Agenda

Advisory Committee on Rules of Civil Procedure
September 22, 2021
4:00 to 6:00 p.m.
Via Webex

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco, Chair
Introduce: • *New recording secretary: Crystal Powell* • *New Clerk of Court member: Loni Page*		Lauren DiFrancesco, Chair
Leadership & Term Changes (CJA 11-101)	Tab 2	Lauren DiFrancesco, Chair
Rules back from public comment • URCP 5 (coordinates with URCP 76) • URCP 24 • URCP 62	Tab 3	Keisa Williams
Rule 100A • *Concerns re clerk resources*	Tab 4	Shane Bahr Jim Peters Nick Stiles Judge Holmberg
Rule 108 • Update from Family Law Procedures Subcommittee • Constitutionality of new standard		Judge Holmberg, Jim Hunnicutt
Rules of Small Claims Procedure • Discuss amendments for statewide ODR	Tab 5	Judge McCullagh, Susan Vogel
Consent agenda --		
Verify Pipeline items: • Rule 45 and objections (Jen Tomchak) • Federal Rule 41 amendments (Judge Mettler and Judge Jones) • Rule 12 and counterclaims in evictions (Susan Vogel, Judge Parker) • Trial date setting (family law-Judge Holmberg, Jim Hunnicutt) • Definitions rule 7.1 (Susan Vogel)		Lauren DiFrancesco, Chair

2021 Meeting Schedule: 4th Wednesday at 4pm unless otherwise scheduled

Committee Webpage: http://www.utcourts.gov/committees/civproc/

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – June 23, 2021

DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members, staff, and guests	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair	X		
Robert Adler	X		
Rod N. Andreason		X	
Paul Barron	X		
Judge James T. Blanch	X		
Jacqueline Carlton		X	
Lauren DiFrancesco	X		
Judge Kent Holmberg	X		
James Hunnicutt	X		
Larissa Lee		X	
Trevor Lee	X		
Judge Amber M. Mettler	X		
Brooke McKnight	X		
Ash McMurray	X		
Timothy Pack	X		
Bryan Pattison	X		
Michael Petrogeorge	X		
Judge Clay Stucki	X		
Judge Laura Scott	X		
Leslie W. Slaugh	X		
Trystan B. Smith	X		
Heather M. Sneddon		X	
Paul Stancil	X		
Nick Stiles		X	
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Christopher Williams	X		
Nancy Sylvester, Staff	X		
Kim Neville, Recording Secretary	X		
Nathaneal Player	X		

(1) APPROVAL OF MINUTES

Jonathan Hafen asked for approval of the minutes as amended with comments from the minutes sub-committee. Jim Hunnicutt moved to adopt the minutes as amended; Rachel DiFrancesco seconded. The minutes were approved unanimously.

(2) RULE 108

Mr. Hunnicutt discussed the proposed amendment to Rule 108, which would alter the standard of review of a commissioner's findings. After analyzing the issue, the sub-committee believes that the amendment could raise potential Constitutional issues that would weigh against the adoption of the proposed amendment.

Judge Stone suggested the Committee may want to consider a future amendment or additional education to provide guidance to judges and practitioners regarding the subject. Judge Blanch commented that the case law suggests that the appellate courts appear to be reviewing the issue for correctness, and that there is at least some burden of persuasion upon the petitioner to show that the commissioner erred.

Leslie Slaugh expressed support for incorporating a standard of review that requires the moving party to identify their grounds for review. Mr. Slaugh also expressed concern that the commissioners often make a decision based upon proffers or affidavit without hearing any evidence. Susan Vogel expressed concern that it would be burdensome for a self-represented party to demonstrate a legal error. Dean Adler commented that Rule 108(b)(2) of the existing rule already provides that the "objection must identify succinctly and with particularly the findings of fact, the conclusions of law, or the part of the recommendation to which the objection is made…" as well as explain why that decision was incorrect. Dean Adler suggested that the issue could be addressed by allowing other avenues for objection, such as insufficiency of proof.

Ms. Vogel also commented that sub-section (d) appears to be drawing a distinction between evidence and proffers, but does not state why.

After a full discussion, Mr. Hafen inquired as to whether any Committee members would be interested in reviewing the issue further and recommending proposed changes. Mr. Hunnicutt volunteered to work with the family law subcommittee to obtain additional input.

(3) RULE 5

Nathaneal Player spoke regarding the proposed changes to Rule 5, which would require a party to file a motion to be excused from e-mail service. Mr. Player commented that the provision could create a barrier for self-represented parties, who often have difficulty filing or presenting motions.

Judge Stone commented that litigants could potentially elect traditional mail to slow down the process; that the courts need to have an efficient method to communicate with all parties; and email is typically the best and most reliable default method. Ms. DiFrancesco also noted that the rules now allow for an additional seven days for mailing days, which would cause further delays when traditional mail is required.

Ms. Vogel commented that the change may be difficult for self-represented parties, who often report difficulty receiving notices from the Court. Mr. Player also commented that a large number of people come to the law library specifically to create an account for mycase, which they often have difficulty accessing in the future.

Tim Pack spoke in support of email as a default service mechanism, as it is relatively easy to obtain a free account or to access the internet through public sources, such as a library.

Judge Stone also commented that there are frequently service issues in landlord-tenant and debtor cases, in which default judgments are being entered based upon service to an old mailing address; using email service could potentially mitigate against this. Ms. Vogel suggested that the Court make it easy for parties to opt out of e-mail service, such as by checking a box in a form. Mr. Slaugh commented that any opt out should include a warning to confirm that the party understands that documents will be sent to the address that is listed. Mr. Player indicated that this may be a feasible option.

Additional revisions were made to subsection (3)(C) to clarify that the party should certify that they do not have access to email. Mr. Hafen suggested that the forms committee prepare / modify an opt-out form so that it can be submitted with the proposed amendment to the Supreme Court.

Ms. DiFrancesco pointed out that the current language does not provide direction for the party who is serving in compliance with the rules. Additional revisions were made to subsection (3)(C) to address this issue.

After a full decision, Mr. Hafen called for the motion. Justin Toth moved to send the proposed amendment with an accompanying opt-out form to the Supreme Court; Ms. DiFrancesco seconded. The motion passed unanimously.

(4) RULE 6.1

Ms. Sylvester presented the proposed amendments to Rule 6.1, which address the use of expedited procedures. This proposal emerged as a result of legislative discussion. The purpose of the rule is to allow for a standing procedure that would alleviate the need for additional legislative regulation.

Mr. Player presented concerns raised by the self-help office concerning the proposed change to subsection (f)(1)(a), which would potentially allow for an occupancy hearing within seven days (as opposed to ten days under the existing statute). The concern is that self-represented parties have difficulty responding under truncated time frames. It is unclear whether the proposed rule is intended to apply to eviction proceedings.

Judge Stone expressed concerns regarding the remote proceedings provision, set forth in 6.1(d). The proposed provision conflicts with Rule 43, which allows the trial judge to determine whether remote proceedings are appropriate. Judge Stone also expressed concerns that self-represented parties and others frequently have difficulty reliably accessing the Court's webex system. Judge Stucki joined in these concerns, indicating that the overwhelming majority of people accessing webex at the Justice Courts have difficulty connecting to the system.

With regard to subsection (e), the Committee also discussed the types of cases in which the expedited procedures rule would apply. Committee members raised questions as to whether the rule would apply to wrongful lien matters, civil commitment matters, or Rule 37 proceedings. In addition, the Committee questioned how subsection (f) intersects with residential eviction cases and the bond requirements in § 78B-6-812.

After a full discussion, Ms. Sylvester recommended that the proposed rule be returned to the liaison committee with the Committee's feedback.

(5) ADJOURNMENT

The meeting adjourned at 5:40 p.m.

Tab 2

Rule 11-101. Creation and Composition of ~~Advisory~~ Supreme Court Committees.

Intent:

To establish ~~advisory~~ Supreme Court committees and procedures to govern those committees.

Applicability:

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

Statement of the Rule:

(1) **Establishment of committees.** There is hereby established a Supreme Court advisory committee in each of the following areas: civil procedure, criminal procedure, juvenile court procedure, appellate procedure, evidence, and the rules of professional conduct. The Supreme Court may establish ad hoc or oversight committees. The Supreme Court shall designate a liaison to each ~~advisory~~ committee.

(2) **Composition of committees.** The Supreme Court shall determine the size of each committee based upon the workload of the individual committees. The committees should be broadly representative of the legal community and should include practicing lawyers, academicians, and judges. Members should possess expertise within the committee's jurisdiction. A committee may also have up to two nonvoting emeritus members. An emeritus member has the same authority and duties as other committee members, except that such member shall have no authority to vote. An emeritus member may serve two terms in addition to the terms served as a member.

(3) **Application and recruitment of committee members.** Vacancies on the advisory committees shall be announced in a manner reasonably calculated to reach members of the Utah State Bar. The notice shall specify the name of the committee that has the vacancy, a brief description of the committee's responsibilities, the method for submitting an application or letter of interest, and the application deadline. Members of the committees or the Supreme Court may solicit applications for membership on the committees. Applications and letters of interest shall be submitted to the Supreme Court.

(4) **Appointment of advisory committee members and chair.** Upon expiration of the application deadline, the Supreme Court shall review the applications and letters of interest and appoint those individuals who are best suited to serve on the committee. Members shall be appointed to serve staggered ~~four~~three-year terms. In the event of a mid-term vacancy the Supreme Court shall appoint a new member to serve for the remainder of the term. The Supreme Court shall select a chair from among the committee's members. The Supreme Court may select a vice-chair from among the committee's members. No member may serve more than two full consecutive terms on the committee unless appointed by the Supreme Court as the committee chair, vice-chair, or when justified by special circumstances, such as an academician or court staff attorney. Generally, members appointed as chair or vice-chair may serve only one term in each leadership position, not to exceed two additional terms. ~~A member appointed as chair or vice-chair may serve up to four terms as a member, chair, or vice-chair~~. Judges who serve as members of the committees generally shall not be selected as chairs.

Committee members shall serve as officers of the court and not as representatives of any client, employer, or other organization or interest group. At the first meeting of a committee in any calendar year, and at every meeting at which a new member of the committee first attends, each committee member shall briefly disclose the general nature of his or her legal practice.

(5) **Absences.** In the event that a committee member fails to attend three committee meetings during a calendar year, the chair may notify the Supreme Court of those absences and may request that the Supreme Court replace that committee member.

(6) **Administrative assistance.** The Administrative Office of the Courts shall coordinate staff support to each committee, including the assistance of the Office of General Counsel in research and drafting and the coordination of secretarial support and publication activities.

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

~~Effective May 1, 2018~~

Tab 3

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Posted: June 21, 2021

Utah Courts

Rules of Civil Procedure – Comment Period Closed August 5, 2021

URCP005. Service and filing of pleadings and other papers. Amend. The proposed amendments provide that no certificate of service is required when a paper is served by filing it with the court's electronic-filing system under paragraph (b)(3)(A).

URCP024. Intervention. Amend. Under the Indian Child Welfare Act (ICWA), an Indian Tribe is permitted to intervene in a child custody proceeding involving an Indian child. These cases arise in both district and juvenile court. Amendments to Rule 24, which track those already adopted in Juvenile Rule 50, will allow a uniform approach to ICWA to be adopted in both juvenile and district court.

Rule 62. Stay of proceedings to enforce a judgment or order. Amend. Among other amendments intended to streamline and improve Rule 62's efficacy, the proposed amendments extend the time for the automatic stay from 14 days to 28 days and provide that a party may obtain a stay of the enforcement of a judgment or order to pay money by providing a bond or other security.

URCP062. Redline

URCP062. Clean

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

This entry was posted in -Rules of Civil Procedure, URCP005, URCP024, URCP062.

« Rules of Juvenile Procedure – Comment Period Closed August 12, 2021

Rules of Juvenile Procedure – Comment Period Closed July 31, 2021 »

UTAH COURTS

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3 thoughts on "Rules of Civil Procedure – Comment Period Closed August 5, 2021"

Jefferson W Gross
June 21, 2021 at 8:29 am

Why give judgment debtors an additional two weeks to hide their assets or to plan for bankruptcy? At least in commercial settings, there is a niche practice to protect/hide assets from creditors. I have no idea why the rule would be changed to provide more time for such machinations.

Jonathan P Thomas
June 21, 2021 at 9:02 am

In regards to Rule 5, removing the requirement for a certificate of service, I would prefer that the requirement remain. There are times when I need to see when something was served. If I do represent someone, then I have to go look it up to when it was served. If I do not represent someone, and they are coming to me thinking of changing representation, I would have to check X-change and HOPE that counsel gave a good description to their filing and and that there were not other motions filed that day. This is assuming the signature date is accurate. I realize that the signature line should have the correct date, but people are more careful with dates on a certificate of service than a signature line.

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0211
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0103
- CJA03-0103
- CJA03-0104
- CJA03-0105
- CJA03-0106
- CJA03-0106
- CJA03-0107
- CJA03-0108
- CJA03-0109
- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05

This change does not add anything and looks like it will just cause more work looking up dates. Any time saved will be lost and then some.

Charles Schultz
June 26, 2021 at 2:00 pm

It never did make any sense to have to file a certificate of service when filing a document with the court that will be sent to an opposing attoreny by the court efiling system. Eliminating that requirement is a good change.

- CJA03-0111.06
- CJA03-0112
- CJA03-0113
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0301.01
- CJA03-0302
- CJA03-0304
- CJA03-0304.01
- CJA03-0305
- CJA03-0306
- CJA03-0306.01
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- CJA04-0202.06
- CJA04-0202.07
- CJA04-0202.08
- CJA04-0202.09
- CJA04-0202.10
- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 20, 2021

Ronald B. Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

Memorandum

TO: Supreme Court's Advisory Committee on the Rules of Civil Procedure

FROM: Keisa Williams

RE: Supreme Court's feedback on proposed rule 5

On July 8, 2021, the Supreme Court reviewed proposed amendments to URCP Rule 5 (see attached letter). The proposed amendments resolved the Court's satellite litigation concerns, but Justice Lee posed the following questions:

- Line 46: What does "or other notice" mean?
- Line 48: If email service is undeliverable and a mailing address was provided, couldn't service be made by any of the methods listed in (b)(3)(C)? Why is regular mail the only option?
- Lines 49-51: If service is complete upon the attempted email, is there an unlimited amount of time to serve someone by mail following an undeliverable notice?
- Lines 53 and 55: Avoid using "they," "their," and gendered pronouns.
- Line 58: Doesn't this allow parties to "opt-out" of email service simply by not providing an email address? Does that defeat the purpose?

I've included proposed solutions in the attached rule draft, but because I haven't been involved in the committee's discussions over the last year, I may not be hitting the mark.

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

(a) When service is required.

(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(A) a judgment;

(B) an order that states it must be served;

(C) a pleading after the original complaint;

(D) a paper relating to disclosure or discovery;

(E) a paper filed with the court other than a motion that may be heard ex parte; and

(F) a written notice, appearance, demand, offer of judgment, or similar paper.

(2) Serving parties in default. No service is required on a party who is in default except that:

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

(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

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

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

(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.

(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required

before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(1) Whom to serve. If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(A) 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; or

(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(3) Methods of service. A paper is served under this rule by using one or more of the methods in the following paragraphs.~~:~~

(A) **Electronic filing.** ~~except~~ Except in the juvenile court, a paper is served by submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account.~~;~~

(B) **Email.** A paper not electronically served under paragraph (b)(3)(A) is served by emailing it to (i) the most recent email address provided by the person to the court and other parties ~~under Rule 10(a)(3) or Rule 76, or by other notice,~~ or (ii) ~~to~~ the email address on file with the Utah State Bar. If email service to the email address is returned as undeliverable, service must then be made by another method in accordance with paragraph (b)(3)(C). ~~regular mail if the person to be served has provided a mailing address.~~ Service is complete upon the attempted email service for purposes of the sender meeting any time period, provided

Commented [KW1]: **Justice Lee:** What does "or by other notice" mean?

Commented [KW2R1]: Having not been involved in the committee's discussions, it's difficult to come up with a solution. Assuming this is meant to cover the myriad of ways a pro se litigant might provide an email address to the court or parties, striking that language and the references to other rules might be sufficient. Just keep it general.

Commented [KW3]: **Justice Lee:** What if the person hasn't provided a mailing address? Couldn't service be made by other methods listed in (C)?

Commented [KW4R3]: **Proposal:** Replace the mailing requirement with a reference to other methods under (b)(3)(C). For consistency, add "or an email is returned as undeliverable" in lines 56-57.

Commented [KW5]: **Justice Lee:** Does this mean there is an unlimited amount of time to serve someone by mail following an undeliverable notice?

Commented [KW6R5]: I'm guessing this was added to be consistent with (b)(4), but I think Justice Lee makes a good point. The language I've proposed could probably be worded better, but it's one idea to close the loop.

service by another method is within 7 days following receipt of an undeliverable email notice.

(C) **Mail and other methods.** This paragraph applies if the person required to serve or be served with a paper has submitted a certification of inability ~~certified that they do not have the ability~~ to serve and receive documents by email or an email is returned as undeliverable. This paragraph also applies if the person to be served has not provided ~~their~~ an email address to the court under Rule 10. A paper may be served under this paragraph by:

(i) mailing it to the ~~person's~~ last known mailing address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76;

~~(D)~~(ii) handing it to the person;

~~(E)~~(iii) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

~~(F)~~(iv) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

~~(G)~~(v) any other method agreed to in writing by the parties.

(4) When service is effective. Service by mail or electronic means is complete upon sending.

(5) Who serves. Unless otherwise directed by the court or these rules:

(A) every paper required to be served must be served by the party preparing it; and

(B) every paper prepared by the court will be served by the court.

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

Commented [KW7]: Avoid using "they" and gendered pronouns.

Commented [KW8R7]: Restructure sentence to remove "they" in line 56, and replace "their" with "an" in line 58.

Commented [KW9]: Justice Lee: Doesn't this essentially allow parties to "opt-out" of email service by simply not providing an email address? Does that defeat the purpose?

Commented [KW10R9]: I'm assuming the answer is 'yes' and we're okay with creating the rule 10 "opt-out" mechanism because not all pro se litigants have access to email and likely wouldn't be savvy enough to submit a certification to that effect. My guess is that most people prefer email, so the "opt-out" wouldn't be abused. I think Justice Lee would be okay with that answer, he's just looking for an answer. He said, "maybe that's just a policy decision we're making?"

(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(4) a copy of the order must be served upon the parties.

(d) Certificate of service. A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B**)** when service to all parties is made under paragraph (b)(3)(A).

(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section 46-1-16(7);

(2) electronically file a scanned image of the affidavit or declaration;

(3) electronically file the affidavit or declaration with a conformed signature; or

(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the clerk of the court, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

Advisory Committee Notes

Note adopted 2015

Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the document on lawyers who have an e-filing account. (Lawyers representing parties in the district court are required to have an account and electronically file documents. Code of Judicial Administration Rule 4-503.) The 2015 amendment excepts from this provision documents electronically filed in juvenile court.

Although electronic filing in the juvenile court presents to the parties the documents that have been filed, the juvenile court e-filing application (CARE), unlike that in the district court, does not deliver an email alerting the party to that fact. The Board of Juvenile Court Judges and the Advisory Committee on the Rules of Juvenile Procedure believe this difference renders electronic filing alone insufficient notice of a document having been filed. So in the juvenile court, a party electronically filing a document must serve that document by one of the other permitted methods.

Effective January 1, 2022

UTAH SUPREME COURT ADVISORY COMMITTEES

RULES OF CIVIL PROCEDURE
JONATHAN O. HAFEN
CHAIR

June 29, 2021

Hon. Matthew B. Durrant
Chief Justice
Utah Supreme Court
POB 140210
Salt Lake City, Utah 84114-0210

Re: Email service amendments under Rule 5.

Dear Chief Justice Durrant:

At your last meeting, Nancy and I presented on amendments to Rule 5. The committee has worked hard to get email service right and we thought we had reached a good solution after your meeting. But upon further discussion with Nathanael Player, we realized that we still had some work to do. He stressed that requiring a litigant who can't email to move the court for traditional service would be unduly burdensome. The committee discussed possible solutions and arrived at the following, which, we feel, is a great compromise and seems to still address the Court's concern about satellite litigation:

> (C) **Mail and other methods.** This paragraph applies if the person required to serve or be served with a paper has certified that they do not have the ability to serve and receive documents by email. This paragraph also applies if the person to be served has not provided their email address to the court under Rule 10. A paper may be served under this paragraph by:
>
> (i) mailing it to the last known mailing address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76;
>
> (ii) handing it to the person;

(iii) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(iv) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(v) any other method agreed to in writing by the parties.

Additionally, we have heard from the IT department that technology changes are needed to accompany the other Rule 5 amendments you already approved, so we recommend that this rule now be made effective January 1, 2022.

I look forward to discussing this topic with the Court at its earliest convenience. Keisa Williams will join me for the discussion.

Sincerely,

/s/ Jonathan O. Hafen

Enclosures

- Draft Rule 5
- Comparison of prior versions of Rule 5

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

(a) When service is required.

(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(A) a judgment;

(B) an order that states it must be served;

(C) a pleading after the original complaint;

(D) a paper relating to disclosure or discovery;

(E) a paper filed with the court other than a motion that may be heard ex parte; and

(F) a written notice, appearance, demand, offer of judgment, or similar paper.

(2) Serving parties in default. No service is required on a party who is in default except that:

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

(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

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

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

(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.

(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required

before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(1) Whom to serve. If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(A) 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; or

(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(3) Methods of service. A paper is served under this rule by using one or more of the methods in the following paragraphs.~~:~~

(A) **Electronic filing.** ~~except~~ Except in the juvenile court, a paper is served by submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account.~~;~~

(B) **Email.** A paper not electronically served under paragraph (b)(3)(A) is served by emailing it to (i) the most recent email address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76, or by other notice, or (ii) ~~to~~ the email address on file with the Utah State Bar. If email service to the email address is returned as undeliverable, service must then be made by regular mail if the person to be served has provided a mailing address. Service is complete upon the attempted email service for purposes of the sender meeting any time period.

(C) **Mail and other methods.** This paragraph applies if the person required to serve or be served with a paper has certified that they do not have the ability to serve and receive documents by email. This paragraph also applies if the person to be served has not provided their email address to the court under Rule 10. A paper may be served under this paragraph by:

(i) mailing it to the ~~person's~~ last known mailing address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76;

~~(D)~~(ii) handing it to the person;

~~(E)~~(iii) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

~~(F)~~(iv) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

~~(G)~~(v) any other method agreed to in writing by the parties.

(4) When service is effective. Service by mail or electronic means is complete upon sending.

(5) Who serves. Unless otherwise directed by the court or these rules:

(A) every paper required to be served must be served by the party preparing it; and

(B) every paper prepared by the court will be served by the court.

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(4) a copy of the order must be served upon the parties.

(d) Certificate of service. A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B**)** when service to all parties is made under paragraph (b)(3)(A).

(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section 46-1-16(7);

(2) electronically file a scanned image of the affidavit or declaration;

(3) electronically file the affidavit or declaration with a conformed signature; or

(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the clerk of the court, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

Advisory Committee Notes

Note adopted 2015

Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the document on lawyers who have an e-filing account. (Lawyers representing parties in the district court are required to have an account and electronically file documents. Code of Judicial Administration Rule 4-503.) The 2015 amendment excepts from this provision documents electronically filed in juvenile court.

Although electronic filing in the juvenile court presents to the parties the documents that have been filed, the juvenile court e-filing application (CARE), unlike that in the district court, does not deliver an email alerting the party to that fact. The Board of Juvenile Court Judges and the Advisory Committee on the Rules of Juvenile Procedure believe this difference renders electronic filing alone insufficient notice of a document having been filed. So in the juvenile court, a party electronically filing a document must serve that document by one of the other permitted methods.

Comparison of Rule 5 Methods of Service Language:

New proposed language

(C) **Mail and other methods.** This paragraph applies if the person required to serve or be served with a paper has certified that they do not have the ability to serve and receive documents by email. This paragraph also applies if the person to be served has not provided their email address to the court under Rule 10. A paper may be served under this paragraph by:

(i) mailing it to the last known mailing address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76;

(ii) handing it to the person;

(iii) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(iv) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(v) any other method agreed to in writing by the parties.

Email service language approved by the Court on 6/3/21

(3) Methods of service. A paper is served under this rule by using one or more of the following methods:

(A) **Electronic filing.** Except in the juvenile court, a paper is served by submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account.

(B) **Email.** A paper not electronically served under paragraph (b)(3)(A) is served by emailing it to (i) the most recent email address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76, or by other notice, or (ii) the email address on file with the Utah State Bar. If email service to the email address is returned as undeliverable, service must then be made by regular mail if the person to be served has provided a mailing address. Service is complete

upon the attempted email service for purposes of the sender meeting any time period.

(C) **Mail and other methods.** If the person's email address has not been provided to the court and other parties, or if the person required to serve the document or be served with the document has been excused by the court from serving and receiving documents by email, a paper may be served under this rule by:

(i) mailing it to the last known mailing address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76;

(ii) handing it to the person;

(iii) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(iv) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(v) any other method agreed to in writing by the parties.

Language Originally Proposed to the Court (pre-comment period)

(3) Methods of service.

(A) A paper is served under this rule by:

(i) except in the juvenile court, submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account;

(ii) for a paper not electronically served under paragraph (b)(3)(A), emailing it to the most recent email address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76, or by other notice, or to the email address on file with the Utah State Bar.

(B) If email service to the email address is returned as undeliverable, service must then be made by regular mail if the person to be served has provided a mailing address. Service is complete upon the attempted email service for purposes of the sender meeting any time period;

(C) if the person's email address has not been provided to the court and other parties, or if the person required to serve the document does not have the ability to email, a paper may be served under this rule by:

(i) mailing it to the last known mailing address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76;

(ii) handing it to the person;

(iii) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(iv) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(v) any other method agreed to in writing by the parties.

Rule 24. Intervention.

(a) **Intervention of right.** On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) **Permissive intervention.**

(1) **In General.** On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) **By a Governmental Entity.** On timely motion, the court may permit a governmental entity to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the governmental entity; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) **Delay or Prejudice.** In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) **Notice and motion required.** A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and set out the claim or defense for which intervention is sought.

(d) **Constitutionality of Utah statutes, ordinances, rules, and other administrative or legislative enactments.**

(1) **Challenges to a statute.** If a party challenges the constitutionality of a statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality shall notify the Attorney General of such fact by serving the notice on the Attorney General by email or, if circumstances prevent service by email, by mail at the address below. The party shall then file proof of service with the court.

Email: notices@agutah.gov

Mail:

Office of the Utah Attorney General

Attn: Utah Solicitor General

350 North State Street, Suite 230

P.O. Box 142320

Salt Lake City, Utah 84114-2320

(2) **Challenges to an ordinance or other governmental enactment.** If a party challenges the constitutionality of a governmental entity's ordinance, rule, or other administrative or legislative enactment in an action in which the governmental entity has not appeared, the party raising the question of constitutionality shall notify the governmental entity of such fact by serving the person identified in Rule 4(d)(1) of the Utah Rules of Civil Procedure. The party shall then file proof of service with the court.

(3) **Notification procedures.**

(A) **Form and content**. The notice shall (i) be in writing, (ii) be titled "Notice of Constitutional Challenge Under URCP 24(d)," (iii) concisely describe the

nature of the challenge, and (iv) include, as an attachment, the pleading, motion, or other paper challenging constitutionality as set forth above.

(B) **Timing**. The party shall serve the notice on the Attorney General or other governmental entity on or before the date the party files the paper challenging constitutionality as set forth above.

(4) **Attorney General's or other governmental entity's response to notice.**

(A) Within 14 days after the deadline for the parties to file all papers in response to the constitutional challenge, the Attorney General or other governmental entity ("responding entity") shall file a notice of intent to respond unless the responding entity determines that a response is unnecessary. The responding entity may seek up to an additional 7 days' extension of time to file a notice of intent to respond.

(B) If the responding entity files a notice of intent to respond within the time permitted by this rule, the court will allow the responding entity to file a response to the constitutional challenge and participate at oral argument when it is heard.

(C) Unless the parties stipulate to or the court grants additional time, the responding entity's response to the constitutional challenge shall be filed within 14 days after filing the notice of intent to respond.

(D) The responding entity's right to respond to a constitutional challenge under Rule 25A of the Utah Rules of Appellate Procedure is unaffected by the responding entity's decision not to respond under this rule.

(5) **Failure to provide notice.** Failure of a party to provide notice as required by this rule is not a waiver of any constitutional challenge otherwise timely asserted. If a party does not serve a notice as required by this rule, the court may postpone the hearing until the party serves the notice.

(e) **Indian Child Welfare Act Proceedings.** In proceedings subject to the Indian Child Welfare Act of 1978, 25 U.S.C. sections 1901–63:

(1) The Indian child's tribe is not required to formally intervene in the proceeding unless the tribe seeks affirmative relief from the court.

(2) If an Indian child's tribe does not formally intervene in the proceeding, official tribal representatives from the Indian child's tribe have the right to participate in any court proceeding. Participating in a court proceeding includes:

(A) being present at the hearing;

(B) addressing the court;

(C) requesting and receiving notice of hearings;

(D) presenting information to the court and parties that is relevant to the proceeding;

(E) submitting written reports and recommendations to the court and parties; and

(F) performing other duties and responsibilities as requested or approved by the court.

(3) The designated representative must provide the representative's contact information in writing to the court and to the parties.

(4) As provided in Rule 14-802 of the Supreme Court Rules of Professional Practice, before a nonlawyer may represent a tribe in the proceeding, the tribe must designate the nonlawyer representative by filing a written authorization. If the tribe changes its designated representative or if the representative withdraws, the tribe must file a written substitution of representation or withdrawal.

Rule 62. Stay of proceedings to enforce a judgment or order.

(a) Delay in execution. No execution or other writ to enforce a judgment or an order to pay money under Rule 7(j)(8) may issue until the expiration of ~~14~~ 28 days after entry of the judgment or order, unless the court in its discretion otherwise directs.

(b) Stay ~~on motion for new trial or for judgment~~by bond or other security; duration of stay. A party may obtain a stay of the enforcement of a judgment or order to pay money by providing a bond or other security, unless a stay is otherwise prohibited by law or these rules.

(1) The stay takes effect when the court approves the bond or other security and remains in effect for the time specified in the order that approves the bond or other security.~~In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment~~

(2) In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay:

(A) an order that is certified as final under Rule 54(b) until the entry of a final judgment under Rule 58A;

(B) an order to pay money under Rule 7(j)(8) until the entry of a judgment under Rule 58A;

(C) a judgment until resolution of any motion made pursuant to Rule 50(b), Rule 52(b), Rule 59, Rule 60, or Rule 73; and

(D) a judgment until resolution of a motion made under this rule.~~ pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).~~

(c) Injunction pending appeal. When a party seeks an appeal from an interlocutory order, or takes an appeal ~~is taken~~ from ~~an interlocutory order or final~~a judgment,

granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of ~~the appeal~~appellate proceedings upon such conditions ~~as it considers proper~~ for the security of the rights of the adverse party as are just.

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

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

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

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

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

(hi) Form of ~~supersedeas bond~~bond; deposit in lieu of bond; ~~waiver of~~stipulation on ~~bond~~security; jurisdiction over sureties to be set forth in undertaking.

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

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

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

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

(i~~j~~) Amount of ~~supersedeas~~ bond or other security.

~~j~~(1) Except as provided in subsection (i~~j~~)(2), a court shall set the ~~supersedeas~~ bond or other security in an amount that adequately protects the ~~judgment creditor~~adverse party against loss or damage occasioned by the ~~appeal~~ stay and assures payment ~~in the event the judgment is affirmed~~after the stay ends. In setting the amount, the court may consider any relevant factor, including:

~~j~~(A) the ~~judgment~~ debtor's ability to pay the judgment or order to pay money;

~~j~~(B) the existence and value of other security;

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

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

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

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

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

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

~~j~~(C) no bond or other security shall be required for punitive damages.

~~j~~(3) If the court permits a bond or other security that is less than the presumptive amount ~~of compensatory damages~~in subsection (i)(2)(A), the court may ~~also~~ enter such orders as are necessary to protect the ~~judgment creditor during the appeal~~adverse party during the stay.

~~j~~(4) If the court finds that the ~~judgment debtor~~party seeking the stay has violated an order or has otherwise dissipated assets, the court may set the amount of the bond or other security ~~under subsection (j)(1)~~ without regard to the presumptive amount under subsection (i)(1) and limits in subsection (~~ij~~)(2).

(j~~k~~) Objecting to sufficiency or amount of security. Any party whose judgment or order to pay money is stayed or sought to be stayed pursuant to Subdivision (b~~d~~) may object to the sufficiency of the sureties on ~~the~~ a ~~supersedeas~~ bond or the amount thereof, or to the sufficiency or amount of other security given to stay the judgment by filing and giving notice of such objection. ~~The party so objecting~~Either party shall be entitled to a hearing ~~thereon~~ on the objection upon five days notice or such shorter time as the court may order. The burden of justifying the sufficiency of the sureties or other security and the amount of the bond or other security, shall be borne by the party seeking the stay, unless the objecting party seeks a bond or other security in an amount greater than the presumed ~~limits~~ amount ~~of this rule~~in subsection (i)(2)(A). The fact that a ~~supersedeas~~ bond, its surety or other security is generally permitted under this rule shall not be conclusive as to its sufficiency or amount.

Tab 4

Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

September 16, 2021

Ronald B. Gordon, Jr.
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

M E M O R A N D U M

TO: **Utah Rules of Civil Procedure Committee**

FROM: **Clerks of Court**

RE: **Impact of URCP 100A on Judicial Workload**

URCP 100A is scheduled to go into effect on November 1, 2021. The rule affects domestic actions as defined in URCP 26.1, and establishes the expectation of setting a hearing to address scheduling issues that occur when a domestic case becomes contested, i.e., an answer is filed. Implementing the process as outlined in this rule will create additional work for both judicial assistants and judicial officers.

Data Services queried data from FY21 to identify how many qualifying cases in the state would have required additional work as a result of URCP 100A. The data provided indicates that in FY21 approximately 3,398 domestic cases would have required additional work by judicial assistants and judges to meet the intent of this rule.

In order to better understand the impact that URCP 100A will have on judicial assistants and judges, the clerks of court respectfully request that results of the pilot programs and the impact on the workload from the judicial districts that participated in the pilot program be reviewed further. Including the clerks of court, the Board of District Court Judges and court commissioners in this review will provide more insight into potential impacts on resources. In addition, a more in-depth analysis of the time needed to process domestic cases in each of the three tracks as outlined in URCP 100A will help identify where additional resources will be needed.

Clerks of Court are concerned that implementing URCP 100A will require more judicial assistant resources than currently exist and request that implementation of URCP 100A be paused until more in-depth research can be completed to determine where additional resources will be needed to take on this work.

Rule 100A. Case Management of Domestic Relations Actions.

(a) **Case management tracks.** All domestic relations actions, as defined in Rule 26.1, will be set for a case management conference before the court, or a case manager assigned by the court, after an answer to the action is filed. At the case management conference, the court or a case manager assigned by the court must determine into which of the following tracks the case will be placed:

(1) Track 1: Standard Track. This category includes all cases that do not require expert witnesses or complex discovery. The court will certify a Track 1 case directly for trial. If the parties have not yet mediated, the court will order the parties to participate in good faith mediation before the trial takes place.

(2) Track 2: Complex Discovery Track. This category includes cases with complex issues that require extraordinary discovery, such as valuation of a business. For a Track 2 case, at the case management conference the court will set a discovery schedule with input from the parties and schedule the case for a pretrial hearing.

(3) Track 3: Significant Custody Dispute Track. This category includes cases with significant custody disputes, including custody disputes involving allegations of child abuse or domestic violence. For a Track 3 case, at the case management conference the court and parties will address: 1) whether a custody evaluation is necessary, and, if so, the form of the evaluation and appointment considerations; and 2) whether appointment of a private guardian ad litem is necessary, and if so, the scope of the appointment and apportionment of costs. The court will prepare and issue any resulting orders appointing a custody evaluator or guardian ad litem and schedule the case for either a pretrial hearing or a custody evaluation settlement conference.

(b) The court may set additional hearings as necessary under Rules 16 or 101. Nothing in this rule prohibits a court from assigning a case to more than one track, at the court's

discretion, or otherwise managing a case differently from the above guidelines for good cause.

Tab 5

UTAH STATE COURTS

Keisa Williams <keisaw@utcourts.gov>

Civil Rules Committee and draft ODR rules

4 messages

Judge Brendan McCullagh <bmccullagh@utcourts.gov> Wed, Jul 28, 2021 at 4:18 PM
To: Keisa Williams <keisaw@utcourts.gov>, Susan Vogel <susanv@utcourts.gov>

Keisa,
attached is a copy of the latest draft of the proposed wholesale changes to the Small Claims Rules as necessitated by the Council's decision to adopt ODR for all small claims proceedings. I presented a draft back in March or April and then we went back to work on them some more. The timeline wasn't super tight, b/c the idea is that these rules would take effect when ALL the courts are actively using ODR. Until then the standing order of the Court will suffice. That handoff idea seemed to work best because there is no need to have rules to cover old style and ODR courts. We are fairly confident that the roll-out will continue through the end of the year, so we are still good on time.

The version attached is the version which includes Susan Vogel's suggested edits. They are way better and more consistent than the ones I was working on. I think these are ready to go back to the full committee. I know they have a meeting in August, but I will be out of town. My thought is to circulate the draft, let Susan head up any questions about the changes. The Committee was ok with the general scope and flow last time. If the committee makes any changes, great. Then we can take them up to the Supreme Court on a conference date after Sep. 6 (when I get back). If the Committee wants more edits (I hope not) we can do it before their Sept. meeting.

Thanks for adding this to your other small list of things to do.

B.

vogel draft sc rules june .pdf
149K

Susan Vogel <susanv@utcourts.gov> Wed, Jul 28, 2021 at 4:25 PM
To: Judge Brendan McCullagh <bmccullagh@utcourts.gov>
Cc: Keisa Williams <keisaw@utcourts.gov>

It's hard for me to say no to a Justice Court Judge, especially Judge McCullagh. I am happy to help in any way I can.

Susan
[Quoted text hidden]

Judge Brendan McCullagh <bmccullagh@utcourts.gov> Wed, Jul 28, 2021 at 4:31 PM
To: Susan Vogel <susanv@utcourts.gov>
Cc: Keisa Williams <keisaw@utcourts.gov>

You rock. I love the draft btw, if I hadn't told you.

Sent from my iPhone

> On Jul 28, 2021, at 4:25 PM, Susan Vogel <susanv@utcourts.gov> wrote:
>
> [Quoted text hidden]

Susan Vogel <susanv@utcourts.gov> Wed, Jul 28, 2021 at 4:36 PM
To: Judge Brendan McCullagh <bmccullagh@utcourts.gov>
Cc: Keisa Williams <keisaw@utcourts.gov>

Utah Rules of Small Claims Procedure

Amended for Statewide ODR

Draft: March 27, 2021

Contents

Rule 1. General provisions. [I am standardizing titles so only first word is capitalized]

(a) These rules are the simplified rules of procedure and evidence for small claims cases required by the Utah Code.

(b) These rules govern a small claims case from its filing through any appeal pursued under Rule 12, including any case removed from the district court to a small claims court pursuant to Rule 2(a). These rules do not apply to ~~an action~~ a case removed from small claims court to the district court, as provided in Rule 4(a).

(c) If a particular form is required by court rules or statute, a party must file a document~~s~~ substantially similar to that required form.

(d) By filing a document, or presenting it in the small claims case, a party is certifying that to the best of the party's knowledge it is not being presented for an improper purpose and that the legal and factual contentions are made in good faith. If the court determines that this certification has been violated, the court may impose an appropriate sanction upon the party or their attorney ~~or party~~. Any document filed with the court, with the exception of a Motion to Waive Fees, must be served on (delivered to) the other party or parties as required by these rules.

(e) The calculation of time periods under these rules is as provided in Rule 6 of the Utah Rule~~s~~ of Civil Procedure ~~6~~. [Link?]

(f) Each party must provide a telephone number and e-mail address for purposes of receiving service of papers and communications from the court. The same ~~notice~~ information must be provided to the other parties, unless a protective order, ~~or~~ civil stalking injunction, or other court order ~~provides otherwise~~prohibits such communication. [Could be criminal no contact order, e.g.]

(g) “ODR” means Online Dispute Resolution.

Committee Note:

In an effort to improve access to justice, the Utah Supreme Court and the Utah Judicial Council undertook a multi-year pilot project in Online Dispute Resolution (ODR) for small claims cases. As a result of the pilot, the Court now fully endorses these ODR

processes by incorporating them permanently into small claims cases throughout the state. The Supreme Court believes ODR will increase the participation rate of parties, assist the parties in resolving their disputes, and improve the quality and presentation of evidence at trial in those matters that cannot be resolved. In short, the Supreme Court believes ODR will further the statutory goal of small claims: dispensing speedy justice between the parties.

With that in mind the Court adopts this 2021 wholesale amendment to the Small Claims Rules, incorporating the mechanisms of ODR into all small claims cases. Courts are joining the ODR platform on a rolling basis, as training and resources allow. During the rollout phase, ODR small claims cases will be governed by standing order of the Utah Supreme Court. Once all courts are using the ODR platform, these ODR rules will come into effect.

Upon taking effect these rules will apply in full to all cases filed after that date. –For cases filed before a court location joined the ODR platform, rules 4A, and 7-13 will apply to those cases.

Where forms are referenced in these rules (the form names are capitalized), they are available on the court website. [www.utcourts.gov]

Rule 2. Plaintiff ~~beginning~~ begins the case. ?

(a) A small claims case starts when the plaintiff files with the clerk of the court a "claim," which is a declaration stating facts showing: [Include the name of the claim form and capitalize it throughout?]

(i) the right to recover money from the defendant or

(ii) that the plaintiff is holding money claimed by two or more defendants ("interpleader").

(b) The plaintiff must include the plaintiff's email address and, if known, the defendant's email address in the claim. The plaintiff must pay the ~~appropriate~~ required filing fee or file a Motion to Waive Fees when filing the claim.

(c) The plaintiff must file any request for exemption from ODR under Rule 5, at the same time as the claim.

(d) A plaintiff must register for the ODR system within 7 days of filing the claim or, if the plaintiff has filed a Rule 5 request and the exemption is denied, within 7 days from receiving the denial. The court will notify the plaintiff by email if the plaintiff has not registered as described above, and will dismiss the case without prejudice if the plaintiff has not registered within 56 days of the email or has not registered within 7 days of a defendant registering.

(e) In interpleader cases, a plaintiff is referred to as "stakeholder" and a defendant as "claimant." The stakeholder shall place the money in trust with the court at the time of filing or acknowledge that the funds are being held safely and will be paid to the claimant(s) as the court directs.

Rule 2A. Defendant's removal from district court.

(a) A defendant removing a case from district court pursuant to 78A-8-102 must file with the clerk ~~–~~of ~~–~~a small claims court with jurisdiction:

(1) a copy of the ~~notice~~ Notice of ~~removal~~ Removal filed in district court;

(2) the plaintiff's stipulation to proceed in small claims; and

(3) any counterclaim showing a right to recover damages from the plaintiff.

(b) A party removing a case to small claims court must pay any required filing fee, or file a Motion to Waive Fees, when the party files the ~~notice~~ Notice of ~~removal~~ Removal in the small claims court.

(c) Upon ~~—~~removal, the clerk of the small claims court must schedule the trial and issue notices, which the defendant must serve upon the plaintiff, along with a copy of any counterclaim.

Committee Note:

These removed cases are not subject to the pre-trial ODR requirements and will be scheduled directly for trial. The number of these cases is negligible, and the parties already have some familiarity with the other's claims.

Rule 3. Service of the ~~claim~~ Claim and ODR ~~summons~~Summons.

(a) A plaintiff must use the ODR Summons in substantially the form required by the Judicial Council~~'s Form Committee~~ when serving a claim under these rules.

(b) A plaintiff must serve the defendant(s) a copy of the claim and the ODR Summons, as provided in Rule 4 of the Utah Rules of Civil Procedure.

(c) Within 7 days of service of the claim and ODR Summons, the plaintiff must file proof of such service with the court. [No form on SC webpage, just general POS forms on court Serving Papers webpage. Capitalize if referring to a form and refer to it as a Proof of Service here and in next paragraph]

(d) If the plaintiff fails to file proof of service within 14 days of service, the served defendant may file a Motion to Dismiss the case against the defendant. If granted, that dismissal is without prejudice.

Rule 4. Responding to a Claim and Counter-claim~~s~~.

(a) Upon being served with the claim, a defendant must, within 14 days:

(1) Create or log into an existing ODR account and link the claim as instructed in the Summons; or

(2) File a request for exemption [form?] from participating in ODR pursuant to Rule 5.

(b) A defendant who is denied an exemption requested pursuant to Rule 5 must comply with subparagraph (a)(l) within 7 days of receiving the denial, or the time remaining under (a), whichever is longer.

(c) If a defendant fails to register or file a request an exemption, the plaintiff may file a ~~motion~~ Motion ~~asking the court~~ to enter ~~a default~~ Default Jjudgment in an amount not to exceed the amount requested in the claim. [This is a form on the SC webpage]

(d) ~~a~~ A defendant may file with the clerk of the court a declaration stating facts showing the right to recover money from plaintiff (“~~counterclaim~~Counterclaim”). [Form on SC webpage is currently called Counter Affidavit and Summons]

(e) The defendant filing a ~~counterclaim~~ Counterclaim must pay the required fee or file a Motion to Waive Fees, at the time of filing.

(f) The defendant may raise and present evidence on any ~~c~~Counterclaim~~s~~ during the facilitation phase without the need to formally file a ~~counterclaim~~Counterclaim. The facilitation process may result in an agreement with the defendant becoming the judgment creditor. If the case proceeds to trial pursuant to rule 6B the defendant must file any ~~counterclaim~~ Counterclaim and pay the required fee or file a Motion to Waive Fees at least 7 days before trial. The defendant may serve the plaintiff through the email address provided by the plaintiff.

(g) Counterclaims for more than the monetary limit for small claims cases ~~actions~~ may not be filed under these rules. To seek such an award a defendant must file a Notice of Removal to District Court under Rule 4A.

Rule 4A. Defendant's removal to district court.

(a) To exercise the right to a jury trial, or to assert a ~~counterclaim~~ Counterclaim outside the jurisdictional limits of small claims, a defendant must:

(1) within 14 days of being served with the affidavit, file a ~~notice~~ Notice of ~~removal~~ Removal in the district court;

(2) pay the required filing fee, or a Motion to Waive Fees in the district court; and

(3) file in the small claims court a copy of the ~~notice~~ Notice of ~~removal~~ Removal including the district court case number.

(b) Upon receiving the ~~notice~~ Notice of ~~removal~~Removal, the clerk of the small claims court will close its case and the matter will continue in the district court under the Utah Rules of Civil Procedure.

(c) If a defendant does not remove a case to the district court under this rule, the defendant waives the right to a jury trial and the case, including appeals, will proceed under these rules.

Rule 5. Requesting an ~~Exemption~~ exemption from ODR

(a) A party must participate in the ODR process unless the court exempts the party because of undue hardship. Undue hardship exists when a party cannot access the online system or participate in the online process without substantial difficulty or expense.

(b) The court will provide to a requesting party the form necessary to request an exemption.

(c) The court will grant the request if the party shows participation would cause undue hardship.

(d) If the court exempts the plaintiff from participating in ODR, the court clerk will schedule a trial and issue a summons for the defendant to appear. The plaintiff must arrange for service of the summons.

(e) If the court exempts the defendant from participating in ODR, the court clerk will schedule a trial and notify the parties of the date, time, and place of the trial.

Rule 6. ODR ~~Procedures~~ procedures and ~~Facilitation~~facilitation.

(a) Once both parties have registered for ODR, the case enters the facilitation phase. During this phase, the parties may communicate with each other through the ODR portal. A facilitator will also be assigned to the case from a roster maintained by the Administrative Office of the Courts. The purpose of this phase of the case is to see if the parties can reach an agreed resolution of the ~~claim~~ Claim and/or ~~counterclaim~~ Counterclaim without either side having to appear at the court.

(b) The role of the facilitator is to guide the parties through ODR and to assist them in reaching a settlement. To advance these goals, the facilitator may provide information to a party regarding procedure and evaluate the Claim or any defenses.

(c) A facilitator will be assigned to the case no later than 7 days after at least 2 adverse parties have linked to an ODR claim. The facilitator will inform the parties of the processes to be followed, including the types of communications the parties may use.
(d) The facilitator will establish timelines for sharing information and a deadline for attempts to informally resolve the case. Unless the facilitator determines additional time will likely result in a settlement, these efforts at resolution should not exceed 14 days. The facilitator may adjust the timelines at any time during the process.

(e) A facilitator may communicate privately with any party at any time for the purposes of facilitating a resolution.

(f) The facilitator may request a party provide the facilitator and every other party with:

(1) information and evidence about the merits of the case;

(2) information about the ability to pay;

(3) responses to another party's information; and

(4) the party's position on any proposed resolution of the ~~claim~~Claim.

(g) All information provided under this paragraph is considered private and will not be disclosed beyond the facilitation phase without the approval of the party providing the information.

Rule 6A. ODR ~~Settlement~~ settlement ~~Agreements~~agreements

(a) **Form of settlement agreements.** The parties may prepare an online settlement agreement form or ask the facilitator to do so. While the parties are free to d~~c~~raft [or create? Craft is going to be a hard word for some people and also to translate] settlement agreements with such terms as they think are required, settlements usually take one of two forms: deferred judgments or entered judgments.

(b) **Deferred judgment**. A deferred judgment is when the court enters a settlement agreement in the court record, and no judgment is entered if the money owed under the settlement agreement is paid. The settlement agreement must set forth the terms agreed to by the parties and must state that if the party owing the money fails to comply with the agreement, the party owed the money may file a Motion to Enforce the Settlement Agreement under Rule 10B. Once the money is paid in full, the party owed the money must, and the party owing the money may, file a Motion to Dismiss under Rule 11.

(c) **Entered judgment.** An entered judgment is when the parties ~~elect~~ choose to have the court enter a judgment at the time the settlement agreement is entered in the court record. The judgment is collectable as the parties determine, or under Rule 11.

(d) **Settlement agreements requiring a party to do something.** In order for the court to enter a judgment on an agreement that requires a party to do something other than paying money, such as returning tangible property or performing a service, the agreement must provide for an amount of money, not to exceed the jurisdictional limit of the court, that will be paid in the event the party fails to ~~perform~~ do? as agreed.

(e) **No settlement agreement reached during ODR.** Once a facilitator has notified the court that the parties are unable to reach a resolution and the matter is set for trial, the ODR portal will be unavailable to create an online settlement agreement. However, parties may always settle a claim without the use of a facilitator or the ODR process and file that with the court before trial, if the parties reach a settlement agreement before trial.

Rule 6B. Unsuccessful ~~Facilitation~~facilitation

(a) Once facilitation has begun, if the plaintiff fails to respond to any communication from the facilitator within 7 days, the facilitator may notify the defendant of the ability to file a Motion to Dismiss under Rule 8. [There is an (a) but no (b) here]

(c) If the facilitator determines that the parties are unable to reach a settlement, the facilitator:

(1) must terminate the facilitation process and notify the court to set a trial date;

(2) may work with the parties to prepare a "trial prep document" to submit to the court that includes information provided during facilitation that is relevant to the dispute and agreed to by both parties;

(3) submit to the court in advance of trial ~~If the parties have prepared a~~any "trial prep document~~,~~" the parties have prepared ~~submit it to the court in advance of trial~~; and

(4) may advise a defendant of the necessity of filing and serving any ~~c~~Counterclaim~~s~~ at least 7 days before trial.

(d) The court, upon receiving notice of a failed facilitation, will:

(1) schedule a date for trial to be held between 14 and 35 days from the date the court receives the notice; and

(2) notify the parties of the date using the email address associated with the ODR account or other updated email address provided to the court.

Rule 6C. Pretrial ~~Procedures~~procedures.

(a) Whether a case is set for trial under Rule 5 or Rule 6B, the following pre-trial procedures govern.

(b) There is no process for the court to order either party to provide information to the other party before trial. However, the parties are urged to exchange information prior to the trial.

(c) Written motions and responses may be filed prior to trial. Motions may be made orally or in writing at the beginning of the trial. No motions will be heard prior to trial.

(d) If a party cannot attend the trial on the scheduled date, that party must contact the court clerk for alternative trial dates and discuss with the other party or parties~~,~~ a mutually agreed upon (stipulated) date. If there is a stipulation, the party requesting a new date must file a Notice of Stipulated Continuance with the ~~Court~~court, and serve that on the other party or parties. [Small claims webpage has a Motion to Postpone, but not a stipulated one or a Notice. Main court webpage has Motion to Continue, but not a stipulated one or a Notice. I prefer the word postpone to continue …and like the idea of a Notice versus a Motion]

(e) If a party cannot attend the trial on the scheduled date and cannot get a stipulation from the other party, or parties, for a new trial date, the clerk of the court may grant one Motion to Postpone the trial date (per side) if the motion is made at least 7 days before trial. The clerk will give notice to the other party and schedule a mutually acceptable date.

(f) Only the judge may grant a Motion to Postpone if the motion is made less than 7 days before trial and it seeks to postpone a case for more than 42 days, or the motion is a second or subsequent Motion to Postpone by a party. The court may condition granting a Motion to Postpone on a party agreeing to pay the other party's expenses incurred because of the postponement.

Rule 7. Trial.

(a) All parties must bring to the trial all documents related to the controversy regardless of whose position they support.

(b) Parties may have witnesses testify at trial and bring documents. If a witness will not attend the trial voluntarily, a party must subpoena the witness. The clerk of the court or a party's attorney may issue a subpoena pursuant to Rule 45 of the Utah Rules of Civil Procedure ~~45~~. The party requesting the subpoena is responsible for service of the subpoena upon the witness and the payment of any fees. A subpoena must be served at least 7 days prior to trial.

(c) The judge will conduct the trial and question the witnesses. The trial will be conducted in such a way as to give all parties a reasonable opportunity to present their positions. The judge may allow parties or their ~~counsel~~ attorneys to question witnesses.

(d) The judge may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their business affairs. The judge will not strictly apply the rules of evidence. The judge may allow hearsay that is probative, trustworthy and credible. Irrelevant or unduly repetitious evidence will be excluded.

(e) After trial, the judge will decide the case and enter a judgment. No written findings are required. The court clerk will serve all parties with a copy of the judgment.

(f) Costs will be awarded to the prevailing party or to the stakeholder in an interpleader ~~action~~ case unless the judge otherwise orders.

Rule 8. Dismissals.

(a) The court must dismiss any ~~claim~~ Claim or Counterclaim if it determines that the court has no jurisdiction to hear ~~the claim.~~it.

(b) Prior to trial, if a party files a Motion to Dismiss the party's own ~~claim~~Claim, the court must dismiss that C~~c~~laim. That dismissal is without prejudice (meaning it can be refiled) unless the moving party requests it be with prejudice (meaning it cannot be refiled).

(c) Dismissal of a Plaintiff's ~~claim~~Claim: The court may dismiss a plaintiff's ~~claim~~ Claim if:

(1)~~The~~ the plaintiff fails to register for ODR as required by Rule 2(d);

(2) ~~The~~ the plaintiff fails to respond to the ODR facilitator for 7 days as outlined in Rule 6B(d);

(3) ~~The~~ the plaintiff (except in interpleader cases) fails to appear at trial; or

(4) ~~No~~ no ~~proof~~ Proof of ~~service~~ Service has been received by the court within 127 days of filing. [If this is going to be a form]

(d) Dismissals under paragraph (c) are without prejudice. However, if the court finds that the plaintiff, in a prior case regarding the same dispute, had failed to register, respond, or appear at trial, then the dismissal is with prejudice.

(e) **Interpleader cases**. If a stakeholder in an interpleader case fails to appear for trial, the court will hear the claims of the competing claimants. If a claimant fails to appear, the court may choose to not consider that claimant's interest in the amount in controversy. If all claimants fail to appear, the court may dismiss the case ~~action~~ without prejudice. If a stakeholder had deposited funds in trust with the court, the clerk of the court must transfer the money to the Unclaimed Property Division of the Office of the State Treasurer.

(f) If a defendant who has filed a ~~counterclaim~~ Counterclaim fails to appear for trial, the court may dismiss that defendant's ~~counterclaim~~Counterclaim.

(g) The party moving for or benefitting from the dismissal must serve the Order of Dismissal on the other parties.

Rule 9. Default judgments.

(a) If a defendant fails to appear at the time set for trial, the court may grant the plaintiff a judgment in an amount not to exceed the amount requested in the ~~claim~~Claim.

(b) If a defendant has filed a ~~counterclaim~~ Counterclaim and the plaintiff fails to appear at trial, the court may grant defendant a judgment in an amount not to exceed the amount requested in defendant's ~~counterclaim~~Counterclaim.

(c) The party who appeared at trial and was granted a default judgment must immediately serve that judgment on the party, or parties, that did not appear.

(d) In an interpleader case ~~action~~, if a claima~~i~~nt fails to appear, a default judgment may be entered against ~~the non-appearing defendant.~~ that claimant.

Rule 10. Set aside of default judgments and dismissals.

(a) A party may request that a default judgment entered against the party or a dismissal of the party's ~~claim~~ Claim be set aside by filing a Motion to Set Aside within 14 days after entry of the judgment or dismissal. If the court receives a timely Motion to Set Aside, and there is good cause to grant the motion, the court must do so and reschedule the trial. The court may require the moving party to pay the expenses incurred by the other party.

(b) If the court, considering the factors known or knowable to the moving party, determines that a Motion to Set Aside filed more than 14 days after the entry of judgment or dismissal is still filed within a reasonable time, the court may excuse the late filing and consider the motion.

Rule 10B. Entry of judgment upon breach of settlement agreement.

(a) If a party fails to comply with the terms of a settlement agreement that did not result in a judgment signed by the court, then the party that is owed money in the agreement may file a Motion to Enter Judgment with the court for any money still owing.(b) The party making the motion must provide the court with a copy of the settlement agreement ~~form~~ created under Rule 6A or otherwise, and a statement of any payments received since the date of the settlement agreement.

(c) Upon receiving a Motion to Enter Judgment, the court will notify the party owing the money that the party has 14 days from the court's notice to file an objection to the motion. [Form on SC webpage is called Motion to Enforce Settlement Agreement. SC webpage has no form to object to a motion. Regular webpage has Memorandum Opposing Motion]

(d) The court will send that notice to the email address associated with the ODR account and any other updated email address provided to the court. If the party was exempted from ODR, and the court has no email address for the party, the court will mail notice to the party at the party's address in the court records.

(e) If an objection is filed, the court will set a hearing.

(f) If an objection is not filed, or if the motion is made within a reasonable time and the owing party does not appear at the hearing, the court may enter judgment in favor of the moving party for the amount stated in the motion as remaining unpaid ~~in the agreement~~.??

(g) After a hearing, if the court determines that the owing party has violated the agreement, the court may enter judgment for the amount remaining upaid? due under?~~in~~ the agreement.

Rule 11. Collection of judgments.

(a) A judgment creditor, or the party owed the money, may collect a judgment from a judgment debtor, or the party owing the money, using the methods permitted under Utah law, including the Utah Rules of Civil Procedure.

(b) Within 7 days of the judgment debtor's full payment of the judgment, including any post-judgment costs and interest, the judgment creditor must file a Satisfaction of Judgment with the court. The court will enter the satisfaction upon the docket. [On court website, called Acknowledgement of Satisfaction of Judgment]

(c) The judgment debtor may file a satisfaction of judgment with the court accompanied by proof of payment. If the judgment creditor fails to object within 14 calendar days after notice, the court may enter satisfaction of the judgment. If the judgment creditor objects to the proposed satisfaction, the court will rule on the matter and may conduct a hearing. [On court webpage, Debtor's Motion to Declare Judgment Satisfied]

(d) If the judgment creditor is unavailable to accept payment of the judgment, the judgment debtor may pay the amount of the judgment into court and serve the creditor with notice of payment in the manner directed by the court as most likely to give the creditor actual notice, which may include publication. After 28 calendar days after final notice, the debtor may file a satisfaction of judgment and the court may conduct a hearing. The court will hold the money in trust for the creditor for the period required by state law. If not claimed by the judgment creditor, the clerk of the court must transfer the money to the Unclaimed Property Division of the Office of the State Treasurer.

Rule 12. Appeals.

(a) Any party may appeal a final order or judgment within 28 calendar days after entry of judgment or order or after denial of a Motion to Set Aside ~~the Judgment or Order~~, whichever is later.

(1) To appeal from the final order of a justice court small claims case, the appealing party must file a Notice of Appeal in the justice court. The required fee or a Motion to Waive Fees must accompany the Notice of Appeal. Within 14 days after filing the ~~notice~~ Notice of ~~appeal~~Appeal, the justice court will transmit to the district court: the district court fees, or a copy of the Motion to Waive Fees; and copies of all the documents in the ~~Justice~~ justice court case, including the Notice of Appeal. Such transmittal will be in the manner directed by the district court or rule of the Judicial Council. [Previously we have referred to just a Motion to Set Aside, which could be for a judgment or a default]

(2) To appeal from the final order of a district court small claims case, the appealing party must file the Notice of Appeal at that ~~District~~ district ~~Court~~ court location. The required fee or a Motion to Waive Fees must accompany the Notice of Appeal.

(b) Upon the receiving a Notice of Appeal from the small claims court, the clerk of the district court will schedule the new trial and notify the parties. All proceedings on appeal will be held in accordance with these Small Claims Rules regarding trials and post-trial proceedings.

(c) The ~~District~~ district court may instruct the parties to engage in mediation, if available.

(d) The district court will issue all orders governing the new trial. The new trial of an adjudication by the small claims department of the district court must be held at the same district court location.

(e) A judgment debtor may stay (put on hold) the judgment during appeal by posting a supersedeas bond with the district court. The district court may also order a judgment stayed if a Motion to Stay Judgment is filed, and the judgment creditor has an

opportunity to be heard. Any stay will continue until entry of the final judgment or order of the district court.

(f) Upon the entry of the judgment or final order of the district court, the clerk of the district court will transmit to the justice court that ~~rendered~~ entered the original judgment a notice of the ~~manner of disposition~~ outcome? of the case.

(g) The district court may dismiss the appeal and remand the case to the justice court if the ~~appellant~~party who appealed:

(1) fails to appear at the trial;

(2) fails to take any step necessary to prosecute the appeal; or

(3) requests the appeal be dismissed.

(h) If a defendant ~~elects to~~ removes a small claims case to the district court under Rule 4A, the ~~matter~~ case will be treated as if it were initially filed ~~in the first instance~~ in district court and the parties will be entitled to any appeal rights available to cases not brought in small claims.

Rule 13. Representation.

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