manner of the garnishee's service of papers upon the defendant and any third persons;

(e)(6) the dates on which previously served writs of continuing garnishment were served; and

(e)(7) any other relevant information plaintiff may desire, including the defendant's position, rate and method of compensation, pay period, and the computation of the amount of defendant's disposable earnings.

(f) Content of writ; priority. The writ shall instruct the garnishee to complete the steps in subsection (g) and instruct the garnishee how to deliver the property. Several writs may be issued at the same time so long as only one garnishee is named in a writ. Priority among writs of garnishment is in order of service. A writ of garnishment of

earnings applies to the earnings accruing during the pay period in which the writ is effective.

(g) Garnishee's responsibilities. The writ shall direct the garnishee to complete the following within seven business days of service of the writ upon the garnishee:

(g)(1) answer the interrogatories under oath or affirmation;

(g)(2) serve the answers on the plaintiff;

(g)(3) serve the writ, answers, notice of exemptions and two copies of the reply form upon the defendant and any other person shown by the records of the garnishee to have an interest in the property; and

(g)(4) file the answers with the clerk of the court.

The garnishee may amend answers to interrogatories to correct errors or to reflect a change in circumstances by serving and filing the amended answers in the same manner as the original answers.

(h) Reply to answers; request for hearing.

(h)(1) The plaintiff or defendant may file and serve upon the garnishee a reply to the answers and request a hearing. The reply shall be filed and served within 10 days after service of the answers or amended answers, but the court may deem the reply timely if filed before notice of sale of the property or before the property is delivered to the plaintiff. The reply may:

(h)(1)(A) challenge the issuance of the writ;

(h)(1)(B) challenge the accuracy of the answers;

(h)(1)(C) claim the property or a portion of the property is exempt; or

(h)(1)(D) claim a set off.

(h)(2) The reply is deemed denied, and the court shall conduct an evidentiary hearing.

(h)(3) If a person served by the garnishee fails to reply, as to that person:

(h)(3)(A) the garnishee's answers are deemed correct; and

(h)(3)(B) the property is not exempt, except as reflected in the answers.

(i) Delivery of property. A garnishee shall not deliver property until the property is due the defendant. Unless otherwise directed in the writ, the garnishee shall retain the property until 20 days after service by the garnishee under subsection (g). If the

garnishee is served with a reply within that time, the garnishee shall retain the property and comply with the order of the court entered after the hearing on the reply. Otherwise, the garnishee shall deliver the property as provided in the writ.

(j) Liability of garnishee.

(j)(1) A garnishee who acts in accordance with this rule, the writ or an order of the court is released from liability, unless answers to interrogatories are successfully controverted.

(j)(2) If the garnishee fails to comply with this rule, the writ or an order of the court, the court may order the garnishee to appear and show cause why the garnishee should not be ordered to pay such amounts as are just, including the value of the property or the balance of the judgment, whichever is less, and reasonable costs and attorney fees incurred by parties as a result of the garnishee's failure. If the garnishee shows that the steps taken to secure the property were reasonable, the court may excuse the garnishee's liability in whole or in part.

(j)(3) No person is liable as garnishee by reason of having drawn, accepted, made or endorsed any negotiable instrument that is not in the possession or control of the garnishee at the time of service of the writ.

(j)(4) Any person indebted to the defendant may pay to the officer the amount of the debt or so much as is necessary to satisfy the writ, and the officer's receipt discharges the debtor for the amount paid.

(j)(5) A garnishee may deduct from the property any liquidated claim against the plaintiff or defendant.

(k) Property as security.

(k)(1) If property secures payment of a debt to the garnishee, the property need not be applied at that time but the writ remains in effect, and the property remains subject to being applied upon payment of the debt. If property secures payment of a debt to the garnishee, the plaintiff may obtain an order authorizing the plaintiff to buy the debt and requiring the garnishee to deliver the property.

(k)(2) If property secures an obligation that does not require the personal performance of the defendant and that can be performed by a third person, the plaintiff may obtain an order authorizing the plaintiff or a third person to perform the obligation

and requiring the garnishee to deliver the property upon completion of performance or upon tender of performance that is refused.

(l) Writ of continuing garnishment.

(l)(1) After final judgment, the plaintiff may obtain a writ of continuing garnishment against any non exempt periodic payment. All provisions of this rule apply to this subsection, but this subsection governs over a contrary provision.

(l)(2) A writ of continuing garnishment applies to payments to the defendant from the effective date of the writ until the earlier of the following:

(l)(2)(A) 120 days;

(l)(2)(B) the last periodic payment;

(l)(2)(C) the judgment is stayed, vacated or satisfied in full; or

(l)(2)(D) the writ is discharged.

(l)(3) Within seven days after the end of each payment period, the garnishee shall with respect to that period:

(l)(3)(A) answer the interrogatories under oath or affirmation;

(l)(3)(B) serve the answers to the interrogatories on the plaintiff, the defendant and any other person shown by the records of the garnishee to have an interest in the property;

(l)(3)(C) file the answers to the interrogatories with the clerk of the court; and

(l)(3)(D) deliver the property as provided in the writ.

(l)(4) Any person served by the garnishee may reply as in subsection (g), but whether to grant a hearing is within the judge’s discretion.

(l)(5) A writ of continuing garnishment issued in favor of the Office of Recovery Services or the Department of Workforce Services of the state of Utah to recover overpayments:

(l)(5)(A) is not limited to 120 days;

(l)(5)(B) has priority over other writs of continuing garnishment; and

(l)(5)(C) if served during the term of another writ of continuing garnishment, tolls that term and preserves all priorities until the expiration of the state’s writ.

Tab 4

Rule 4. Process.

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

(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,

(b)(ii)(A) the plaintiff may proceed against those served, and

(b)(ii)(B) the others may be served or appear at any time prior to trial.

(c) Contents of summons.

(c)(1) The summons shall contain the name of the court, the address of the court, the names of the parties to the action, and the county in which it is brought. It shall be directed to the defendant, state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number. It shall state the time within which the defendant is required to answer the complaint in writing, and shall notify the defendant that in case of failure to do so, judgment by default will be rendered against the defendant. It shall state either that the complaint is on file with the court or that the complaint will be filed with the court within ten days of service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons shall state that the defendant need not answer if the complaint is not filed within 10 days after service and shall state the telephone number of the clerk of the court where the defendant may call at least 13 days after service to determine if the complaint has been filed.

(c)(3) If service is made by publication, the summons shall briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Method of Service. Unless waived in writing, service of the summons and complaint shall be by one of the following methods:

(d)(1) Personal service. The summons and complaint may be served in any state or judicial district of the United States by the sheriff or constable or by the deputy of either, by a United States Marshal or by the marshal's deputy, or by any other person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving the same shall state the name of the process and offer to deliver a copy thereof. Personal service shall be made as follows:

(d)(1)(A) Upon any individual other than one covered by subparagraphs (B), (C) or (D) below, by delivering a copy of the summons and the complaint to the individual personally, or by leaving a copy at the individual's dwelling house or usual place of abode with some person of suitable age and discretion there residing, or by delivering a copy of the summons and the complaint to an agent authorized by appointment or by law to receive service of process;

(d)(1)(B) Upon an infant (being a person under 14 years) by delivering a copy of the summons and the complaint to the infant and also to the infant's father, mother or guardian or, if none can be found within the state, then to any person having the care and control of the infant, or with whom the infant resides, or in whose service the infant is employed;

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

(d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and the complaint to the person who has the care, custody, or control of the individual to be served, or to that person's designee or to the guardian or conservator of the individual to be served if one has been appointed, who shall, in any case, promptly deliver the process to the individual served;

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

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

(d)(1)(G) Upon a county, by delivering a copy of the summons and the complaint to the county clerk of such county;

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and the complaint to the superintendent or business administrator of the board;

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

(d)(1)(J) Upon the state of Utah, in such cases as by law are authorized to be brought against the state, by delivering a copy of the summons and the complaint to the attorney general and any other person or agency required by statute to be served; and

(d)(1)(K) Upon a department or agency of the state of Utah, or upon any public board, commission or body, subject to suit, by delivering a copy of the summons and the complaint to any member of its governing board, or to its executive employee or secretary.

(d)(2) Service by mail or commercial courier service.

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(d)(2)(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(d)(3) Service in a foreign country. Service in a foreign country shall be made as follows:

(d)(3)(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(d)(3)(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(d)(3)(B)(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(d)(3)(B)(ii) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(d)(3)(B)(iii) unless prohibited by the law of the foreign country, by delivery to the individual personally of a copy of the summons and the complaint or by any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(d)(3)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(4) Other service.

(d)(4)(A) Where the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, where service upon all of the individual parties is impracticable under the circumstances, or where there exists good cause to believe that the person to be served is avoiding service of process, the party seeking service of process may file a motion supported by affidavit or self authentication under Utah Code Section 46-5-101 requesting an order allowing service by publication

or by some other means. The supporting affidavit or self-authentication shall set forth the efforts made to identify, locate or serve the party to be served, or the circumstances which make it impracticable to serve all of the individual parties.

(d)(4)(B) If the motion is granted, the court shall order service of process by publication or by other means, provided that the means of notice employed shall be reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action to the extent reasonably possible or practicable. The court's order shall also specify the content of the process to be served and the event or events as of which service shall be deemed complete. Unless service is by publication, a copy of the court's order shall be served upon the defendant with the process specified by the court.

(d)(4)(C) In any proceeding where summons is required to be published, the court shall, upon the request of the party applying for publication, designate the newspaper in which publication shall be made. The newspaper selected shall be a newspaper of general circulation in the county where such publication is required to be made and shall be published in the English language.

(e) Proof of Service.

(e)(1) If service is not waived, the person effecting service shall file proof with the court. The proof of service must state the date, place, and manner of service. Proof of service made pursuant to paragraph (d)(2) shall include a receipt signed by the defendant or defendant’s agent authorized by appointment or by law to receive service of process. If service is made by a person other than by an attorney, the sheriff or constable, or by the deputy of either, by a United States Marshal or by the marshal's deputy, the proof of service shall be made by affidavit or self authentication under Utah Code Section 46-5-101.

(e)(2) Proof of service in a foreign country shall be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court. When service is made pursuant to paragraph (d)(3)(C), proof of service shall include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(3) Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(f) Waiver of Service; Payment of Costs for Refusing to Waive.

(f)(1) A plaintiff may request a defendant subject to service under paragraph (d) to waive service of a summons. The request shall be mailed or delivered to the person upon whom service is authorized under paragraph (d). It shall include a copy of the complaint, shall allow the defendant at least 20 days from the date on which the request is sent to return the waiver, or 30 days if addressed to a defendant outside of the United States, and shall be substantially in the form of the Notice of Lawsuit and Request for Waiver of Service of Summons set forth in the Appendix of Forms attached to these rules.

(f)(2) A defendant who timely returns a waiver is not required to respond to the complaint until 45 days after the date on which the request for waiver of service was mailed or delivered to the defendant, or 60 days after that date if addressed to a defendant outside of the United States.

(f)(3) A defendant who waives service of a summons does not thereby waive any objection to venue or to the jurisdiction of the court over the defendant.

(f)(4) If a defendant refuses a request for waiver of service submitted in accordance with this rule, the court shall impose upon the defendant the costs subsequently incurred in effecting service.

Rule 43. Evidence.

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

(b) Evidence on motions. When a motion is based on facts not appearing of record the court may hear the matter on affidavits or self-authentication under Utah Code Section 46-5-101 presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral testimony or depositions.

Rule 54. Judgments; costs.

(a) Definition; form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment need not contain a recital of pleadings, the report of a master, or the record of prior proceedings. Judgments shall state whether they are entered upon trial, stipulation, motion or the court's initiative; and, unless otherwise directed by the court, a judgment shall not include any matter by reference.

(b) Judgment upon multiple claims and/or involving multiple parties. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, and/or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction, any order or other form of decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

(c) Demand for judgment.

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

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

(d) Costs.

(d)(1) To whom awarded. Except when express provision therefor is made either in a statute of this state or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs; provided, however, where an appeal or other proceeding for review is taken, costs of the action, other than costs in

connection with such appeal or other proceeding for review, shall abide the final determination of the cause. Costs against the state of Utah, its officers and agencies shall be imposed only to the extent permitted by law.

(d)(2) How assessed. The party who claims his costs must within five days after the entry of judgment serve upon the adverse party against whom costs are claimed, a copy of a memorandum of the items of his costs and necessary disbursements in the action, and file with the court a like memorandum thereof duly verified or self-authenticated under Utah Code Section 46-5-101 stating that to ~~affiant's~~ the person's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding. A party dissatisfied with the costs claimed may, within seven days after service of the memorandum of costs, file a motion to have the bill of costs taxed by the court.

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

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

Rule 56. Summary judgment.

(a) For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for summary judgment upon all or any part thereof.

(b) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move for summary judgment as to all or any part thereof.

(c) Motion and proceedings thereon. The motion, memoranda, ~~and~~ affidavits and self authenticated statements shall be in accordance with Rule 7. The judgment sought shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits and self authenticated statements, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(d) Case not fully adjudicated on motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of affidavits and self authenticated statements; further testimony; defense required. Supporting and opposing affidavits and self authenticated statements shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the ~~affiant~~ declarant is competent to testify to

the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit and self authenticated statements shall be attached thereto or served therewith. The court may permit affidavits and self authenticated statements to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits and self authenticated statements or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. Summary judgment, if appropriate, shall be entered against a party failing to file such a response.

(f) When affidavits and self authenticated statements are unavailable. Should it appear from the affidavits and self authenticated statements of a party opposing the motion that the party cannot for reasons stated present by affidavit or self authenticated statements facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits and self authenticated statements to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) Affidavits and self authenticated statements made in bad faith. If any of the affidavits and self authenticated statements presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party presenting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

Rule 58B. Satisfaction of judgment.

(a) Satisfaction by owner or attorney. A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors, by the owner thereof, or by the attorney of record of the judgment creditor where no assignment of the judgment has been filed and such attorney executes such satisfaction within eight years after the entry of the judgment, in the following manner: (1) by written instrument, duly acknowledged or self-authenticated under Utah Code Section 46-5-101 by such owner or attorney; or (2) by acknowledgment or self-authenticated statement of such satisfaction signed by the owner or attorney and entered on the docket of the judgment in the county where first docketed, with the date affixed and witnessed by the clerk. Every satisfaction of a part of the judgment, or as to one or more of the judgment debtors, shall state the amount paid thereon or for the release of such debtors, naming them.

(b) Satisfaction by order of court. When a judgment shall have been fully paid and not satisfied of record, or when the satisfaction of judgment shall have been lost, the court in which such judgment was recovered may, upon motion and satisfactory proof, authorize the attorney of the judgment creditor to satisfy the same, or may enter an order declaring the same satisfied and direct satisfaction to be entered upon the docket.

(c) Entry by clerk. Upon receipt of a proper satisfaction of judgment, ~~duly executed and acknowledged,~~ the clerk shall file the same with the papers in the case, and enter it on the register of actions. ~~He~~ The clerk shall also enter a brief statement of the substance thereof, including the amount paid, on the margin of the judgment docket, with the date of filing of such satisfaction.

(d) Effect of satisfaction. When a judgment shall have been satisfied, in whole or in part, or as to any judgment debtor, and such satisfaction entered upon the docket by the clerk, such judgment shall, to the extent of such satisfaction, be discharged and cease to be a lien. In case of partial satisfaction, if any execution shall thereafter be issued on the judgment, such execution shall be endorsed with a memorandum of such partial satisfaction and shall direct the officer to collect only the residue thereof, or to collect only from the judgment debtors remaining liable thereon.

(e) Filing transcript of satisfaction in other counties. When any satisfaction of a judgment shall have been entered on the judgment docket of the county where such

judgment was first docketed, a certified transcript of satisfaction, or a certificate by the clerk showing such satisfaction, may be filed with the clerk of the district court in any other county where the judgment may have been docketed. Thereupon a similar entry in the judgment docket shall be made by the clerk of such court; and such entry shall have the same effect as in the county where the same was originally entered.

Rule 59. New trials; amendments of judgment.

(a) Grounds. Subject to the provisions of Rule 61, a new trial may be granted to all or any of the parties and on all or part of the issues, for any of the following causes; provided, however, that on a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment:

(a)(1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion by which either party was prevented from having a fair trial.

(a)(2) Misconduct of the jury; and whenever any one or more of the jurors have been induced to assent to any general or special verdict, or to a finding on any question submitted to them by the court, by resort to a determination by chance or as a result of bribery, such misconduct may be proved by the affidavit or self-authenticated statement of any one of the jurors.

(a)(3) Accident or surprise, which ordinary prudence could not have guarded against.

(a)(4) Newly discovered evidence, material for the party making the application, which he could not, with reasonable diligence, have discovered and produced at the trial.

(a)(5) Excessive or inadequate damages, appearing to have been given under the influence of passion or prejudice.

(a)(6) Insufficiency of the evidence to justify the verdict or other decision, or that it is against law.

(a)(7) Error in law.

(b) Time for motion. A motion for a new trial shall be served not later than 10 days after the entry of the judgment.

(c) Affidavits or self-authenticated statements; time for filing. When the application for a new trial is made under Subdivision (a)(1), (2), (3), or (4), it shall be supported by affidavit or self-authenticated statement under Section 46-5-101. Whenever a motion for a new trial is based upon affidavits or self-authenticated statement they shall be served

with the motion. The opposing party has 10 days after such service within which to serve opposing affidavits or self-authenticated statements. The time within which the affidavits or self-authenticated statements or opposing affidavits or self-authenticated statements shall be served may be extended for an additional period not exceeding 20 days either by the court for good cause shown or by the parties by written stipulation. The court may permit reply affidavits or self-authenticated statements.

(d) On initiative of court. Not later than 10 days after entry of judgment the court of its own initiative may order a new trial for any reason for which it might have granted a new trial on motion of a party, and in the order shall specify the grounds therefor.

(e) Motion to alter or amend a judgment. A motion to alter or amend the judgment shall be served not later than 10 days after entry of the judgment.

Rule 62. Stay of proceedings to enforce a judgment.

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

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

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

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

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

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

(g) Power of appellate court not limited. The provisions in this rule do not limit any power of an appellate court or of a judge or justice thereof to stay proceedings or to suspend, modify, restore, or grant an injunction, or extraordinary relief or to make any

order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

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

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

(i)(1) A supersedeas bond given under Subdivision (d) may be either a commercial bond having a surety authorized to transact insurance business under Title 31A, or a personal bond having one or more sureties who are residents of Utah having a collective net worth of at least twice the amount of the bond, exclusive of property exempt from execution. Sureties on personal bonds shall make and file an affidavit or self-authenticated statement under Utah Code Section 46-5-101 setting forth in reasonable detail the assets and liabilities of the surety.

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

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

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

(j) Amount of supersedeas bond.

(j)(1) Except as provided in subsection (j)(2), a court shall set the supersedeas bond in an amount that adequately protects the judgment creditor against loss or damage

occasioned by the appeal and assures payment in the event the judgment is affirmed. In setting the amount, the court may consider any relevant factor, including:

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

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

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

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

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

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

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

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

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

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

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

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

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

Rule 63. Disability or disqualification of a judge.

(a) Substitute judge; Prior testimony. If the judge to whom an action has been assigned is unable to perform the duties required of the court under these rules, then any other judge of that district or any judge assigned pursuant to Judicial Council rule is authorized to perform those duties. The judge to whom the case is assigned may in the exercise of discretion rehear the evidence or some part of it.

(b) Disqualification.

(b)(1)(A) A party to any action or the party's attorney may file a motion to disqualify a judge. The motion shall be accompanied by a certificate that the motion is filed in good faith and shall be supported by an affidavit or self-authenticated statement under Utah Code Section 46-5-101 stating facts sufficient to show bias, prejudice or conflict of interest.

(b)(1)(B) The motion shall be filed after commencement of the action, but not later than 20 days after the last of the following:

(b)(1)(B)(i) assignment of the action or hearing to the judge;

(b)(1)(B)(ii) appearance of the party or the party's attorney; or

(b)(1)(B)(iii) the date on which the moving party learns or with the exercise of reasonable diligence should have learned of the grounds upon which the motion is based.

If the last event occurs fewer than 20 days prior to a hearing, the motion shall be filed as soon as practicable.

(b)(1)(C) Signing the motion, ~~or~~ affidavit or self-authenticated statement constitutes a certificate under Rule 11 and subjects the party or attorney to the procedures and sanctions of Rule 11. No party may file more than one motion to disqualify in an action.

(b)(2) The judge against whom the motion and affidavit or self-authenticated statement are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit or self-authenticated statement to a reviewing judge. The judge shall take no further action in the case until the motion is decided. If the judge grants the motion, the order shall direct the presiding judge of the court or, if the court has no presiding judge, the presiding officer of the Judicial Council to assign another judge to the action or hearing. The presiding judge of the court, any judge of the

district, any judge of a court of like jurisdiction, or the presiding officer of the Judicial Council may serve as the reviewing judge.

(b)(3)(A) If the reviewing judge finds that the motion and affidavit or self-authenticated statement are timely filed, filed in good faith and legally sufficient, the reviewing judge shall assign another judge to the action or hearing or request the presiding judge or the presiding officer of the Judicial Council to do so.

(b)(3)(B) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion ~~and affidavit~~ an affidavit or self-authenticated statement responsive to questions posed by the reviewing judge.

(b)(3)(C) The reviewing judge may deny a motion not filed in a timely manner.

Rule 64. Writs in general.

(a) Definitions. As used in Rules 64, 64A, 64B, 64C, 64D, 64E, 69A, 69B and 69C:

(a)(1) “Claim” means a claim, counterclaim, cross claim, third party claim or any other claim.

(a)(2) “Defendant” means the party against whom a claim is filed or against whom judgment has been entered.

(a)(3) “Deliver” means actual delivery or to make the property available for pick up and give to the person entitled to delivery written notice of availability.

(a)(4) “Disposable earnings” means that part of earnings for a pay period remaining after the deduction of all amounts required by law to be withheld.

(a)(5) “Earnings” means compensation, however denominated, paid or payable to an individual for personal services, including periodic payments pursuant to a pension or retirement program. Earnings accrue on the last day of the period in which they were earned.

(a)(6) “Notice of exemptions” means a form that advises the defendant or a third person that certain property is or may be exempt from seizure under state or federal law. The notice shall list examples of exempt property and indicate that other exemptions may be available. The notice shall instruct the defendant of the deadline for filing a reply and request for hearing.

(a)(7) “Officer” means any person designated by the court to whom the writ is issued, including a sheriff, constable, deputy thereof or any person appointed by the officer to hold the property.

(a)(8) “Plaintiff” means the party filing a claim or in whose favor judgment has been entered.

(a)(9) “Property” means the defendant’s property of any type not exempt from seizure. Property includes but is not limited to real and personal property, tangible and intangible property, the right to property whether due or to become due, and an obligation of a third person to perform for the defendant.

(a)(10) “Serve” with respect to parties means any method of service authorized by Rule 5 and with respect to non-parties means any manner of service authorized by Rule 4.

(b) Security.

(b)(1) Amount. When security is required of a party, the party shall provide security in the sum and form the court deems adequate. For security by the plaintiff the amount should be sufficient to reimburse other parties for damages, costs and attorney fees incurred as a result of a writ wrongfully obtained. For security by the defendant, the amount should be equivalent to the amount of the claim or judgment or the value of the defendant's interest in the property. In fixing the amount, the court may consider any relevant factor. The court may relieve a party from the necessity of providing security if it appears that none of the parties will incur damages, costs or attorney fees as a result of a writ wrongfully obtained or if there exists some other substantial reason for dispensing with security. The amount of security does not establish or limit the amount of damages, costs or attorney fees recoverable if the writ is wrongfully obtained.

(b)(2) Jurisdiction over surety. A surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom papers affecting the surety's liability may be served. The surety shall file with the clerk of the court the address to which the clerk may mail papers. The surety's liability may be enforced on motion without the necessity of an independent action. If the opposing party recovers judgment or if the writ is wrongfully obtained, the surety will pay the judgment, damages, costs and attorney fees not to exceed the sum specified in the contract. The surety is responsible for return of property ordered returned.

(b)(3) Objection. The court may issue additional writs upon the original security subject to the objection of the opposing party. The opposing party may object to the sufficiency of the security or the sufficiency of the sureties within five days after service of the writ. The burden to show the sufficiency of the security and the sufficiency of the sureties is on the proponent of the security.

(b)(4) Security of governmental entity. No security is required of the United States, the State of Utah, or an officer, agency, or subdivision of either, nor when prohibited by law.

(c) Procedures in aid of writs.

(c)(1) Referee. The court may appoint a referee to monitor hearings under this subsection.

(c)(2) Hearing; witnesses; discovery. The court may conduct hearings as necessary to identify property and to apply the property toward the satisfaction of the judgment or order. Witnesses may be subpoenaed to appear, testify and produce records. The court may permit discovery.

(c)(3) Restraint. The court may forbid any person from transferring, disposing or interfering with the property.

(d) Issuance of writ; service

(d)(1) Clerk to issue writs. The clerk of the court shall issue writs. A court in which a transcript or abstract of a judgment or order has been filed has the same authority to issue a writ as the court that entered the judgment or order. If the writ directs the seizure of real property, the clerk of the court shall issue the writ to the sheriff of the county in which the real property is located. If the writ directs the seizure of personal property, the clerk of the court may issue the writ to an officer of any county.

(d)(2) Content. The writ may direct the officer to seize the property, to keep the property safe, to deliver the property to the plaintiff, to sell the property, or to take other specified actions. If the writ is to enforce a judgment or order for the payment of money, the writ shall specify the amount ordered to be paid and the amount due.

(d)(2)(A) If the writ is issued ex parte before judgment, the clerk shall attach to the writ plaintiff's affidavit or self-authenticated statement under Utah Code Section 46-5-101, detailed description of the property, notice of hearing, order authorizing the writ, notice of exemptions and reply form.

(d)(2)(B) If the writ is issued before judgment but after a hearing, the clerk shall attach to the writ plaintiff's affidavit or self-authenticated statement and detailed description of the property.

(d)(2)(C) If the writ is issued after judgment, the clerk shall attach to the writ plaintiff's application, detailed description of the property, the judgment, notice of exemptions and reply form.

(d)(3) Service.

(d)(3)(A) Upon whom; effective date. The officer shall serve the writ and accompanying papers on the defendant, and, as applicable, the garnishee and any person named by the plaintiff as claiming an interest in the property. The officer may

simultaneously serve notice of the date, time and place of sale. A writ is effective upon service.

(d)(3)(B) Limits on writs of garnishment.

(d)(3)(B)(i) A writ of garnishment served while a previous writ of garnishment is in effect is effective upon expiration of the previous writ; otherwise, a writ of garnishment is effective upon service.

(d)(3)(B)(ii) Only one writ of garnishment of earnings may be in effect at one time. One additional writ of garnishment of earnings for a subsequent pay period may be served on the garnishee while an earlier writ of continuing garnishment is in effect.

(d)(3)(C) Return; inventory. Within 10 days after service, the officer shall return the writ to the court with proof of service. If property has been seized, the officer shall include an inventory of the property and whether the property is held by the officer or the officer's designee. If a person refuses to give the officer an affidavit or self-authenticated statement describing the property, the officer shall indicate the fact of refusal on the return, and the court may require that person to pay the costs of any proceeding taken for the purpose of obtaining such information.

(d)(3)(D) Service of writ by publication. The court may order service of a writ by publication upon a person entitled to notice in circumstances in which service by publication of a summons and complaint would be appropriate under Rule 4.

(d)(3)(D)(i) If service of a writ is by publication, substantially the following shall be published under the caption of the case:

To _____, [Defendant/Garnishee/Claimant]:

A writ of _____ has been issued in the above-captioned case commanding the officer of _____ County as follows:

[Quoting body of writ]

Your rights may be adversely affected by these proceedings. Property in which you have an interest may be seized to pay a judgment or order. You have the right to claim property exempt from seizure under statutes of the United States or this state, including Utah Code, Title 78, Chapter 23.

(d)(3)(D)(ii) The notice shall be published in a newspaper of general circulation in each county in which the property is located at least 10 days prior to the due date for

the reply or at least 10 days prior to the date of any sale, or as the court orders. The date of publication is the date of service.

(e) Claim to property by third person.

(e)(1) Claimant's rights. Any person claiming an interest in the property has the same rights and obligations as the defendant with respect to the writ and with respect to providing and objecting to security. Any claimant named by the plaintiff and served with the writ and accompanying papers shall exercise those rights and obligations within the same time allowed the defendant. Any claimant not named by the plaintiff and not served with the writ and accompanying papers may exercise those rights and obligations at any time before the property is sold or delivered to the plaintiff.

(e)(2) Join claimant as defendant. The court may order any named claimant joined as a defendant in interpleader. The plaintiff shall serve the order on the claimant. The claimant is thereafter a defendant to the action and shall answer within 10 days, setting forth any claim or defense. The court may enter judgment for or against the claimant to the limit of the claimant's interest in the property.

(e)(3) Plaintiff's security. If the plaintiff requests that an officer seize or sell property claimed by a person other than the defendant, the officer may request that the court require the plaintiff to file security.

(f) Discharge of writ; release of property.

(f)(1) By defendant. At any time before notice of sale of the property or before the property is delivered to the plaintiff, the defendant may file security and a motion to discharge the writ. The plaintiff may object to the sufficiency of the security or the sufficiency of the sureties within five days after service of the motion. At any time before notice of sale of the property or before the property is delivered to the plaintiff, the defendant may file a motion to discharge the writ on the ground that the writ was wrongfully obtained. The court shall give the plaintiff reasonable opportunity to correct a defect. The defendant shall serve the order to discharge the writ upon the officer, plaintiff, garnishee and any third person claiming an interest in the property.

(f)(2) By plaintiff. The plaintiff may discharge the writ by filing a release and serving it upon the officer, defendant, garnishee and any third person claiming an interest in the property.

(f)(3) Disposition of property. If the writ is discharged, the court shall order any remaining property and proceeds of sales delivered to the defendant.

(f)(4) Copy filed with county recorder. If an order discharges a writ upon property seized by filing with the county recorder, the officer or a party shall file a certified copy of the order with the county recorder.

(f)(5) Service on officer; disposition of property. If the order discharging the writ is served on the officer:

(f)(5)(A) before the writ is served, the officer shall return the writ to the court;

(f)(5)(B) while the property is in the officer's custody, the officer shall return the property to the defendant; or

(f)(5)(C) after the property is sold, the officer shall deliver any remaining proceeds of the sale to the defendant.

Rule 64A. Prejudgment writs in general.

(a) Availability. A writ of replevin, attachment or garnishment is available after the claim has been filed and before judgment only upon written order of the court.

(b) Motion; affidavit or self-authenticated statement. To obtain a writ of replevin, attachment or garnishment before judgment, plaintiff shall file a motion, security as ordered by the court and an affidavit or self-authenticated statement under Utah Code Section 46-5-101 stating facts showing the grounds for relief and other information required by these rules. If the plaintiff cannot by due diligence determine the facts necessary to support the affidavit or self-authenticated statement, the plaintiff shall explain in the affidavit or self-authenticated statement the steps taken to determine the facts and why the facts could not be determined. The affidavit or self-authenticated statement supporting the motion shall state facts in simple, concise and direct terms that are not conclusory.

(c) Grounds for prejudgment writ. Grounds for a prejudgment writ include, in addition to the grounds for the specific writ, all of the requirements listed in subsections (c)(1) through (c)(3) and at least one of the requirements listed in subsections (c)(4) through (c)(10):

(c)(1) that the property is not earnings and not exempt from execution; and

(c)(2) that the writ is not sought to hinder, delay or defraud a creditor of the defendant; and

(c)(3) a substantial likelihood that the plaintiff will prevail on the merits of the underlying claim; and

(c)(4) that the defendant is avoiding service of process; or

(c)(5) that the defendant has assigned, disposed of or concealed, or is about to assign, dispose of or conceal, the property with intent to defraud creditors; or

(c)(6) that the defendant has left or is about to leave the state with intent to defraud creditors; or

(c)(7) that the defendant has fraudulently incurred the obligation that is the subject of the action; or

(c)(8) that the property will materially decline in value; or

(c)(9) that the plaintiff has an ownership or special interest in the property; or

(c)(10) probable cause of losing the remedy unless the court issues the writ.

(d) Statement. The affidavit or self-authenticated statement supporting the motion shall state facts sufficient to show the following information:

(d)(1) if known, the nature, location, account number and estimated value of the property and the name, address and phone number of the person holding the property;

(d)(2) that the property has not been taken for a tax, assessment or fine;

(d)(3) that the property has not been seized under a writ against the property of the plaintiff or that it is exempt from seizure;

(d)(4) the name and address of any person known to the plaintiff to claim an interest in the property; and, if the motion is for a writ of garnishment,

(d)(5) the name and address of the garnishee; and

(d)(6) that the plaintiff has attached the garnishee fee established by Utah Code Section 78-7-44.

(e) Notice, hearing. The court may order that a writ of replevin, attachment or garnishment be issued before judgment after notice to the defendant and opportunity to be heard.

(f) Method of service. The affidavit or self-authenticated statement for the prejudgment writ shall be served on the defendant and any person named by the plaintiff as claiming an interest in the property. The affidavit or self-authenticated statement shall be served in a manner directed by the court that is reasonably calculated to expeditiously give actual notice of the hearing.

(g) Reply. The defendant may file a reply to the affidavit or self-authenticated statement for a prejudgment writ at least 24 hours before the hearing. The reply may:

(g)(1) challenge the issuance of the writ;

(g)(2) object to the sufficiency of the security or the sufficiency of the sureties;

(g)(3) request return of the property;

(g)(4) claim the property is exempt; or

(g)(5) claim a set off.

(h) Burden of proof. The burden is on the plaintiff to prove the facts necessary to support the writ.

(i) Ex parte writ before judgment. If the plaintiff seeks a prejudgment writ prior to a hearing, the plaintiff shall file an affidavit or self-authenticated statement stating facts showing irreparable injury to the plaintiff before the defendant can be heard or other reason notice should not be given. If a writ is issued without notice to the defendant and opportunity to be heard, the court shall set a hearing for the earliest reasonable time, and the writ and the order authorizing the writ shall:

(i)(1) state the grounds for issuance without notice;

(i)(2) designate the date and time of issuance and the date and time of expiration;

(i)(3) designate the date, time and place of the hearing;

(i)(4) forthwith be filed in the clerk's office and entered of record;

(i)(5) expire 10 days after issuance unless the court establishes an earlier expiration date, the defendant consents that the order and writ be extended or the court extends the order and writ after hearing;

(i)(6) be served on the defendant and any person named by the plaintiff as claiming an interest in the property in a manner directed by the court that is reasonably calculated to expeditiously give actual notice of the hearing.

Rule 64E. Writ of execution.

(a) Availability. A writ of execution is available to seize property in the possession or under the control of the defendant following entry of a final judgment or order requiring the delivery of property or the payment of money.

(b) Application. To obtain a writ of execution, the plaintiff shall file an application stating:

(b)(1) the amount of the judgment or order and the amount due on the judgment or order;

(b)(2) the nature, location and estimated value of the property; and

(b)(3) the name and address of any person known to the plaintiff to claim an interest in the property.

(c) Death of plaintiff. If the plaintiff dies, a writ of execution may be issued upon the affidavit or self-authenticated statement of an authorized executor or administrator or successor in interest.

(d) Reply to writ; request for hearing.

(d)(1) The defendant may reply to the writ and request a hearing. The reply shall be filed and served within 10 days after service of the writ and accompanying papers upon the defendant.

(d)(2) The court shall set the matter for an evidentiary hearing. If the court determines that the writ was wrongfully obtained, or that property is exempt from seizure, the court shall enter an order directing the officer to release the property. If the court determines that the writ was properly issued and the property is not exempt, the court shall enter an order directing the officer to sell or deliver the property. If the date of sale has passed, notice of the rescheduled sale shall be given. No sale may be held until the court has decided upon the issues presented at the hearing.

(d)(3) If a reply is not filed, the officer shall proceed to sell or deliver the property.

(e) Mortgage foreclosure governed by statute. Utah Code Title 78, Chapter 37, Mortgage Foreclosure, governs mortgage foreclosure proceedings notwithstanding contrary provisions of these rules.

Rule 65A. Injunctions.

(a) Preliminary injunctions.

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

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

(b) Temporary restraining orders.

(b)(1) Notice. No temporary restraining order shall be granted without notice to the adverse party or that party's attorney unless (A) it clearly appears from specific facts shown by affidavit or self-authenticated statement under Utah Code 46-5-101 or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (B) the applicant or the applicant's attorney certifies to the court in writing as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required.

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

(b)(3) Priority of hearing. If a temporary restraining order is granted, the motion for a preliminary injunction shall be scheduled for hearing at the earliest possible time and

takes precedence over all other civil matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the temporary restraining order shall have the burden to show entitlement to a preliminary injunction; if the party does not do so, the court shall dissolve the temporary restraining order.

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

(c) Security.

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

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

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

(d) Form and scope. Every restraining order and order granting an injunction shall set forth the reasons for its issuance. It shall be specific in terms and shall describe in

reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. It shall be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice, in person or through counsel, or otherwise, of the order. If a restraining order is granted without notice to the party restrained, it shall state the reasons justifying the court's decision to proceed without notice.

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

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

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

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

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

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

Rule 65C. Post-conviction relief.

(a) Scope. This rule shall govern proceedings in all petitions for post-conviction relief filed under Utah Code Ann. § 78-35a-101 et seq., Post-Conviction Remedies Act.

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

(c) Contents of the petition. The petition shall set forth all claims that the petitioner has in relation to the legality of the conviction or sentence. Additional claims relating to the legality of the conviction or sentence may not be raised in subsequent proceedings except for good cause shown. The petition shall state:

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

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

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

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

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

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

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

(d)(1) affidavits, self-authenticated statements under Utah Code Section 46-5-101, copies of records and other evidence in support of the allegations;

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

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

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

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

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

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

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

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

(g)(2)(B) the claims have no arguable basis in fact; or

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

(g)(3) If a petition is not frivolous on its face but is deficient due to a pleading error or failure to comply with the requirements of this rule, the court shall return a copy of the petition with leave to amend within 20 days. The court may grant one additional 20 day period to amend for good cause shown.

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

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

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

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

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

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

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

(k) Presence of the petitioner at hearings. The petitioner shall be present at the prehearing conference if the petitioner is not represented by counsel. The prehearing conference may be conducted by means of telephone or video conferencing. The petitioner shall be present before the court at hearings on dispositive issues but need

not otherwise be present in court during the proceeding. The court may conduct any hearing at the correctional facility where the petitioner is confined.

(l) Discovery; records. Discovery under Rules 26 through 37 shall be allowed by the court upon motion of a party and a determination that there is good cause to believe that discovery is necessary to provide a party with evidence that is likely to be admissible at an evidentiary hearing. The court may order either the petitioner or the respondent to obtain any relevant transcript or court records.

(m) Orders; stay.

(m)(1) If the court vacates the original conviction or sentence, it shall enter findings of fact and conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony conviction, the order shall be stayed for 5 days. Within the stay period, the respondent shall give written notice to the court and the petitioner that the respondent will pursue a new trial, pursue a new sentence, appeal the order, or take no action. Thereafter the stay of the order is governed by these rules and by the Rules of Appellate Procedure.

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

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

(n) Costs. The court may assign the costs of the proceeding, as allowed under Rule 54(d), to any party as it deems appropriate. If the petitioner is indigent, the court may direct the costs to be paid by the governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of Corrections, Section 64-13-23 and sections 78-7-36 through 78-7-43 govern the manner and procedure by which the trial court shall determine the amount, if any, to charge for fees and costs.

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

Rule 69A. Seizure of property.

Unless otherwise directed by the writ, the officer shall seize property as follows:

(a) Debtor's preference. When there is more property than necessary to satisfy the amount due, the officer shall seize such part of the property as the defendant may indicate. If the defendant does not indicate a preference, the officer shall first seize personal property, and if sufficient personal property cannot be found, then the officer shall seize real property.

(b) Real property. Real property shall be seized by filing the writ and a description of the property with the county recorder and leaving the writ and description with an occupant of the property. If there is no occupant of the property, the officer shall post the writ and description in a conspicuous place on the property. If another person claims an interest in the real property, the officer shall serve the writ and description on the other person.

(c) Personal property.

(c)(1) Farm products, as that term is defined in Utah Code Section 70A-9a-102, may be seized by filing the writ and description of the property with the central filing system established by Utah Code Section 70A-9a-320.

(c)(2) Securities shall be seized as provided in Utah Code Section 70A-8-111.

(c)(3) In the discretion of the officer, property of extraordinary size or bulk, property that would be costly to take into custody or to store and property not capable of delivery may be seized by serving the writ and a description of the property on the person holding the property. The officer shall request of the person holding the property an affidavit or self-authenticated statement under Utah Code Section 46-5-101 describing the nature, location and estimated value of the property.

(c)(4) Otherwise, personal property shall be seized by serving the writ and a description of the property on the person holding the property and taking the property into custody.

Rule 69C. Redemption of real property after sale.

(a) Right of redemption. Real property may be redeemed unless the estate is less than a leasehold of a two-years' unexpired term, in which case the sale is absolute.

(b) Who may redeem. Real property subject to redemption may be redeemed by the defendant or by a creditor having a lien on the property junior to that on which the property was sold or by their successors in interest. If the defendant redeems, the effect of the sale is terminated and the defendant is restored to the defendant's estate. If the property is redeemed by a creditor, any other creditor having a right of redemption may redeem.

(c) How made. To redeem, the redemptioner shall pay the amount required to the purchaser and shall serve on the purchaser:

(c)(1) a certified copy of the judgment or lien under which the redemptioner claims the right to redeem;

(c)(2) an assignment, properly acknowledged if necessary to establish the claim; and

(c)(3) an affidavit or self-authencticated statement under Utah Code Section 46-5-101 showing the amount due on the judgment or lien.

(d) Time for redemption. The property may be redeemed within 180 days after the sale.

(e) Redemption price. The price to redeem is the sale price plus six percent. The price for a subsequent redemption is the redemption price plus three percent. If the purchaser or redemptioner files with the county recorder notice of the amounts paid for taxes, assessments, insurance, maintenance, repair or any lien other than the lien on which the redemption was based, the price to redeem includes such amounts plus six percent for an initial redemption or three percent for a subsequent redemption. Failure to file notice of the amounts with the county recorder waives the right to claim such amounts.

(f) Dispute regarding price. If there is a dispute about the redemption price, the redemptioner shall within 20 days of the redemption pay into court the amount necessary for redemption less the amount in dispute and file and serve upon the purchaser a petition setting forth the items to which the redemptioner objects and the grounds for the objection. The petition is deemed denied. The court may permit

discovery. The court shall conduct an evidentiary hearing and enter an order determining the redemption price. The redemptioner shall pay to the clerk any additional amount within seven days after the court's order.

(g) Certificate of redemption. The purchaser shall promptly execute and deliver to the redemptioner, or the redemptioner to a subsequent redemptioner, a certificate of redemption containing:

(g)(1) a detailed description of the real property;

(g)(2) the price paid;

(g)(3) a statement that all right, title, interest of the purchaser in the property is conveyed to the redemptioner; and

(g)(4) if known, whether the sale is subject to redemption.

The redemptioner or subsequent redemptioner shall file a duplicate of the certificate with the county recorder.

(h) Conveyance. The purchaser or last redemptioner is entitled to conveyance upon the expiration of the time permitted for redemption.

(i) Rents and profits, request for accounting, extension of time for redemption.

(i)(1) Subject to a superior claim, the purchaser is entitled to the rents of the property or the value of the use and occupation of the property from the time of sale until redemption. Subject to a superior claim, a redemptioner is entitled to the rents of the property or the value of the use and occupation of the property from the time of redemption until a subsequent redemption. Rents and profits are a credit upon the redemption price.

(i)(2) Upon written request served on the purchaser before the time for redemption expires, the purchaser shall prepare and serve on the requester a written and verified account of rents and profits. The period for redemption is extended to five days after the accounting is served. If the purchaser fails to serve the accounting within 30 days after the request, the redemptioner may, within 60 days after the request, bring an action to compel an accounting. The period for redemption is extended to 15 days after the order of the court.

(j) Remedies.

(j)(1) For waste. A purchaser or redemptioner may file a motion requesting the court to restrain the commission of waste on the property. After the estate has become absolute, the purchaser or redemptioner may file an action to recover damages for waste.

(j)(2) Failure to obtain property.

(j)(2)(A) A purchaser or redemptioner who fails to obtain the property or who is evicted from the property because the judgment against the defendant is reversed or discharged may file a motion for judgment against the plaintiff for the purchase price plus amounts paid for taxes, assessments, insurance, maintenance and repair plus interest.

(j)(2)(B) A purchaser or redemptioner who fails to obtain the property or who is evicted from the property because of an irregularity in the sale or because the property is exempt may file a motion for judgment against the plaintiff or the defendant for the purchase price plus amounts paid for taxes, assessments, insurance, maintenance and repair plus interest. If the court enters judgment against the plaintiff, the court shall revive the plaintiff's judgment against defendant for the amount of the judgment against plaintiff.

(j)(2)(C) Interest on a judgment in favor of a purchaser or redemptioner is governed by Utah Code Section 15-1-4. Interest on a revived judgment in favor of the plaintiff against the defendant is at the rate of the original judgment. The effective date of a revived judgment in favor of plaintiff against defendant is the date of the original judgment except as to an intervening purchaser in good faith.

(k) Contribution and reimbursement. A defendant may claim contribution or reimbursement from other defendants by filing a motion.

Rule 73. Attorney fees.

(a) When attorney fees are authorized by contract or by law, a request for attorney fees shall be supported by affidavit, self-authenticated statement under Utah Code Section 46-5-101 or testimony unless the party claims attorney fees in accordance with the schedule in subsection (d) or in accordance with Utah Code Section 75-3-718 and no objection to the fee has been made.

(b) An affidavit or self-authenticated statement supporting a request for or augmentation of attorney fees shall set forth:

(b)(1) the basis for the award;

(b)(2) a reasonably detailed description of the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work;

(b)(3) factors showing the reasonableness of the fees;

(b)(4) the amount of attorney fees previously awarded; and

(b)(5) if the affidavit or self-authenticated statement is in support of attorney fees for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney is not sharing the fee or any portion thereof in violation of Rule of Professional Conduct 5.4.

(c) If a party requests attorney fees in accordance with the schedule in subsection (d), the party's complaint shall state the basis for attorney fees, state the amount of attorney fees allowed by the schedule, cite the law or attach a copy of the contract authorizing the award, and, if the attorney fees are for services rendered to an assignee or a debt collector, a statement that the attorney will not share the fee or any portion thereof in violation of Rule of Professional Conduct 5.4.

(d) Attorney fees awarded under the schedule may be augmented only for considerable additional efforts in collecting or defending the judgment and only after further order of the court.

Amount of Damages, Exclusive of Costs, Attorney Fees and Post-Judgment Interest, Between	and:	Attorney Fees Allowed
0.00	1,500.00	250.00

1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00
3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	or more	775.00

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Rule 102. Motion and order for payment of costs and fees.

(a) In an action under Utah Code Section 30-3-3(1), either party may move the court for an order requiring the other party to provide costs, attorney fees, and witness fees, including expert witness fees, to enable the moving party to prosecute or defend the action. The motion shall be accompanied by an affidavit or self-authenticated statement under Utah Code Section 46-5-101 setting forth the factual basis for the motion and the amount requested. The motion may include a request for costs or fees incurred:

(a)(1) prior to the commencement of the action;

(a)(2) during the action; or

(a)(3) after entry of judgment for the costs of enforcement of the judgment.

(b) The court may grant the motion if the court finds that:

(b)(1) the moving party lacks the financial resources to pay the costs and fees;

(b)(2) the non moving party has the financial resources to pay the costs and fees;

(b)(3) the costs and fees are necessary for the proper prosecution or defense of the action; and

(b)(4) the amount of the costs and fees are reasonable.

(c) The court may deny the motion or award limited payment of costs and fees if the court finds that one or more of the grounds in paragraph (b) is missing or enters in the record the reason for denial of the motion.

(d) The order shall specify the costs and fees to be paid within 30 days of entry of the order or the court shall enter findings of fact that a delay in payment will not create an undue hardship to the moving party and will not impair the ability of the moving party to prosecute or defend the action. The order shall specify the amount to be paid. The court may order the amount to be paid in a lump sum or in periodic payments. The court may order the fees to be paid to the moving party or to the provider of the services for which the fees are awarded.

Rule 104. Divorce decree upon affidavit or self-authenticated statement.

A party in a divorce case may apply for entry of a decree without a hearing in cases in which the opposing party fails to make a timely appearance after service of process or other appropriate notice, waives notice, stipulates to the withdrawal of the answer, or stipulates to the entry of the decree or entry of default. An affidavit or self-authenticated statement under Utah Code Section 46-5-101 in support of the decree shall accompany the application. The affidavit or self-authenticated statement shall contain evidence sufficient to support necessary findings of fact and a final judgment.

Rule 105. Shortening 90 day waiting period in domestic matters.

A motion for a hearing less than 90 days from the date the petition was filed shall be accompanied by an affidavit or self-authenticated statement under Utah Code Section 46-5-101 setting forth the date on which the petition for divorce was filed and the facts constituting good cause.

Tab 5

Rule 7. Pleadings allowed; motions, memoranda, hearings, orders, objection to commissioner's order.

(a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross claim, if the answer contains a cross claim; a third party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third party answer, if a third party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.

(b)(1) Motions. An application to the court for an order shall be by motion which, unless made during a hearing or trial or in proceedings before a court commissioner, shall be made in accordance with this rule. A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought.

(b)(2) Limit on order to show cause. An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show probable cause to believe a party has violated a court order.

(c) Memoranda.

(c)(1) Memoranda required, exceptions, filing times. All motions, except uncontested or ex parte motions, shall be accompanied by a supporting memorandum. Within ten days after service of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition. Within five days after service of the memorandum in opposition, the moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised in the memorandum in opposition. No other memoranda will be considered without leave of court. A party may attach a proposed order to its initial memorandum.

(c)(2) Length. Initial memoranda shall not exceed 10 pages of argument without leave of the court. Reply memoranda shall not exceed 5 pages of argument without leave of the court. The court may permit a party to file an over-length memorandum upon ex parte application and a showing of good cause.

(c)(3) Content.

(c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a statement of material facts as to which the moving party contends no genuine issue exists. Each fact shall be separately stated and numbered and supported by citation to relevant materials, such as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.

(c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a verbatim restatement of each of the moving party's facts that is controverted, and may contain a separate statement of additional facts in dispute. For each of the moving party's facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials. For any additional facts set forth in the opposing memorandum, each fact shall be separately stated and numbered and supported by citation to supporting materials, such as affidavits or discovery materials.

(c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table of contents and a table of authorities with page references.

(c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of documents cited in the memorandum, such as affidavits or discovery materials.

(d) Request to submit for decision. When briefing is complete, either party may file a "Request to Submit for Decision." The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

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

(f) Orders.

(f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.

(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.

(f)(3) Unless otherwise directed by the court, all orders shall be prepared as separate documents and shall not incorporate any matter by reference.

(g) Objection to court commissioner's recommendation. A recommendation of a court commissioner is the order of the court until modified by the court. A party may object to the recommendation by filing an objection in the same manner as filing a motion within ten days after the recommendation is made in open court or, if the court commissioner takes the matter under advisement, ten days after the minute entry of the recommendation is served. A party may respond to the objection in the same manner as responding to a motion.

Rule 101. Motion practice before court commissioners.

(a) Written motion required. An application to a court commissioner for an order shall be by motion which, unless made during a hearing, shall be made in accordance with this rule. A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought.

(b) Time to file and serve. The moving party shall file the motion and attachments with the clerk of the court and obtain a hearing date and time. The moving party shall serve the responding party with the motion and attachments and notice of the hearing at least 14 calendar days before the hearing. A party may file and serve with the motion a memorandum supporting the motion. 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.

(c) Response; reply. The responding party shall file and serve the moving party with a response and attachments at least 5 business days before the hearing. A party may file and serve with the response a memorandum opposing the motion. The moving party may file and serve the responding party with a reply and attachments at least 3 business days before the hearing. The reply is limited to responding to matters raised in the response.

(d) Attachments; objection to failure to attach.

(d)(1) As used in this rule “attachments” includes all records, forms, information, ~~and~~ affidavits and self-authenticated statements under Utah Code Section 46-5-101 necessary to support the party’s position. Attachments for motions and responses regarding alimony shall include income verification and a financial declaration. Attachments for motions and responses regarding child support and child custody shall include income verification, a financial declaration and a child support worksheet. A financial declaration shall be verified.

(d)(2) If attachments necessary to support the moving party’s position are not served with the motion, the responding party may file and serve an objection to the defect with the response. If attachments necessary to support the responding party’s position are not served with the response, the moving party may file and serve an objection to the defect with the reply. The defect shall be cured within 2 business days after notice of the defect or at least 2 business days before the hearing, whichever is earlier.

(e) Courtesy copy. Parties shall deliver to the court commissioner a courtesy copy of all papers filed with the clerk of the court within the time required for filing with the clerk. The courtesy copy shall state the name of the court commissioner and the date and time of the hearing.

(f) Late filings; sanctions. If a party files or serves papers beyond the time required in subsections (b) or (c), the court commissioner may hold or continue the hearing, reject the papers, impose costs and attorney fees caused by the failure and by the continuance, and impose other sanctions as appropriate.

(g) Counter motion. Opposing a motion is not sufficient to grant relief to the responding party. An application for an order may be raised by counter motion. This rule applies to counter motions except that a counter motion shall be filed and served with the response. The response to the counter motion shall be filed and served no later than the reply. The reply to the response to the counter motion shall be filed and served at least 2 business days before the hearing. A separate notice of hearing on counter motions is not required.

(h) Limit on hearing. The court commissioner shall not hold a hearing on a motion before the deadline for an appearance by the respondent under Rule 12.

(i) Limit on order to show cause. ~~The court shall issue an order to show cause only upon motion~~ An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by affidavit, self-authenticated statement or other evidence sufficient to show probable cause to believe a party has violated a court order. ~~The court commissioner shall proceed in accordance with Utah Code Title 78, Chapter 32, Contempt.~~

(j) Motions to judge. The following motions shall be to the judge to whom the case is assigned: motion for alternative service; motion to waive 90-day waiting period; motion to waive divorce education class; motion for leave to withdraw after a case has been certified as ready for trial; and motions in limine. A court may provide that other motions be to the judge.

Tab 6

Rule 40. Scheduling and postponing a trial.

(a) Scheduling a trial. Unless the court sets the date of trial by order, any party may and the plaintiff shall, at the close of all discovery, certify to the court that the case is ready for trial. The court shall schedule the trial as soon as mutually convenient to the court and parties. The court shall notify parties of the trial date and of any pretrial conference.

(b) Postponement. The court may postpone a trial for good cause upon such terms as are just, including the payment of costs. If the ground for postponement is the absence of evidence, the motion to postpone must show the materiality of the evidence and due diligence to procure it. If the court concludes that the proffered evidence would not be admitted or if the adverse party does not object to the proffered evidence, the trial shall not be postponed upon that ground.

(c) Preserving testimony of witnesses. If requested, the court may conduct a hearing to examine and cross-examine any witness present, and the testimony may be read at the trial with the same effect as and subject to the same objections to a deposition under Rule 32.

Tab 7

Rule 3. Service of the affidavit.

(a) After filing the affidavit and receiving a trial date, plaintiff must serve the affidavit and summons on defendant. To serve the affidavit, plaintiff must either:

(a)(1) have the affidavit served on defendant by a sheriff's department, constable, or person regularly engaged in the business of serving process and pay for that service; or

(a)(2) have the affidavit delivered to defendant by a method of mail or commercial courier service that requires defendant to sign a receipt and provides for return of that receipt to plaintiff.

(b) The affidavit must be served at least 30 calendar days before the trial date. Service by mail or commercial courier service is complete on the date the receipt is signed by defendant. If the affidavit is not timely served, the plaintiff may request a new trial date or the action is deemed dismissed without prejudice.

(c) Proof of service of the affidavit must be filed with the court no later than 10 business days after service. If service is by mail or commercial courier service, plaintiff must file a proof of service. If service is by a sheriff, constable, or person regularly engaged in the business of serving process, proof of service must be filed by the person completing the service.

(d) Each party shall serve on all other parties a copy of all documents filed with the court other than the counter affidavit. Each party shall serve on all other parties all documents as ordered by the court. Service of all papers other than the affidavit and counter affidavit may be by first class mail to the other party's last known address. The party mailing the papers shall file proof of mailing with the court no later than 10 business days after service. If the papers are returned to the party serving them as undeliverable, the party shall file the returned envelope with the court.