

Agenda

Advisory Committee on Rules of Civil Procedure

April 23, 2008
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
Rule 6, et al. Time	Tab 2	Tim Shea
Overall evaluation of URCP	Tab 3	Fran Wikstrom
Garnishment Procedures	Tab 4	Tim Shea
Rule 45. Objection to subpoena by a party.	Tab 5	Tim Shea
CJA Chapter 11. Advisory Committees and the Rulemaking Process.	Tab 6	Fran Wikstrom
Miscellaneous Issues	Tab 7	Tim Shea

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

Meeting Schedule

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, March 26, 2008
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Todd M. Shaughnessy, Honorable Anthony B. Quinn, Honorable Derek Pullan, Lincoln Davies, Anthony W. Schofield, Lori Woffinden, Francis J. Carney, Leslie W. Slauch, Jonathan Hafen, Thomas R. Lee, Judge R. Scott Waterfall, David W. Scofield, Barbara Townsend

EXCUSED: Terrie T. McIntosh, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Janet H. Smith, Cullen Battle, Matty Branch, Steven Marsden

STAFF: Tim Shea, Trystan B. Smith

GUESTS: Dan McConkie, Steve Walkenhorst, Steve Combe, Lynn S. Davies, D. Chris Purcell, Michael Litchfield, Thomas W. Seiler, Robert B. Sykes, Mark Dunn, Todd Turnblom, Tajha Ferrara, Henry Heath, Scott DuBois, Stephen Trayner, John Lund, Mark Taylor, Kevin Swenson

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the February 27, 2008 minutes. No comments were made and Mr. Wikstrom asked for a motion that the minutes be approved. The motion was duly made and seconded, and unanimously approved.

II. RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS.

Mr. Wikstrom invited the four spokespersons from the personal injury bar to address the committee regarding the proposed changes to Rule 35.

Mr. Sykes spoke on behalf of the plaintiffs bar. Mr. Sykes began his comments by observing that a number of states customarily allow videotaping of Rule 35 medical examinations. Mr. Sykes relayed an anecdote about a neurosurgeon incorrectly reporting the medical history of a plaintiff. He stressed the importance of recording medical examinations to memorialize the plaintiff's reporting to the examiner. Mr. Sykes further expressed his concerns about the amounts paid to examiners and the potential for bias of the professional witness.

Mr. DuBois, Utah Defense Lawyers Association (UDLA) president, presented a petition against the proposed changes.

Mr. Trayner spoke on behalf of the defense bar. Mr. Trayner began his comments indicating that the majority of states do not allow the recording of medical examinations. He further indicated that a defendant does not have full access to the plaintiff whose medical condition is the most germane evidence in the case, explaining a defendant only has one opportunity to access the plaintiff and his or her medical condition.

Mr. Trayner expressed his concern about the proposed changes, and his belief that the proposed rule change would be patently unfair. Mr. Trayner reiterated the overwhelming number of states do not allow the amendments currently proposed. He indicated that only Arizona and California allow the recording of examinations. Mr. Trayner further expressed concern about the provision requiring the production of past reports. He noted concerns about the privacy of the patient and the disclosure of a redacted report to strangers to the litigation. Mr. Trayner also expressed his concern regarding the effectiveness of cross-examining experts using prior reports, and having a “mini-trial” on every report.

Mr. Carney shared with the guests the committee’s prior thought processes about the proposed rule changes.

Mr. Davies addressed his concerns about video recording the examination. He indicated the recording allows the plaintiff to “play to the camera,” fundamentally changing the nature of the examination. Mr. Davies indicated the examiners he spoke to felt more comfortable with audio recordings.

He recommended that the committee remove the video recording provision. He did not believe the proposed rule changes provided a level playing field because the defendant would not have the opportunity to video record the plaintiff’s examination with his or her treating physician, or record an examination with a physician plaintiff’s counsel referred his client to.

Mr. Davies also indicated that there are only a handful of doctors who handle these examinations because of the difficulty of retaining doctors to act as experts. Mr. Davies noted that often the examiner is the sole doctor who has the complete medical history of the plaintiff before reaching his or her opinions. He indicated that rarely a treating physician has access to a patient’s past medical history, and the medical records of concurrent treaters. Mr. Davies concluded his remarks indicating his belief that the proposed rule changes were intended to harass expert doctors, and discourage their participation.

Mr. Seiler addressed his observations on behalf of the plaintiffs bar. The thrust of his concern was an examiner taking a second deposition as a part of obtaining a history. He further expressed his support for video recording and noted his clients’ reporting regarding discrepancies in what occurred during the examination.

Mr. Carney and Mr. Wikstrom questioned why the committee should not adopt a rule that also required a plaintiff’s treating physician seen after a lawyer’s retention to produce prior reports and video record that physician’s examination.

Mr. Wikstrom noted that the committee was in its initial stages of consideration of the proposed rule changes. He invited the guests in attendance to submit any and all comments to the committee for their consideration.

III. RULE 6, ET AL. TIME.

Mr. Shea brought Rule 6 back to the committee. Mr. Wikstrom asked that the committee address Rule 6 at the next meeting.

IV. SB 205. UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT.

Mr. Shea addressed Utah's adoption of the Uniform Interstate Depositions and Discovery Act. He indicated he did not believe a rule change was needed to conform to the Act.

Mr. Wikstrom suggested the committee postpone further discussion regarding the Act until after the 3 other states considering adoption of the Act pass the legislation.

V. OVERALL EVALUATION OF URCP.

Mr. Wikstrom asked for volunteers to examine other jurisdictions' expedited discovery rules, and bring back to the committee the best practices and concepts from these jurisdictions. He asked the committee to conceptualize the appropriate application of the expedited discovery rules.

Judge Pullan volunteered to examine Colorado. Mr. Hafen volunteered to examine Arizona. Mr. Schofield volunteered to examine New Mexico. Judge Waterfall, Mr. Scofield and Mr. Davies volunteered to examine Canada. Mr. Carney, Mr. Blanch and Mr. Shaughnessy volunteered to examine the federal rules.

VI. ADJOURNMENT.

The meeting adjourned at 5:45 p.m. The next meeting of the committee will be held at 4:00 p.m. on Wednesday, April 23, 2008, at the Administrative Office of the Courts.

Tab 2

1 Rule 6. Time.

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

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

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

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

29 ~~(e) Additional time after service by mail. Whenever a party has the right or is~~
30 ~~required to do some act or take some proceedings within a prescribed period after the~~
31 ~~service of a notice or other paper upon him and the notice or paper is served upon him~~

32 ~~by mail, 3 days shall be added to the end of the prescribed period as calculated under~~
33 ~~subsection (a). Saturdays, Sundays and legal holidays shall be included in the~~
34 ~~computation of any 3-day period under this subsection, except that if the last day of the~~
35 ~~3-day period is a Saturday, a Sunday, or a legal holiday, the period shall run until the~~
36 ~~end of the next day that is not a Saturday, Sunday, or a legal holiday.~~

37 (a) Computing time. The following rules apply in computing any time period specified
38 in these rules, any local rule or court order, or in any statute that does not specify a
39 method of computing time.

40 (a)(1) Period stated in days or a longer unit. When the period is stated in days or a
41 longer unit of time:

42 (a)(1)(A) exclude the day of the event that triggers the period;

43 (a)(1)(B) count every day, including intermediate Saturdays, Sundays, and legal
44 holidays; and

45 (a)(1)(C) include the last day of the period, but if the last day is a Saturday, Sunday,
46 or legal holiday, the period continues to run until the end of the next day that is not a
47 Saturday, Sunday or legal holiday.

48 (a)(2) Period stated in hours. When the period is stated in hours:

49 (a)(2)(A) begin counting immediately on the occurrence of the event that triggers the
50 period;

51 (a)(2)(B) count every hour, including hours during intermediate Saturdays, Sundays,
52 and legal holidays; and

53 (a)(2)(C) if the period would end on a Saturday, Sunday, or legal holiday, the period
54 continues to run until the same time on the next day that is not a Saturday, Sunday, or
55 legal holiday.

56 (a)(3) Inaccessibility of the clerk's office. Unless the court orders otherwise, if the
57 clerk's office is inaccessible:

58 (a)(3)(A) on the last day for filing under Rule 6(a)(1), then the time for filing is
59 extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or

60 (a)(3)(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is
61 extended to the same time on the first accessible day that is not a Saturday, Sunday, or
62 legal holiday.

63 (a)(4) "Last day" defined. Unless a different time is set by a statute, local rule, or
64 court order, filing on the last day means:

65 (a)(4)(A) for electronic filing, the filing must be made before midnight; and

66 (a)(4)(B) for filing by other means, the filing must be made before the clerk's office is
67 scheduled to close.

68 (a)(5) "Next day" defined. The "next day" is determined by continuing to count
69 forward when the period is measured after an event and backward when measured
70 before an event.

71 (a)(6) "Legal holiday" defined. "Legal holiday" means the day for observing:

72 (a)(6)(A) New Year's Day;

73 (a)(6)(B) Martin Luther King, Jr. Day;

74 (a)(6)(C) Washington and Lincoln Day;

75 (a)(6)(D) Memorial Day;

76 (a)(6)(E) Independence Day;

77 (a)(6)(F) Pioneer Day;

78 (a)(6)(G) Labor Day;

79 (a)(6)(H) Columbus Day;

80 (a)(6)(I) Veterans' Day;

81 (a)(6)(J) Thanksgiving Day;

82 (a)(6)(K) Christmas Day; and

83 (a)(6)(L) any day designated by the President or Congress as a national holiday or
84 the Governor or Legislature as a state holiday.

85 (b) The court may extend any time period other than those stated in Rules 50(b),
86 52(b), 59(b), 59(d), 59(e) and 60(b). If the request to extend a time period is made
87 before expiration of the period, as originally prescribed or as extended by a previous
88 order, the order may be entered upon an ex parte application and a showing of good
89 cause. If the request to extend the time period is made after expiration of the period, the
90 request shall be made by motion and may be granted upon a showing of excusable
91 neglect.

92 (c) Notice of a hearing shall be served not less than 7 days before the day of the
93 hearing, unless a different period is stated by these rules or by order of the court. An

94 order to shorten the time period may be entered upon an ex parte application and a
95 showing of good cause.

96

Rule	Change	To	Rule	Change	To	65C(m)(1)	5	7
Tony Schofield			54(d)(2)	5	14	66(f)	10	14
3(a)	10	14	54(d)(2)	7	14	68(c)(3)	10	14
4(c)(2)	13	14	56(a)	20	21	68(c)(4)	10	14
4(f)(1)	20	21	Cullen Battle			Steve Marsden		
5(b)(1)(B)	5	7	59(b)	10	14	69C(f)	20	21
7(c)(1)	5	7	59(c)	10	14	69C(f)	7	14
7(c)(1)	10	14	59(c)	20	21	69C(i)(2)	5	7
7(f)	15	21	59(d)	10	14	69C(i)(2)	15	21
7(f)	5	7	59(e)	10	14	74(c)	20	21
12(a)	20	21	60(b)	3 months	90	Leslie Slaugh		
12(a)(1)	10	14	Tom Lee			101(b)	Delete "calendar"	
12(a)(2)	10	14	62(a)	10	14	101(c)	5	7
12(e)	10	14	63(b)(1)(B)	20	21			
12(f)	20	21	63(b)(1)(B)(iii)	20	21			
Frank Carney			64(d)(3)(C)	10	14			
14(a)	10	14	64(d)(3)(D)(ii)	10	14			
15(a)	20	21	64(e)(2)	10	14			
15(a)	10	14	64(f)(1)	5	7			
17(c)(2)	20	21	64A(i)(5)	10	14			
17(c)(3)	20	21	David Scofield					
27(a)(2)	20	21	64D(g)	7	14			
31(a)(4)	7	14	64D(h)	10	14			
38(b)	10	14	64D(i)	20	21			
38(c)	10	14	64(D)(l)(3)	7	14			
Jon Hafen			64E(d)(1)	10	14			
50(b)	10	14	65A(b)(2)	10	14			
50(c)(2)	10	14						
52(b)	10	14	James Blanch					
53(d)(1)	20	21	65C(g)(3)	20	21			
53(e)(2)	10	14	65C(i)	Delete "plus time ..."				

Tab 3

Average of Amount In Controversy	FY 2006	FY 2007	FY 2008
Civil Rights	\$ 411,333.00	\$ 39,710,147.58	\$ 3,550,721.44
Contracts	\$ 360,003.38	\$ 91,535.64	\$ 124,213.39
Interpleader	\$ 27,549.46	\$ 30,513.04	\$ 81,501.00
Malpractice	\$ 768,292.83	\$ 231,025.17	\$ 42,500.00
Personal Injury	\$ 117,053.91	\$ 278,834.56	\$ 3,770,314.51
Property Damage	\$ 14,331.00	\$ 47,082.97	\$ 9,315.41
Property Rights	\$ 1,030,496.10	\$ 330,382.26	\$ 22,006.55
Sexual Harassment	\$ 1,050,000.00	\$ 513,216.36	
Water Rights	\$ 99,333.33		
Wrongful Death	\$ 16,666.67	\$ 1,046,812.50	\$ 137,500.00
Wrongful Termination	\$ 1,066,666.67	\$ 267,333.17	

Average of Judgment	FY 2006	FY 2007	FY 2008
Civil Rights	\$ 4,748.15		\$ 226,802.50
Contracts	\$ 81,714.84	\$ 64,481.03	\$ 81,787.74
Interpleader	\$ 80,014.59	\$ 46,050.87	\$ 51,308.17
Malpractice	\$ 84,629.65	\$ 150,650.34	\$ 26,282.60
Personal Injury	\$ 116,318.58	\$ 278,535.18	\$ 48,938.30
Property Damage	\$ 12,132.71	\$ 12,146.27	\$ 37,737.94
Property Rights	\$ 78,147.40	\$ 73,274.40	\$ 105,756.69
Sexual Harassment	\$ 473.37		
Water Rights	\$ 5,087.62	\$ 74,806.95	
Wrongful Death	\$ 2,040,949.17	\$ 4,870.81	
Wrongful Termination		\$ 25,934.07	

Tab 4

Tim:

I waited until after the Session was over to broach this subject. But, I have had a number of legislators who have constituents who have complained about the amount of paperwork required for a garnishment. I have been asked to ask if your committee would look at the process and see if the paperwork could be cut down.

If you could broach this subject with the Civil Procedures committee and let me know, I will get back to my legislators.

Thanks
Esther D. Chelsea-McCarty
Associate General Counsel
echelsea@utah.gov
(801) 538-1032

Esther,

There is a meeting next Wednesday, but the agenda is already full. I will raise it with them in April. In the meantime, let me ask, too much paperwork from whose perspective? The creditor, debtor or garnishee/employer? They all have rights and responsibilities, and the combination adds up to a considerable package.

Thanks,
Tim

Tim:

Most of the constituents the legislators are dealing with are small business owners, so it's the garnishee/employer who is doing the complaining. In one of my meetings over this during last Summer, we actually printed out the two different packets of forms from the court's website and discussed them with some people that run collection agencies. All thought that the forms could be simplified, but they all also realized that rights, responsibilities, and procedures had to be adhered to. So, I was asked to contact you to see if your committee would take a look at it with an eye to streamlining the process.

Thanks,
Esther

Tab 5

Tim,

Thank you for taking the time to answer my question yesterday. Unfortunately, I don't think I stated it very clearly.

My question is - Under Rule 45 as amended, what is the proper procedure for a party to the lawsuit, not the person subpoenaed, to object to the subpoena?

Rule 45(e)(3) clearly sets out the procedure for objecting to a subpoena for a "person subject to the subpoena." However, I do not see where amended Rule 45 specifically addresses the procedure a party to the lawsuit should follow if it wishes to object to the subpoena after it receives notice under (b)(3). For example, (c)(3)(B) of old Rule 45 stated that a court may modify or quash a subpoena "to protect a person subject to or affected by the subpoena." The "or affected by the subpoena" provided a foothold by which a party to the lawsuit could move to quash a subpoena served on a non-party. The "affected by the subpoena" language has been removed from the new rule leaving a gap, or at least some confusion, with regard to what procedure a party to the lawsuit (or any other person affected by the subpoena) should follow if that party/person wishes to object to the subpoena.

I gather from your response that the guidelines under (e)(3) apply to any person or party who desires to object to a subpoena. However, without the "affected by the subpoena" language, I began to wonder if there was some other purpose for its absence or if there was another procedure that a party to a lawsuit should follow when it wishes to object to a subpoena, e.g. filing for a protective order under Rule 26(c). Therefore, to put my question another way, is it correct that when a party to a lawsuit receives notice that a subpoena has been served on a non-party and the party wishes to object to the subpoena, all they need do is file a written objection as provided for under section 45(e)(3) and wait for the attorney that served the subpoena to file a motion to compel, in the same way a non-party subject to the subpoena would.

Thank you for your time.

Sam Slark

1 Rule 45. Subpoena.

2 (a) Form; issuance.

3 (a)(1) Every subpoena shall:

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

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

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

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

10 or

11 (a)(1)(C)(ii) to appear and produce ~~or to permit for~~ inspection, ~~and~~ copying, ~~of testing~~
12 or sampling documents, electronically stored information or tangible things in the
13 possession, custody or control of that person, or

14 (a)(1)(C)(iii) to copy documents or electronically stored information in the
15 possession, custody or control of that person and mail or deliver the copies to the party
16 or attorney responsible for issuing the subpoena before a date certain, or

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

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

21 ~~(a)(1)(D) set forth the text of (a)(1)(E) include a N~~ notice to ~~P~~ persons ~~S~~ served with a
22 ~~S~~ subpoena, in a form substantially similar ~~form~~ to the subpoena form appended to
23 these rules. A subpoena may specify the form or forms in which electronically stored
24 information is to be produced.

25 ~~(a)(2) A command to produce or to permit inspection and copying of documents or~~
26 ~~tangible things, or to permit inspection of premises, may be joined with a command to~~
27 ~~appear at trial, or at hearing, or at deposition, or may be issued separately.~~

28 ~~(a)(3)~~ (a)(2) The clerk shall issue a subpoena, signed but otherwise in blank, to a
29 party requesting it, who shall complete it before service. An attorney admitted to
30 practice in ~~the court in which the action is pending~~ Utah may ~~also~~ issue and sign a
31 subpoena as an officer of the court.

32 (b) Service; ~~scope fees; prior notice.~~

33 (b)(1) ~~Generally.~~

34 ~~(b)(1)(A)~~ A subpoena may be served by any person who is at least 18 years of age
35 and not a party and is not less than 18 years of age to the case. Service of a subpoena
36 upon ~~a the~~ person named therein to whom it is directed shall be made as provided in
37 Rule 4(d) ~~for the service of process and, if the,~~

38 (b)(2) If the subpoena commands a person's appearance, is commanded, by
39 tendering to that person the party or attorney responsible for issuing the subpoena shall
40 tender with the subpoena the fees for one day's attendance and the mileage allowed by
41 law. When the subpoena is issued on behalf of the United States, or this state, or any
42 officer or agency of either, fees and mileage need not be tendered.

43 ~~(b)(3) Prior notice of any commanded production or inspection of documents or~~
44 ~~tangible things or inspection of premises before trial shall be served on each party in the~~
45 ~~manner prescribed by Rule 5(b). If the subpoena commands a person to copy and mail~~
46 ~~or deliver documents or electronically stored information, to produce documents,~~
47 ~~electronically stored information or tangible things for inspection, copying, testing or~~
48 ~~sampling or to permit inspection of premises, the party or attorney responsible for~~
49 ~~issuing the subpoena shall serve each party with notice of the subpoena by delivery or~~
50 ~~other method of actual notice before serving the subpoena.~~

51 ~~(b)(1)(B) Proof of service when necessary shall be made by filing with the clerk of~~
52 ~~the court from which the subpoena is issued a statement of the date and manner of~~
53 ~~service and of the names of the persons served, certified by the person who made the~~
54 ~~service.~~

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

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

62 ~~(b)(3) Subpoena for taking deposition. (c) Appearance; resident; non-resident.~~

63 ~~(b)(3)(A)~~ (c)(1) A person who resides in this state may be required to appear:
64 (c)(1)(A) at a trial or hearing in the county in which the case is pending; and
65 (c)(1)(B) at a deposition, or to produce documents, electronically stored information
66 or tangible things, or to permit inspection of premises only in the county ~~where-in~~ in which
67 the person resides, ~~or~~ is employed, or transacts business in person, or at such other
68 place as the court may order.

69 (c)(2) A person who does not reside in this state but who is served within this state
70 may be required to appear:

71 (c)(2)(A) at a trial or hearing in the county in which the case is pending; and
72 (c)(2)(B) at a deposition, or to produce documents, electronically stored information
73 or tangible things, or to permit inspection of premises only in the county ~~in this state~~
74 ~~where-in~~ in which the person is served ~~with a subpoena~~, or at such other place as the
75 court may order.

76 ~~(b)(3)(B) A subpoena commanding the appearance of a witness at a deposition may~~
77 ~~also command the person to whom it is directed to produce or to permit inspection and~~
78 ~~copying of documents or tangible things relating to any of the matters within the scope~~
79 ~~of the examination permitted by Rule 26(b), but in that event the subpoena will be~~
80 ~~subject to the provisions of Rule 30(b) and paragraph (c) of this rule.~~

81 ~~(b)(4) Subpoena for production or inspection of documents or tangible things or~~
82 ~~inspection of premises. A subpoena to command a person who is not a party to produce~~
83 ~~or to permit inspection and copying of documents or tangible things or to permit~~
84 ~~inspection of premises may be served at any time after commencement of the action.~~
85 ~~The scope and procedure shall comply with Rule 34, except that the person must be~~
86 ~~allowed at least 14 days to comply as stated in subparagraph (c)(2)(A) of this rule.~~ (d)
87 Payment of production or copying costs. The party ~~servng~~ or attorney responsible for
88 issuing the subpoena shall pay the reasonable cost of producing or copying ~~the~~
89 documents, electronically stored information or tangible things. Upon the request of any
90 other party and the payment of reasonable costs, the party ~~servng~~ or attorney
91 responsible for issuing the subpoena shall provide to the requesting party copies of all
92 documents, electronically stored information or tangible things obtained in response to
93 the subpoena or shall make the tangible things available for inspection.

94 ~~(e)~~ (e) Protection of persons subject to subpoenas; objection.

95 ~~(e)(1) A~~ (e)(1) The party or ~~an~~ attorney responsible for ~~the issuance and service of~~
96 issuing a subpoena shall take reasonable steps to avoid imposing an undue burden or
97 expense on ~~a~~ the person subject to ~~that~~ the subpoena. The court ~~from which the~~
98 subpoena was issued shall enforce this duty and impose upon the party or attorney in
99 breach of this duty an appropriate sanction, which may include, but is not limited to, lost
100 earnings and a reasonable attorney's attorney fee.

101 ~~(e)(2)(A)~~ (e)(2) A subpoena ~~served upon a person who is not a party to copy and~~
102 mail or deliver documents or electronically stored information, to produce ~~or to permit~~
103 inspection and copying of documents, electronically stored information or tangible
104 things, or to permit inspection of premises, ~~whether or not joined with a command to~~
105 appear at trial, or at hearing, or at deposition, must allow the person at least 14 days
106 after service to comply, unless a shorter time has been ordered by the court for good
107 cause shown shall comply with Rule 34(a) and (b)(1), except that the person subject to
108 the subpoena must be allowed at least 14 days after service to comply.

109 ~~(e)(2)(B) A person commanded to produce or to permit inspection and copying of~~
110 documents or tangible things or to permit inspection of premises need not appear in
111 person at the place of production or inspection unless also commanded to appear at
112 trial, at hearing, or at deposition.

113 ~~(e)(2)(C) A person commanded to produce or to permit inspection and copying of~~
114 documents or tangible things or inspection of premises may, before the time specified
115 for compliance with the subpoena, serve upon the party or attorney designated in the
116 subpoena written objection to inspection or copying of any or all of the documents or
117 tangible things or inspection of the premises. ~~(e)(3) The person subject to the subpoena~~
118 may object if the subpoena:

119 (e)(3)(A) fails to allow reasonable time for compliance;

120 (e)(3)(B) requires a resident of this state to appear at other than a trial or hearing in
121 a county in which the person does not reside, is not employed, or does not transact
122 business in person;

123 (e)(3)(C) requires a non-resident of this state to appear at other than a trial or
124 hearing in a county other than the county in which the person was served;

125 (e)(3)(D) requires the person to disclose privileged or other protected matter and no
126 exception or waiver applies;

127 (e)(3)(E) requires the person to disclose a trade secret or other confidential
128 research, development, or commercial information;

129 (e)(3)(F) subjects the person to an undue burden or cost;

130 (e)(3)(G) requires the person to produce electronically stored information in a form or
131 forms to which the person objects;

132 (e)(3)(H) requires the person to provide electronically stored information from
133 sources that the person identifies as not reasonably accessible because of undue
134 burden or cost; or

135 (e)(3)(I) requires the person to disclose an unretained expert's opinion or information
136 not describing specific events or occurrences in dispute and resulting from the expert's
137 study that was not made at the request of a party.

138 (e)(4)(A) If the person subject to the subpoena objects, the objection must be made
139 before the date for compliance.

140 (e)(4)(B) The person subject to the subpoena shall state the objection in a concise,
141 non-conclusory manner.

142 (e)(4)(C) If the objection is that the information commanded by the subpoena is
143 privileged or protected and no exception or waiver applies, or requires the person to
144 disclose a trade secret or other confidential research, development, or commercial
145 information, the objection shall sufficiently describe the nature of the documents,
146 communications, or things not produced to enable the party or attorney responsible for
147 issuing the subpoena to contest the objection.

148 (e)(4)(D) If the objection is that the electronically stored information is from sources
149 that are not reasonably accessible because of undue burden or cost, the person from
150 whom discovery is sought must show that the information sought is not reasonably
151 accessible because of undue burden or cost.

152 (e)(4)(E) The person shall serve the objection on the party or attorney responsible
153 for issuing the subpoena. The party or attorney responsible for issuing the subpoena
154 shall serve a copy of the objection on the other parties.

155 (e)(5) If objection is made, the party serving or attorney responsible for issuing the
156 subpoena shall is not be entitled to inspect and copy the materials or inspect the
157 premises except pursuant to an order of the court. If objection has been made, the party
158 serving the subpoena may, upon notice to the person commanded to produce,
159 compliance but may move at any time for an order to compel the production
160 compliance. The motion shall be served on the other parties and on the person subject
161 to the subpoena. Such an An order to compel production compelling compliance shall
162 protect any the person who is not a party or an officer of a party subject to the subpoena
163 from significant expense resulting from the inspection and copying commanded or
164 harm. The court may quash or modify the subpoena. If the party or attorney responsible
165 for issuing the subpoena shows a substantial need for the information that cannot be
166 met without undue hardship, the court may order compliance upon specified conditions.

167 ~~(c)(3)(A) On timely motion, the court from which a subpoena was issued shall quash~~
168 ~~or modify the subpoena if it:~~

169 ~~(c)(3)(A)(i) fails to allow reasonable time for compliance;~~

170 ~~(c)(3)(A)(ii) requires a resident of this state who is not a party to appear at deposition~~
171 ~~in a county in which the resident does not reside, or is not employed, or does not~~
172 ~~transact business in person; or requires a non-resident of this state to appear at~~
173 ~~deposition in a county other than the county in which the person was served;~~

174 ~~(c)(3)(A)(iii) requires disclosure of privileged or other protected matter and no~~
175 ~~exception or waiver applies;~~

176 ~~(c)(3)(A)(iv) subjects a person to undue burden.~~

177 ~~(c)(3)(B) If a subpoena:~~

178 ~~(c)(3)(B)(i) requires disclosure of a trade secret or other confidential research,~~
179 ~~development, or commercial information;~~

180 ~~(c)(3)(B)(ii) requires disclosure of an unretained expert's opinion or information not~~
181 ~~describing specific events or occurrences in dispute and resulting from the expert's~~
182 ~~study made not at the request of any party;~~

183 ~~(c)(3)(B)(iii) requires a resident of this state who is not a party to appear at~~
184 ~~deposition in a county in which the resident does not reside, or is not employed, or does~~
185 ~~not transact business in person; or~~

186 ~~(c)(3)(B)(iv) requires a non-resident of this state who is not a party to appear at~~
187 ~~deposition in a county other than the county in which the person was served;~~
188 ~~the court may, to protect a person subject to or affected by the subpoena, quash or~~
189 ~~modify the subpoena or, if the party serving the subpoena shows a substantial need for~~
190 ~~the testimony or material that cannot otherwise be met without undue hardship and~~
191 ~~assures that the person to whom the subpoena is addressed will be reasonably~~
192 ~~compensated, the court may order appearance or production only upon specified~~
193 ~~conditions.~~

194 ~~(d)(f)~~ Duties in responding to subpoena.

195 (f)(1) A person commanded to copy and mail or deliver documents or electronically
196 stored information or to produce documents, electronically stored information or tangible
197 things shall serve on the party or attorney responsible for issuing the subpoena a
198 declaration under penalty of law stating in substance:

199 (f)(1)(A) that the declarant has knowledge of the facts contained in the declaration;

200 (f)(1)(B) that the documents, electronically stored information or tangible things
201 copied or produced are a full and complete response to the subpoena;

202 (f)(1)(C) that the documents, electronically stored information or tangible things are
203 the originals or that a copy is a true copy of the original; and

204 (f)(1)(D) the reasonable cost of copying or producing the documents, electronically
205 stored information or tangible things.

206 ~~(d)(1)-(f)(2)~~ A person responding to a subpoena commanded to copy and mail or
207 deliver documents or electronically stored information or to produce documents,
208 electronically stored information or tangible things shall copy or produce them as they
209 are kept in the usual course of business or shall organize and label them to correspond
210 with the categories in the ~~demand~~ subpoena.

211 ~~(d)(2) When information subject to a subpoena is withheld on a claim that it is~~
212 ~~privileged or subject to protection as trial preparation materials, the claim shall be made~~
213 ~~expressly and shall be supported by a description of the nature of the documents,~~
214 ~~communications, or things not produced that is sufficient to enable the demanding party~~
215 ~~to contest the claim.~~

216 (f)(3) If a subpoena does not specify the form or forms for producing electronically
217 stored information, a person responding to a subpoena must produce the information in
218 the form or forms in which the person ordinarily maintains it or in a form or forms that
219 are reasonably usable.

220 (f)(4) If the information produced in response to a subpoena is subject to a claim of
221 privilege or of protection as trial-preparation material, the person making the claim may
222 notify any party who received the information of the claim and the basis for it. After
223 being notified, the party must promptly return, sequester, or destroy the specified
224 information and any copies of it and may not use or disclose the information until the
225 claim is resolved. A receiving party may promptly present the information to the court
226 under seal for a determination of the claim. If the receiving party disclosed the
227 information before being notified, it must take reasonable steps to retrieve the
228 information. The person who produced the information must preserve the information
229 until the claim is resolved.

230 ~~(e)-(g)~~ Contempt. Failure by any person without adequate excuse to obey a
231 subpoena served upon that person ~~may be deemed a~~ is punishable as contempt of ~~the~~
232 ~~court from which the subpoena issued. An adequate cause for failure to obey exists~~
233 ~~when a subpoena purports to require a nonparty to appear or produce at a place not~~
234 ~~within the limits provided by subparagraph (c)(3)(A)(ii).~~

235 ~~(f)-(h)~~ Procedure ~~where when~~ witness ~~conceals himself evades service~~ or fails to
236 attend. If a witness evades service of a subpoena, or fails to attend after service of a
237 subpoena, the court may issue a warrant to the sheriff of the county to arrest the
238 witness and bring the witness before the court.

239 ~~(g)-(i)~~ Procedure when witness is confined in jail. If the witness is a prisoner ~~confined~~
240 ~~in a jail or prison within the state,~~ a party may move for an order ~~for examination to~~
241 examine the witness in the jail or prison ~~upon deposition or, in the discretion of the~~
242 court, for temporary removal and production or to produce the witness before the court
243 or officer for the purpose of being orally examined, ~~may be made upon motion, with or~~
244 ~~without notice, by a justice of the Supreme Court, or by the district court of the county in~~
245 ~~which the action is pending.~~

246 ~~(h)-(j)~~ Subpoena unnecessary; ~~when~~. A person present in court, or before a judicial
247 officer, may be required to testify in the same manner as if the person were in
248 attendance upon a subpoena.

249 ~~Advisory Committee Notes~~

250 ~~Purposes of Amendment. The 1994 amendments represent a substantial change~~
251 ~~from prior practice. Patterned on the 1991 amendments to Fed. R. Civ. P. 45, these~~
252 ~~amendments expedite and facilitate procedures for serving subpoenas, modify~~
253 ~~procedures relating to persons who are not parties to correspond to procedures relating~~
254 ~~to parties under Utah R. Civ. P. 34, and specify the rights and obligations of persons~~
255 ~~served with a subpoena.~~

256 ~~Paragraph (a). This paragraph amends former Rule 45 in the following important~~
257 ~~respects:~~

258 ~~First, subparagraph (a)(6)(3) authorizes an attorney to issue and sign a subpoena as~~
259 ~~an officer of the court. The subparagraph eliminates the requirement that an attorney~~
260 ~~obtain a subpoena from the clerk of the court, and the requirement that a subpoena be~~
261 ~~issued under seal of the court. An attorney who is not a member of the Utah State Bar~~
262 ~~but who has been admitted to practice pro hac vice in the court in which the action is~~
263 ~~pending is authorized to issue a subpoena. Consistent with the authority of an attorney~~
264 ~~to issue a subpoena, subparagraph (a)(1)(B) requires every subpoena to identify the~~
265 ~~attorney serving it. Subparagraph (a)(1)(A) requires every subpoena to issue from the~~
266 ~~court in which the action is pending, amending former Rule 45(d)(1), which authorized a~~
267 ~~deposition to be issued from the court where the deposition is to take place, as well as~~
268 ~~the court where the action is pending.~~

269 ~~Second, subparagraph (a)(2) authorizes a party to serve upon a person who is not a~~
270 ~~party a subpoena to produce or to permit inspection and copying of documents or~~
271 ~~tangible things, or to permit inspection of premises. A party no longer must serve a~~
272 ~~subpoena duces tecum to discover documents or tangible things from a person who is~~
273 ~~not a party, although the amended rule preserves that option, and no longer must bring~~
274 ~~an independent action for entry onto land. Subparagraph (a)(2) also requires a person~~
275 ~~who is not a party to produce materials within that person's control, which subjects that~~

276 ~~person to the same scope of discovery as if that person were a party served with a~~
277 ~~discovery request under Rule 34.~~

278 ~~Third, subparagraph (a)(1)(D) requires every subpoena to state the rights and duties~~
279 ~~of a person served in a form substantially similar to the form in the Appendix to these~~
280 ~~rules.~~

281 ~~Paragraph (b) also amends former Rule 45 in several important respects.~~
282 ~~Subparagraph (b)(1)(A) requires prior notice of each commanded production or~~
283 ~~inspection of documents or tangible things, or inspection of premises, to be served as~~
284 ~~prescribed by Rule 5(b). This subparagraph ensures that other parties will have notice~~
285 ~~enabling them to object to or participate in discovery, or to serve a demand for~~
286 ~~additional materials. No similar provision is included for depositions, because~~
287 ~~depositions are governed by Rule 30 or 31. Subparagraph (b)(1)(A) specifies that the~~
288 ~~subpoena may be served as required by Rule 4(e), amending paragraph (c) of the~~
289 ~~former rule.~~

290 ~~Subparagraph (b)(4) authorizes a subpoena for production or inspection of~~
291 ~~documents or tangible things or inspection of premises to be served upon a person who~~
292 ~~is not a party at any time after commencement of the action. A subpoena served upon a~~
293 ~~person who is not a party has the same scope specified in Rule 34(a) for a request~~
294 ~~served upon a party, and is subject to the same procedures specified in Rule 34(b). A~~
295 ~~person who is not a party is not required to file a written response to the subpoena,~~
296 ~~unless the party objects to the subpoena pursuant to subparagraph (c)(2)(D).~~

297 ~~Subparagraph (b)(4) also requires each party serving a subpoena for the production~~
298 ~~of documents to provide to other parties copies of documents obtained in response to~~
299 ~~the subpoena. No comparable provision appears in the federal rule, but the Committee~~
300 ~~determined that such a provision would alleviate some of the burden imposed upon~~
301 ~~persons who are not parties and shift it to parties.~~

302 ~~Other subparagraphs make minor amendments to the former Rule 45.~~
303 ~~Subparagraph (b)(1)(C) amends former paragraph (d)(3) to include a subpoena for~~
304 ~~document production or inspection, as well as a deposition subpoena. Subparagraph~~
305 ~~(b)(2) is the former paragraph (e) with minor modifications. Subparagraph (b)(3)(A)~~
306 ~~requires a nonresident to attend deposition only in the county where the nonresident is~~

307 ~~served, amending former paragraph (d)(2) to eliminate the requirement that a~~
308 ~~nonresident attend a deposition within forty miles of the place of service.~~

309 ~~Paragraph (c). Paragraph (c) states the rights of witnesses or other persons served~~
310 ~~with subpoenas. The paragraph does not diminish rights conferred by any other rule or~~
311 ~~any other authority. Subparagraph (c)(1) states the duty of an attorney to minimize the~~
312 ~~burden on a witness who is not a party, and specifies that such a witness may recover~~
313 ~~lost earnings that result from the misuse of a subpoena. Subparagraph (c)(1) expands~~
314 ~~the responsibility of an attorney stated in Rule 26(g); this responsibility is correlative to~~
315 ~~the expanded power of an attorney to issue a subpoena.~~

316 ~~Subparagraph (c)(2)(A) specifies that a person who is not a party served with a~~
317 ~~subpoena for the production or inspection of documents or tangible things or inspection~~
318 ~~of premises must have at least 14 days to respond. A subpoena to appear at trial, at~~
319 ~~hearing, or at deposition must be served within a reasonable time, unless it also~~
320 ~~requires the production of documents.~~

321 ~~Subparagraph (c)(2)(C) states that a person who is not a party has no obligation to~~
322 ~~make copies or to advance costs, and has no counterpart in either the federal rule or~~
323 ~~the former state rule. The Committee included this statement in the rule so that it would~~
324 ~~become part of the notice provided to each person served with a subpoena.~~

325 ~~Subparagraph (c)(2)(D) specifies that a person served with a subpoena for the~~
326 ~~production or inspection of documents or tangible things or inspection of premises may~~
327 ~~serve written objection upon the party serving the subpoena. The party serving the~~
328 ~~subpoena bears the burden to obtain an order to compel production, and must provide~~
329 ~~prior notice to the person served of the motion to compel. A person served with a~~
330 ~~subpoena to appear at trial, at hearing, or at deposition, must appear unless the person~~
331 ~~obtains a court order to quash or modify the subpoena; a written objection to the serving~~
332 ~~party is insufficient. A person served with a subpoena duces tecum may object to~~
333 ~~providing documents by notifying the party serving the subpoena, but still must appear~~
334 ~~to testify at trial, at hearing, or at deposition, unless the person obtains an order to~~
335 ~~quash or modify the subpoena.~~

336 ~~Subparagraph (c)(3) identifies the circumstances in which a subpoena may be~~
337 ~~modified or quashed. It follows paragraph (c)(3) of the 1991 amendments to Fed. R.~~

338 ~~Civ. P. 45, but is modified to specify the locations where residents or nonresidents of~~
339 ~~the State may be compelled to attend deposition.~~

340 ~~Paragraph (d). This paragraph follows the 1991 amendments to Fed R. Civ. P. 45.~~
341 ~~Subparagraph (d)(2)(D) applies to privileged attorney-client communications, and to all~~
342 ~~attorney work product protected under the doctrine of Hickman v. Taylor, 329 U.S. 495,~~
343 ~~67 S. Ct. 385, 91 L. Ed. 451 (1947), and progeny.~~

344 ~~Paragraph (e). This paragraph specifies that an adequate cause for failure to obey~~
345 ~~exists when a subpoena purports to require a party to respond at a place beyond the~~
346 ~~geographic boundaries imposed by the rule, amending former paragraph (f).~~

347 ~~Paragraph (f). This is the former paragraph (g), amended to eliminate references to~~
348 ~~the masculine pronoun.~~

349 ~~Paragraph (g). This is the former paragraph (h).~~

350 ~~Paragraph (h). This is the former paragraph (i), amended to eliminate references to~~
351 ~~the masculine pronoun.~~

352

Tab 6

1 ~~Rule 11-101. Supreme Court's rulemaking process.~~ ARTICLE 1. Advisory
2 Committees and the Rulemaking Process.

3 Intent:

4 To establish ~~a~~procedures for the adoption, modification, and repeal of rules ~~of~~
5 ~~procedure and evidence, and rules~~ governing the practice of law, evidence, court
6 procedures, and other matters within the authority of the Supreme Court.

7 Applicability:

8 ~~This rule shall apply to the Judiciary, the Utah State Bar, the Supreme Court's~~
9 ~~Advisory Rules Committees, the Supreme Court's Board of Continuing Legal Education,~~
10 ~~the Supreme Court's Ethics and Discipline Committee, and all other individuals and~~
11 ~~entities participating in the rulemaking process.~~

12 Statement of the Rule:

13 ~~(1)~~ Statement of a Authority.

14 (1) Article VIII, Section 4 of the Utah Constitution provides that the Supreme Court
15 shall adopt rules of procedure and evidence to be used in the courts of the state and
16 shall by rule manage the appellate process. Section 4 further provides that the Supreme
17 Court may authorize retired justices and judges and judges pro tempore to perform
18 judicial duties. ~~Finally,~~ Section 4 also provides that the Supreme Court shall by rule
19 govern the practice of law, including admission to practice law and the conduct and
20 discipline of persons admitted to practice law.

21 (2) To assist the Supreme Court with these responsibilities, the Supreme Court
22 hereby establishes a procedure for the creation and operation of advisory committees;
23 the adoption, repeal and amendment of rules of procedure and evidence; rules
24 regulating judges pro tempore and retired judges; ~~and~~ rules governing the practice of
25 law. and other matters within the constitutional authority of the Supreme Court.

26

1 ~~(2)~~ Rule 11-101. Creation and eComposition of aAdvisory rules eCommittees.

2 Intent:

3 To establish advisory committees and procedures to govern those committees.

4 Applicability:

5 This rule shall apply to the Supreme Court, the Administrative Office of the Courts,
6 and the Supreme Court advisory committees.

7 ~~(2)(A)-(1)~~ Establishment of committees. There is hereby established a Supreme
8 Court advisory ~~rules~~-committee in each of the following areas: civil procedure, criminal
9 procedure, juvenile court procedure, appellate procedure, evidence, ~~civil-jury~~
10 ~~instructions, criminal jury instructions,~~ and the rules of professional conduct. The
11 Supreme Court shall designate a liaison to each advisory committee and to the Utah
12 State Bar.

13 ~~(2)(B)-(2)~~ Composition of committees. The Supreme Court shall determine the size
14 of each committee based upon the workload of the individual committees. The
15 committees should be broadly representative of the legal community and should include
16 practicing lawyers, academicians, and judges. Members should possess expertise
17 within the committee's jurisdiction.

18 ~~(2)(C)-(3)~~ Application and recruitment of committee members. Vacancies on the
19 committees shall be announced ~~in the Utah Bar Journal. in a manner reasonably~~
20 calculated to reach members of the Utah State Bar. The notice shall specify the name of
21 the committee which has the vacancy, a brief description of the committee's
22 responsibilities, the method for submitting an application or letter of interest and the
23 application deadline. Members of the committees or the Supreme Court may solicit
24 applications for membership on the committees. Applications and letters of interest shall
25 be submitted to the Supreme Court.

26 ~~(2)(D)-(4)~~ Appointment of committee members and chair. Upon expiration of the
27 application deadline, the Supreme Court shall review the applications and letters of
28 interest and appoint those individuals who are best suited to serve on the committee.
29 Members shall be appointed to serve staggered four-year terms. The ~~Chief Justice~~
30 Supreme Court shall select a chair from among the committee's members. ~~The chair~~
31 ~~shall be appointed to serve a two-year term and may be appointed to serve additional~~

32 ~~two-year terms.~~ Judges who serve as members of the committees generally shall not be
33 selected as chairs. Committee members shall serve as officers of the court and not as
34 representatives of any client, employer, or other organization or interest group. At the
35 first meeting of a committee in any calendar year, and at every meeting at which a new
36 member of the committee first attends, each committee member shall briefly disclose
37 the general nature of his or her legal practice.

38 ~~(2)(E)-(5)~~ Vacancies. In the event of a vacancy on a committee due to death,
39 incapacity, resignation or removal, the Supreme Court, after consultation with the
40 committee chair, shall appoint a new committee member to serve for the remainder of
41 the unexpired term ~~to which appointed~~.

42 ~~(2)(F)-(6)~~ Absences. In the event that a committee member fails to attend three
43 committee meetings during a calendar year, the chair ~~shall~~ may notify the Supreme
44 Court of those absences and may request that the Supreme Court replace that
45 committee member.

46 ~~(2)(G)-(7)~~ Administrative assistance. The Administrative Office of the Courts shall
47 coordinate staff support to each committee, including the assistance of the Office of
48 General Counsel in research and drafting and the coordination of secretarial support
49 and publication activities.

50 ~~(2)(H)-(8)~~ Recording secretaries. A committee chair may appoint a third-year law
51 student, a member of the Bar in good standing, or a legal secretary to serve as a
52 recording secretary for the committee. The recording secretary, shall attend and take
53 minutes at committee meetings, provide research and drafting assistance to committee
54 members and perform other assignments as requested by the chair.

55 ~~(3) Responsibility of advisory rules committees.~~

56

1 **Rule 11-102. Advisory Committee Procedures.**

2 Intent:

3 To establish procedures governing the advisory committees.

4 Applicability:

5 This rule shall apply to the Supreme Court and the Supreme Court advisory
6 committees.

7 ~~(3)(A)-(1)~~ Petitions. Petitions for the adoption, repeal or amendment of a rule of
8 procedure, evidence, or professional conduct, ~~or a jury instruction~~ may be submitted by
9 any interested individual to the Utah chair of an advisory committee, or to the Supreme
10 Court. Petitions shall be in writing, ~~shall and should~~ set forth the proposed rule,
11 amendment, or instruction, or the text of the rule or instruction proposed for repeal, and
12 shall specify the need for and anticipated effect of the proposal.

13 ~~(3)(B)-(2)~~ Committee agenda. The Supreme Court shall forward ~~all submitted~~
14 petitions to the chair of the appropriate committee. All petitions shall be placed on the
15 committee's agenda for consideration and the committee shall provide written
16 notification of committee action to ~~all individuals who file petitions~~ petitioners. In addition
17 to petitions, the chairs shall place on the agenda any item of interest to the committee.

18 ~~(3)(C)-(3)~~ Committee work. Committees shall meet as a whole, at the direction of the
19 chair, to discuss and vote upon ~~individual and subcommittee~~ recommendations and to
20 prepare written recommendations to the Supreme Court concerning petitions or
21 committee-initiated proposals. A majority of the members of the committee shall
22 constitute a quorum for the transaction of business. The chair may cast a vote only to
23 break a tie vote of the members present. Voting by proxy shall not be allowed. An
24 individual committee may adopt additional procedures not inconsistent with these rules.
25 Minutes shall be taken at all meetings of the committee of the whole and a copy shall be
26 forwarded to the Supreme Court's liaison for the committee.

27 ~~(4)~~ Public comment.

28

1 Rule 11-103. Rulemaking Procedures.

2 Intent:

3 To establish procedures for disseminating proposed rules to the Utah State Bar,
4 Judiciary, interested groups, and members of the public.

5 Applicability:

6 This rule shall apply to the Supreme Court, the Administrative Office of the Courts,
7 and the Supreme Court advisory committees.

8 ~~(4)(A)-(1)~~ Submission of final rules recommendations. Each advisory ~~rules~~
9 committee shall vote upon and finalize its recommendations and any proposed
10 committee notes for public comment and submit them to the Administrative Office of the
11 Courts for publication and distribution.

12 ~~(4)(B)-(2)~~ Publication. The Administrative Office of the Courts shall publish the final
13 committee recommendations and any proposed committee notes for a 45-day comment
14 period. ~~The comment period will run from the expected publication date of the law~~
15 ~~reporter service in which the rules will appear.~~ The purpose of the comment period shall
16 be to solicit written ~~or oral~~ comment concerning the committees' recommendations ~~and~~
17 ~~to request input on the committees' agenda.~~

18 ~~(4)(C)-(3)~~ Distribution. Copies of proposed rules and any advisory committee notes
19 shall be distributed as provided in Rule ~~2-203~~ 11-106.

20 ~~(4)(D)-(4)~~ Comment. ~~The committees have the discretion to limit public comment to~~
21 ~~oral or written comment.~~ Written comment shall be submitted to the Administrative
22 Office of the Courts. ~~Oral comment shall be scheduled for hearing at the convenience of~~
23 ~~the committee during the 45-day comment period.~~

24 ~~(4)(E)-(5)~~ Committee review. Upon the expiration of the comment period, the
25 Administrative Office of the Courts shall compile all of the written comment received and
26 forward it to the appropriate committee chair. The chair shall convene a meeting of the
27 committee for the purpose of reviewing the public comment and discussing and voting
28 upon appropriate modifications to the rules. If after receiving public comment, a
29 committee makes substantial modifications to the proposed rule, the committee may
30 submit the modified rule to the Administrative Office of the Courts for re-publication and
31 further public comment.

32 ~~(4)(F)-(6)~~ Transmittal. Once the committee has reviewed the public comment and
33 voted upon the final modifications to the proposed rules and committee notes, it shall
34 submit a letter of transmittal to the Supreme Court with a copy of the committee's final
35 proposals, a summary of the public comment and the committee's recommendations in
36 response to the comment.

37 ~~(5) Responsibility of Utah State Bar, or other entities, as to proposed amendments to~~
38 ~~rules pertaining to the practice of law.~~

39

1 Rule 11-104. Procedures Pertaining to the Practice of Law.

2 Intent:

3 To establish procedures for adopting or modifying rules pertaining to the practice of
4 law.

5 Applicability:

6 This rule shall apply to the Supreme Court, the Administrative Office of the Courts,
7 the Utah State Bar, the Supreme Court Board of Continuing Legal Education, and the
8 Supreme Court Ethics and Discipline Committee.

9 ~~(5)(A)-(1)~~ Petitions. Petitions for the adoption, repeal or amendment of rules or
10 procedures governing, affecting, or pertaining to the practice of law, other than the rules
11 of professional conduct, shall be filed with the ~~Utah~~ Supreme Court. Petitions shall set
12 forth the proposed rule or amendment or the text of the rule proposed for repeal and
13 shall specify the need for and anticipated effect of the proposal.

14 ~~(5)(B)-(2)~~ Publication. After preliminary review of the petition, the Supreme Court
15 shall submit the proposed rule or amendments to the Administrative Office of the Courts
16 to be published for a 45-day comment period.

17 ~~(5)(C)-(3)~~ Distribution. Distribution of the proposed rule or amendments shall be as
18 provided in Rule ~~2-203~~11-106.

19 ~~(5)(D)-(4)~~ Supreme Court review. Upon the expiration of the comment period, the
20 Administrative Office of the Courts shall compile all of the written comment received and
21 forward it to the Supreme Court.

22 ~~(5)(E)~~ Petitioner's review. Following receipt of the written comment, the Supreme
23 Court shall submit a copy of the comments to the entity who filed the petition seeking
24 the rule change. Petitioner shall review the comments and ~~vote upon~~ recommend any
25 final modification to the rules or procedures. Once petitioner has completed its review,
26 ~~and voted upon the final modifications,~~ it shall submit a memorandum to the Supreme
27 Court containing the petitioner's final proposals, a summary of the public comment, and
28 the petitioner's recommendations in response to the public comment.

29 ~~(6) Responsibility of Supreme Court.~~

30 ~~(6)(A) Court liaison. The Supreme Court shall designate a representative of the~~
31 ~~Court to serve as a liaison to each advisory rules committee and to the Utah State Bar.~~

32

1 Rule 11-105. Supreme Court Action on Rule Modifications.

2 Intent:

3 To establish procedures for the review and adoption of rule change
4 recommendations.

5 Applicability:

6 This rule shall apply to the Supreme Court and the Administrative Office of the
7 Courts.

8 ~~(6)(B)-(1)~~ Advisory ~~rules~~-committee proposals. The Supreme Court shall consider
9 committee proposals and adopt, modify or reject those proposals. The Supreme Court
10 shall notify committee chairs and the Administrative Office of the Courts as to which
11 proposals were adopted, modified, or rejected.

12 ~~(6)(C)-(2)~~ Petitions concerning rules or procedures pertaining to the practice of law.
13 The Supreme Court shall consider petitions and petitioners' memoranda and adopt,
14 modify, or reject the proposals made and enter an appropriate order.

15 ~~(6)(D)-(3)~~ Court-initiated rules.

16 (3)(A) In its discretion, the Supreme Court may adopt rules of procedure or
17 evidence, rules regulating judges pro tempore and retired judges, and rules governing
18 the practice of law, or modify or repeal those rules upon its own initiative and without
19 proposals by the advisory committees or the Utah State Bar. ~~Court initiated rules shall~~
20 ~~be published for a 45-day public comment period in accordance with Paragraph (3).~~

21 (3)(B) The Supreme Court shall distribute a copy of the proposed rule as provided in
22 Rule 11-106.

23 (3)(C) The Administrative Office of the Courts shall publish the rule for a 45-day
24 comment period and submit any comments received during that period to the Supreme
25 Court for consideration. The Supreme Court may then adopt, or amend and adopt, or
26 decline to adopt the rule.

27 ~~(6)(E)-(4)~~ Effective date. Rules shall become effective 60 days after adoption by the
28 Supreme Court unless otherwise ordered.

29 ~~(6)(F)-(5)~~ Expedited rulemaking.

30 (5)(A) Notwithstanding the other provisions contained in these rules, if the Supreme
31 Court determines ~~by an affirmative vote of the members of the Supreme Court~~ that it is

32 in the best interest of the Judiciary to suspend the rulemaking procedures, the Supreme
33 Court may ~~take final action on a committee or Court-initiated proposal, approve the~~
34 ~~proposal and provide for an immediate effective date~~ adopt any rule and provide a date
35 for the rule to become effective.

36 (5)(B)The Supreme Court shall ~~transmit~~ distribute a copy of the approved rule as
37 provided in Rule 11-106~~or committee note to each committee chair and the~~
38 ~~Administrative Office of the Courts~~. The Administrative Office of the Courts shall publish
39 the rule for a 45-day comment period and submit any comments received during that
40 period to the Supreme Court for consideration. The Supreme Court may then ratify,
41 amend or repeal the rule.

42 (6)(G) Publication. All rules adopted by the Supreme Court shall be published in the
43 ~~official publication for Supreme Court Rules.~~

44

1 **Rule 11-106. Rule Distribution Process.**

2 Intent:

3 To establish a procedure for the distribution of proposed or adopted rule changes
4 and other communications from the Supreme Court.

5 Applicability:

6 This rule shall apply to the Supreme Court and the Administrative Office of the
7 Courts.

8 (1) Distribution list. At the direction of the Supreme Court, the Administrative Office
9 of the Courts shall email notice of the proposed or adopted rules, and an invitation for
10 comment to the governor, the chairperson of the Judicial Rules Review Committee, the
11 director of the Office of Legislative Research and General Counsel, the Boards of
12 Judges, the Executive Director of the Commission on Criminal and Juvenile Justice, the
13 chair of each of the Supreme Court advisory committees, the Executive Director of the
14 Utah State Bar, each active member of the Utah State Bar, each member of the
15 Judiciary, the proponent of the rule change, and any other person or agency identified
16 by the Supreme Court as requiring notice. The notice shall include a summary of the
17 proposed changes and identify the URL where the full text of proposed rules is
18 available.

19 (2) Publication. The proposed or adopted rule and an invitation for comment shall be
20 published in a law reporter.

21

Tab 7

Miscellaneous Issues

Form 3B page 2 Para 1 not supported by R 4.		
I just finished a Rule 11 motion on an attorney who filed a motion for summary judgment he has absolutely no hope of winning because we have a straight faced argument there was a settlement of all claims. I am following the Rule 11 21 day safe harbor requirements. Tell me again why the civil procedure committee is not willing to give us 30 days to respond to a summary judgment which would, in this case, not require me to do all the work of responding and then have him bail out and cover himself. One of those two time frames needs to change, either we need 30 days to respond to summary judgment or we need a shorter safe harbor time.		Bob Wilde
URCP 64D. If P&D agree on an amount, tell the employer. If it is a continuing garnishment of a regular pay period for fixed hours and wages, calculate only once and withhold that amount each time.		Sandra Lovey. 575-5414. (Employer/Garnishee)
Maybe I've missed this in the rules, but the rules committee ought to address a rule regarding requiring the opposing party to designate a Rule 30 b 6 witness to appear and testify at trial if so requested by the other party. Rule 30 applies to depositions, and in fact Rule 30 b 6 states, "A subpoena shall advise a nonparty organization of its duty to make such a designation." Rule 45 doesn't address a 30 b 6 designation.		Rich Humpherys
Aurora Credit Services, Inc. v. Liberty West Development, Inc. Rule 54.		Cullen Battle Frank Carney
Rule 28. (No need for independent officer is record of deposition taken by a/v		Frank Carney
Rule 7(c)(3)(D) A party may attach as exhibits to a memorandum relevant		Leslie Slaugh

<p>portions of documents cited in the memorandum, such as affidavits or discovery materials. A party should not attach documents already on file with the court unless the document is of central importance and a duplicate copy attached to the memorandum would be helpful to the court.</p>		
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