Agenda
Advisory Committee on Rules of Civil Procedure

October 24, 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
Overall evaluation of URCP		Fran Wikstrom
Rule 35. Physical and mental examination of persons.	Tab 2	Frank Carney Tom Lee
Efiling rules	Tab 3	Tim Shea
Aurora Credit Services, Inc. v. Liberty West Development, Inc. Rule 54.	Tab 4	Cullen Battle Frank Carney

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

Meeting Schedule

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, September 26, 2007
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Terrie T. McIntosh, Leslie W. Slaugh, Judge Anthony W. Schofield, Cullen Battle, Barbara Townsend, Debora Threedy, Judge Derek Pullan, David W. Scofield, Judge R. Scott Waterfall, Jonathan Hafen, Janet H. Smith, Todd M. Shaughnessy

EXCUSED: Francis J. Carney, Judge Lyle R. Anderson, Judge David O. Nuffer, Thomas R. Lee, Lori Woffinden, Judge Anthony B. Quinn, Steven Marsden, Matty Branch, Trystan B. Smith

STAFF: Tim Shea

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:10 p.m., and entertained comments from the committee concerning the May 23, 2007 minutes. No comments were made and Mr. Wikstrom moved that the May 23, 2007 minutes be submitted. The motion was seconded by Mr. Hafen, and unanimously approved.

II. WELCOME TO 2007-2008 SEASON.

Mr. Wikstrom welcomed everyone to the first meeting of the 2007-2008 season. He advised the committee that he and Mr. Shea had met with the Supreme Court over the summer, and that the Court had approved all proposed rule changes submitted by the committee to date. Those rules will take effect November 1, 2007.

III. DISCOVERY SURVEY AND OVERALL EVALUATION OF URCP.

The committee received a discovery survey in its materials for today's meeting. Mr. Wikstrom stated that the survey came about because the Supreme Court had asked what attorneys thought of the requirements and standards set forth in new discovery rules.

Mr. Slaugh presented his impression of the general results of the discovery survey. He expressed his opinion that many attorneys do not like many things under new Rule 26, although they seem to universally favor the new limitation on interrogatories. He also commented that the questions in the survey may not have been specific enough to the new rule to obtain good

feedback. Ms. Threedy observed that it may take awhile for attorneys to become familiar with using the new rule.

Other committee members commented about the cost of discovery as impacting litigation and the ability of the public to pay for legal services. Judge Pullan noted that some good cases may be turned away from the system due to inability to afford attorney costs and/or attorneys' inability to perform the work vis a vis the amount of recovery involved. Judge Schofield stated that Judge Pullan has a discovery form that he uses for small cases, and Judge Pullan was asked to provide that form at the next meeting.

After extensive discussion it was agreed that this subject is worthy of further discussion, and Mr. Wikstrom agreed to place issues related to this general topic on the agenda at future meetings.

IV. E-FILING RULES.

Mr. Shea commented that the district courts are coming close to e-filing ability. He stated that the rule will not require e-filing at first, but that he hopes that attorneys who have the technical capability will choose to e-file. He stated that when a document is e-filed, the document will be available for reading online, just as in the federal system, and that attorneys and parties will be able to view those documents online without charge. The process will require that filing must be in pdf format, and that documents can be filed through a third-party vendor (*e.g.*, a law firm, an outside agent, etc.). Once a law firm meets the standard to qualify as a vendor, that law firm can file on behalf of all of its attorneys. There will be an electronic cover sheet and security checks to assure that the filer is properly approved. The former digital signature requirement has been abandoned due to cost, and only an electronic signature will be required. If a document is e-filed, the court will not retain any paper copies of that documents. Once a document is filed, the system will send a notice to everyone listed on the case who has provided an e-mail address.

Extensive discussion commenced on the effect of e-filing on service, proof of service, and other matters. The question was asked whether e-filing will take the place of service, and Mr. Shea responded that it will take the place of service, but not proof of service so that parties will still be required to attach a "certificate of service" to a document.

The question also arose as to whether the usual three-extra-days-for-mailing will apply to e-filed documents, and how that would work since e-filing can be done 24 hours per day, seven days per week. It was suggested that the rule include that an e-filed document would not be effectively filed until 8 a.m. on the next business day after filing. Various scenarios were suggested, but the committee eventually decided to think about this particular issue for another month before making a decision.

V. AMENDMENTS RECOGNIZING A SELF-AUTHENTICATING DECLARATION INSTEAD OF AN AFFIDAVIT.

The committee discussed Mr. Shea's proposed amendments to various rules which would reflect that a self-authenticating declaration may be used, as well as an affidavit. Mr. Shea stated that he had made this change in every rule where it might apply, so that those who are not aware of the new self-authenticating declaration rule would be made aware that this can be done.

After discussion, it was agreed that as long as the use of self-authenticating declarations is approved by and confirmed in Rule 11, this would have the same effect as including it in each separate rule where it might apply. Ms. Smith moved that the change be made in Rule 11 and Mr. Scofield seconded the motion, which was unanimously approved. Judge Schofield moved that the change *not* be made in any other rules. Mr. Wikstrom seconded that motion, which was unanimously approved.

VI. RULES 7 AND 101. LIMITS ON ORDER TO SHOW CAUSE.

Proposed amendments to Rule 7 and 101 were discussed. A motion was made, seconded, and approved to strike the word "probable" at line 15 of page 77 (Rule 7(b)(2)), and the word "probable" at line 53 of page 81 (Rule 101(i)).

VII. RULE 40. SCHEDULING AND POSTPONING A TRIAL.

The committee discussed an amendment to Rule 40. It was suggested that with all of the changes involved in the amendment, the committee effectively would be making a new rule. After discussion, Mr. Slaugh moved for deletion of the phrase "and the plaintiff shall" at line 3 on p. 83. The motion was seconded and unanimously approved. Judge Schofield moved to delete everything after the first sentence of part (b) on p. 83. Mr. Hafen seconded that motion and it was also unanimously approved.

VIII. URSCP 3.

Mr. Shea proposed an amendment to URSCP at (b) to add the sentence "If the affidavit is not timely served, the plaintiff may request a new trial date or the action is deemed dismissed without prejudice." Mr. Slaugh commented that he believes that this change should include a time frame for dismissal. After discussion, the committee agreed with Mr. Slaugh's comment. Mr. Shea will redraft the proposed amendment to include a time limit that would be consistent with Rule 4.

IX. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next committee meeting will be held at 4:00 p.m. on Wednesday, October 24, 2007, at the Administrative Office of the Courts.

Tab 2

Rule 35. Physical and mental examination of persons.

(a) Order for examination. When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party is in controversy, the court in which the action is pending may order the party or person to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control, unless the party is unable to produce the person for examination. The order may be made only on motion for good cause shown. ~~and upon notice to the person to be examined and to all parties and~~ The order shall specify the time, place, manner, conditions, and scope of the examination and the person ~~or persons~~ by whom it is to be made. At the election of the party being examined, the examination may be recorded by videotape or other means, absent a showing that the recording would unduly interfere with the examination.

(b) Report of examining physician.

(b)(1) ~~If requested by a party against whom an order is made under Rule 35(a) or the person examined, the~~ The party causing the examination to be made shall deliver to ~~the person examined and/or~~ the other party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnosis and conclusions~~, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the report cannot be obtained. The court on motion may order delivery of a report on such terms as are just. If an examiner fails or refuses to make a report, the court on motion may take any action authorized by Rule 37(b)(2)~~.

[I tend to think we should leave this unchanged; see my comments below. In particular, why should we delete the requirement that the plaintiff produce a "like report of any examination, previously or thereafter made, of the same condition"? The good thing about this provision as it stands is that it is parallel to the federal rule, so it can be interpreted by reference to a large body of federal case law. Moreover, this provision has an attractive parallelism to it: both parties are required upon request to produce "like reports" of the "same condition." This would then leave for subsection (c) the question

of the availability of past medical reports at the behest of the defendant on other, unrelated conditions. My inclination there is still to leave that up to the discovery process, which seems much better suited to handle this than a blanket rule like that in subsection (c). It seems rather arbitrary to impose a blanket 4-year limit. In some cases, it strikes me that 4 years may be unduly burdensome; in others, it may not disclose enough to permit cross-examination fo the examiner. Why not just leave this up to the regular discovery rules?]

(b)(2) By requesting and obtaining a report of the examination so ordered or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, regarding the testimony of every other person who has examined or may thereafter examine the party in respect of the same mental or physical condition.

(b)(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of a report of any other examiner or the taking of a deposition of an examiner in accordance with the provisions of any other rule.

(c) Right of party examined to other medical reports. At the time of making an order to submit to an examination under Subdivision (a), the court shall, upon motion of the party to be examined, order the party seeking such examination to furnish to the party to be examined a report of any examination ~~previously made or medical treatment previously given by any examiner employed directly or indirectly by the party seeking the order for a physical or mental examination, or at whose instance or request such medical examination or treatment has previously been conducted~~ performed within the previous four years by the examiner at the request of the party, its counsel, or its insurer. The expense of production of such reports shall be borne by the party seeking the examination, except as to reasonable copying charges.

[I'm still confused as to why we need a mandatory disclosure requirement here. In some cases, the plaintiff may have no interest in challenging the examiner's objectivity, and thus might have no need for the 4-years worth of reports. In others, 4 years of reports might not be enough, yet we might implicitly be precluding discovery into reports beyond the 4-year period. I'm inclined to leave subsection (b) largely intact while replacing (c) with a general statement that discovery into prior reports by the examiner (not related to the plaintiff's condition) should be controlled by Rules 26 et seq.]

(d) Sanctions.

(d)(1) If a party or a person in the custody or under the legal control of a party fails to obey an order entered under Subdivision (a), the court on motion may take any action

authorized by Rule 37(b)(2), except that the failure cannot be treated as contempt of court.

(d)(2) If a party fails to obey an order entered under Subdivision (c), the court on motion may take any action authorized by Rule 37(b)(2).

FJC Notes:

I have deleted the bulk of (b)(1) (requiring the plaintiff to produce reports on other examinations of the same condition) because this information is routinely available through other discovery means. But isn't it also true that the information about previous examinations by the examiner at the request of the party would also be available through other discovery means? I think we should keep this parallel, for a number of reasons: (a) if we eliminate the plaintiff's production it will look like we are disfavoring it, given that it is currently in the rule; (b) there are good reasons (a la R. 26(a) disclosures) to streamline the provision of information that is almost always going to be requested anyway; and (c) there is no way to make an amendment that is not parallel without inflaming the defense bar and creating a huge impetus for a legislative override.

Restrictions on place of examination? (Out of county?)

Emphasize need for showing of good cause, and insufficiency of other sources of information.

Do we want to even attempt to address the "professional" examiners, i.e. those making hundreds of thousands of dollars on ME's a year– we could do this by allowing the court the disallow "biased" examiners (as some already do under "suitably qualified" provision). It also brings into play Rule 702 on the inherent unhelpfulness and exclusion of "professional" examiners. I would leave this alone. Let's not bite off more than we can chew; "suitably qualified" seems like a good enough standard to me. There are plenty of hired gun experts in lots of different fields; I see no reason to single out the professional ME unless we're going to tackle all of the other hired guns.

We want to address in our comment that the rule does not say that this is an "independent" medical examination and that term should be used. (Unless, of course, we really want to make the examiners "independent.")

I don't know how to address the issue raised about examiners using the examination as a "second deposition," without the benefit of counsel for the person being examined. Seems to me the only solution there is to allow counsel to be present, as some other states do. I would be quite concerned about a rule that imposed a presumption that counsel can be present. I think there are some real potential problems with that– including the prospect of making this even more adversarial, and more of a proceeding that is conducted only by professional MEs and not the regular treating physician.

Repetitive exams– addressed in the rule or note or neither? There is case law on "good cause" that gets at this issue–and says that the burden of establishing good cause increases on a second exam. I would let that case law take care of the issue.

Disclosure of information on the examiner– what's necessary to show on motion? If designated as expert, required to provide all the Rule 26(a) information. Do we want that before the examination? Why not? Sounds fine to me.

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 8 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, except that the judge may accept the papers, note thereon the filing date and forthwith transmit them to the office of the clerk.~~ A party may file with the clerk of court using any means of delivery permitted by the court. The court may require parties to file electronically with an electronic filing account. Filing is complete upon acceptance by the clerk of court. The clerk shall note the date of acceptance on the paper. The judge may accept papers, shall note the date of acceptance on the papers and shall transmit them to the clerk of court.

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~~ 8 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. 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, 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 signature. 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, affidavits, 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 declaration pursuant to 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 pursuant 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 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 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

IN THE UTAH COURT OF APPEALS

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Aurora Credit Services, Inc., Plaintiff and Appellant, v. Liberty West Development, Inc.; XM International; and Dennis W. Gay, Defendants and Appellees.	OPINION (For Official Publication) Case No. 20060964-CA F I L E D (October 12, 2007) 2007 UT App 327

Third District, Salt Lake Department, 940904935
The Honorable L.A. Dever

Attorneys: Eric P. Hartman, Salt Lake City, for Appellant
James E. Magleby and Christine T. Greenwood, Salt Lake City, for Appellees

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Before Judges Billings, McHugh, and Thorne.

BILLINGS, Judge:

¶1 Plaintiff Aurora Credit Services, Inc. appeals the trial court's award of costs to Defendant Liberty West Development, Inc., contending that Defendant's request for costs was untimely under rule 54(d)(2) of the Utah Rules of Civil Procedure. We agree and therefore reverse the ruling of the trial court.

BACKGROUND

¶2 This case stems from a complex set of facts that has twice visited the Utah appellate courts. See Aurora Credit Servs., Inc. v. Liberty W. Dev., Inc., 970 P.2d 1273 (Utah 1998); Aurora Credit Servs., Inc. v. Liberty W. Dev., Inc., 2006 UT App 48, 129 P.3d 287, cert. denied, 138 P.3d 589 (Utah 2006). The substantive bulk of the case ended in 2004 and is not at issue

here.[1] In July 2004, the trial court issued an order (the 2004 Order) imposing sanctions against Plaintiff based upon its "blatant and willful disregard" of the trial court's previous orders. One of these sanctions was a dismissal with prejudice of Plaintiff's then-in-force second amended complaint. Following that dismissal, Plaintiff filed a motion with the trial court requesting that the 2004 Order be altered or amended. In November 2004, the trial court denied Plaintiff's motion and stated, "This is the Court's final order."[2] Plaintiff appealed to this court, and we affirmed the issue of sanctions and accompanying dismissal. See Aurora, 2006 UT App 48 at ¶1. Our decision was filed in the trial court on June 2, 2006.

¶3 On June 19, 2006, Defendant filed three documents in the trial court: (1) a motion for entry of final judgment, (2) a verified memorandum of costs associated with the trial court, and (3) a verified bill of costs on appeal. Plaintiff challenged portions of these documents. Plaintiff argued then, as now, that rule 54(d) of the Utah Rules of Civil Procedure barred Defendant's request for trial costs because the rule states that costs must be requested within five days of judgment. See Utah R. Civ. P. 54(d).

¶4 The trial court entered an order entitled "Final Judgment" dated September 20, 2006, and awarded all requested costs to Defendant. Plaintiff appeals.

ISSUES AND STANDARDS OF REVIEW

¶5 We first consider the trial court's decision to award costs to Defendant. Because this is a review of the trial court's interpretation of a rule of civil procedure (as opposed to a trial court's determination of, for example, which costs should be awarded and which costs should not), we review for correctness, giving no deference to the trial court's conclusion. See Lyon v. Burton, 2000 UT 19,¶76, 5 P.3d 616.

¶6 We also review the trial court's decision not to impose sanctions on Defendant under rule 11 of the Utah Rules of Civil

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1. For a detailed account of the facts that gave rise to this case, see the interlocutory appeal decision in Aurora Credit Services, Inc. v. Liberty West Development, Inc., 970 P.2d 1273, 1275-76 (Utah 1998).

2. We disagree with Defendant that this dismissal with prejudice, which was subsequently appealed, was not a final order of judgment.

Procedure. Whether a rule 11 violation has occurred is a question of law that we review for correctness. See Jeschke v. Willis, 811 P.2d 202, 204 (Utah Ct. App. 1991).

¶7 Finally, Plaintiff asks us to impose sanctions against Defendants, their counsel, or both, under rules 33, 34, and 40 of the Utah Rules of Appellate Procedure, see Utah R. App. P. 33, 34, 40, for frivolously extending this litigation. Because this issue is only relevant on appeal, the trial court did not address it and so we consider it in the first instance.

ANALYSIS

I. Award of Costs

¶8 The provision at the forefront of this dispute is found in rule 54(d)(2) of the Utah Rules of Civil Procedure:

> 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 stating that to affiant's knowledge the items are correct, and that the disbursements have been necessarily incurred in the action or proceeding.

Utah R. Civ. P. 54(d)(2) (emphasis added). Plaintiff contends that the 2004 Order issuing sanctions and dismissing the case is the judgment from which the five days should have been counted.[3] Defendant clearly did not file for costs within five days of that order, waiting instead until the appeal was complete--in June 2006--to ask for costs. Defendant argues that this was proper based on the following language of rule 54(d)(1):

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3. We recognize that "judgment," as it is used in rule 54(a), "includes a decree and any order from which an appeal lies." Utah R. Civ. P. 54(a). The term "judgment," however, cannot be equated to "final determination," as used in rule 54(d)(1), see id. R. 54(d)(1), because appealable judgments may occur at various places along the trial timeline, giving rise to interlocutory appeals. Costs are not allowed in conjunction with interlocutory appeals. See Benjamin v. Amica Mut. Ins. Co., 2006 UT 37,¶¶38-39, 140 P.3d 1210.

> 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.

Id. R. 54(d)(1) (emphasis added). Defendant contends that, in this case, the "final determination" came on June 2, 2006, when the Utah Supreme Court denied certiorari to review our opinion, Aurora v. Liberty, 138 P.3d 589 (Utah 2006), and the case was remitted to the trial court. Accordingly, Defendant argues it was not required to file for costs until the appeal process was completed.[4]

¶9 The language in question, that "costs . . . shall abide the final determination," Utah R. Civ. P. 54(d)(1), is unique to Utah.[5] It has been a part of our Rules of Civil Procedure since at least 1953, when the Rules were created to supersede the previously-statutory provisions. See id. R. 54(d)(1) (1953).

¶10 We agree with Defendant that the term "final determination" as it is used in rule 54(d)(1) is whichever decision ends the case--here, the one issued by the appellate court. However, we conclude that it is the trial court's order awarding costs, or perhaps even the payment of costs, not the party's request for costs, that does the "abiding" of the final determination.

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4. Defendant filed its motion for costs on June 19, 2006. In this case, the trial court received the remittitur on June 2, 2006. Rule 34(d) of the Utah Rules of Appellate Procedure requires that a party claiming costs must file its bill of costs within fifteen days after a remittitur is filed with the trial court. See Utah R. App. P. 34(d). However, June 17, which would have been the fifteen-day deadline, was a Saturday. In connection with rule 6(a) of the Utah Rules of Civil Procedure, which allows for an extension to the next business day, see Utah R. Civ. P. 6(a), Defendant's June 19th filing would have been proper if the fifteen days to file for costs were to run from the date of remittitur following appeal, as Defendant argued.

5. Neither the parties nor our independent research have identified similar provisions from other states.

¶11 Our supreme court has repeatedly stated that the language of rule 54(d)(2) is unambiguously mandatory: Parties must claim their costs within five days. See e.g., Lyon v. Burton, 2000 UT 19,¶77, 5 P.3d 616 ("[F]ailure to satisfy the requirement for filing a verified memorandum of costs is fatal to a claim to recover costs under [r]ule 54."); Walker Bank & Trust Co. v. N.Y. Terminal Warehouse Co., 10 Utah 2d 210, 350 P.2d 626, 630-31 (1960) (holding that failure to timely file is fatal to recovery of costs); Houghton v. Barton, 49 Utah 611, 165 P. 471, 477 (1917) (noting that because costs are not a common law right, "statutes authorizing them are strictly construed").[6]

¶12 These cases share a reasonably similar fact pattern where costs are concerned: the party who prevailed at trial filed for costs more than five days after the trial court's judgment, the losing party appealed both the request for costs and the merits, and the Utah Supreme Court determined that the request for costs was untimely and therefore barred, even though the primary issue had not yet been resolved on appeal. See Lyon, 2000 UT 19 at ¶¶75-78; Walker Bank & Trust, 350 P.2d at 627, 630-31; Houghton, 165 P. at 476-77. These cases are consistent with our above interpretation: Parties must request costs within five days of the trial court's final, appealable judgment and cannot wait until the appeal is concluded to claim their costs. Otherwise, following Defendant's reasoning here, costs in these cases would still have been an open question at the time the supreme court ruled.

¶13 Defendant argues that it is inefficient for a party who prevails at trial to prepare and submit a bill of costs within five days of the end of the trial phase, not knowing if they will still be the prevailing party after the appeal.[7] However, a

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6. The federal rule and the rules of many states do not have time limits in which a party may request costs; instead, time limits are more typically tied to the clerk's responsibilities to tax the costs. See, e.g., Fed. R. Civ. P. 54(d)(1) ("[C]osts other than attorney['s] fees shall be allowed as of course to the prevailing party unless the court otherwise directs; . . . Such costs may be taxed by the clerk on one day's notice. On motion served within 5 days . . . , the action of the clerk may be reviewed by the court.").

7. Defendant points us to Litty v. Becker, 656 A.2d 365 (Md. Ct. Spec. App. 1995), a Maryland case stating that "it may often be prudent for a party to delay filing such a motion until the appeal has been concluded, to avoid presenting an issue that need no longer be decided." Id. at 369. This case is not persuasive

(continued...)

prevailing party cannot, within five days of the end of the trial phase, know with absolute certainty whether an appeal will be filed. For this reason, parties who prevail at trial and wish to claim their costs must do so after the trial court has rendered its decision, accepting that it is possible that the case will be reversed and costs will not be awarded.

¶14 Defendant also suggests that the purpose of the five-day time limit is merely to notify the opposing party that costs will be sought, and that, therefore, the memorandum of costs should be a non-issue. Defendant points us to a Florida case where the trial court entered a final judgment and awarded costs and fees at that time, but left the specific amount to a later date. See Chamizo v. Forman, 933 So. 2d 1240, 1241 (Fla. Dist. Ct. App. 2006). In that case, the appellate court determined that the untimeliness of the prevailing party's subsequent memorandum was a non-issue, because costs had already been granted. See id. The facts of the present case are distinguishable from those in Chamizo because the trial court here had not awarded costs at all.

¶15 In sum, Defendant's request for costs was not timely and we therefore reverse the trial court's award of costs to Defendant.

II. Sanctions

¶16 We turn to whether the trial court erred in choosing to not impose sanctions on Defendant under rule 11 of the Utah Rules of Civil Procedure. In relevant part, rule 11(b) states that by filing any document with the court, an attorney represents that

> (b) (1) [any motions filed are] not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; [and]
>
> (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[.]

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7. (...continued)
because the Maryland rule regarding the award of costs is significantly different than our rule and does not include a time limit. See id. at 366 n.2.

Utah R. Civ. P. 11(b). Rule 11(c) authorizes the court to impose sanctions for the violation of these provisions. See id. R. 11(c). Because the trial court ruled in Defendant's favor on the costs, it obviously did not impose sanctions.

¶17 Although we reverse on the issue of costs, we affirm the trial court's assessment that sanctions were inappropriate. Relying on the trial court's award, Defendant advanced an argument that was inventive but not totally frivolous. Defendant pointed us toward cases in other jurisdictions that supported its position. Defendant's interpretation gave us the opportunity to clarify a rule--a posture clearly allowed by rule 11(b).

¶18 Finally, we decline Plaintiff's invitation to issue sanctions against Defendant under rules 33, 34 and 40 of the Utah Rules of Appellate Procedure, as we do not conclude that Defendant's arguments are meritless.

CONCLUSION

¶19 We conclude that rule 54(d)(1)'s provision that costs "abide the final determination of the case," Utah R. Civ. P. 54(d)(1), means that the trial court does not need to award costs until an appeal is issued, but does not excuse parties who want to request costs from complying with rule 54(d)(2)'s five-day time limit. Accordingly, we reverse the trial court's award of trial costs to Defendant. We also refuse to impose sanctions against Defendant.

_____
Judith M. Billings, Judge

¶20 WE CONCUR:

_____
Carolyn B. McHugh, Judge

_____
William A. Thorne Jr., Judge