Agenda

Supreme Court Advisory Committee
Utah Rules of Civil Procedure
Oct. 25, 2023
4:00 to 6:00 p.m.
Via Webex

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Rule 56 – back from public comment	Tab 2	Lauren DiFrancesco
Rule 60 – fraud on the court	Tab 3	Judge Cornish
Affidavits / Declarations	Tab 4	Ash McMurray
Rule 76 – updating contact information and MyCase	Tab 5	Susan Vogel
Rule 74 – contact information when attorney withdraws	Tab 6	
Rule 5(a)(2) and 5(a)(3)		Lauren DiFrancesco
Rule 104 – divorce decree upon affidavit	Tab 7	Susan Vogel
Consent agenda - *None*		
Pipeline items: - Remote Hearings Subcommittee - Omnibus Subcommittee - Rule 5 Subcommittee - Rule 47 Attorney Voir Dire - Third Party Financing - Standard POs Subcommittee - Rule 62 Subcommittee - Rule 53A Special Masters - Removal of gendered pronouns by Plain Language Subcommittee - Records Classification - Probate Subcommittee - Rule 7A and 37 – Motion for Sanctions - Rule 3(a)(2) - Rule 4 and §78B-8-302(7)		Lauren DiFrancesco

Next Meeting: December 6 (Virtual)

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 – September 27, 2023
In-Person and via Webex

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Vice-Chair	X		Bryson King, Staff
Lauren DiFrancesco, Chair	X		Keri Sargent
Judge Kent Holmberg		X	Crystal Powell
James Hunnicutt	X		Rachel Sykes
Trevor Lee	X		
Ash McMurray	X		
Michael Stahler	X		
Timothy Pack		X	
Loni Page	X		
Bryan Pattison	X		
Judge Laura Scott	X		
Judge Clay Stucki		X	
Judge Andrew H. Stone		X	
Justin T. Toth	X		
Susan Vogel	X		
Tonya Wright	X		
Judge Rita Cornish	X		
Commissioner Catherine Conklin	X		
Giovanna Speiss		X	
Jonas Anderson	X		
Heather Lester	X		
Jensie Anderson	X		
Judge Ronald Russell	X		
Emeritus Seats Vacant			

(1) INTRODUCTIONS

The meeting started at 4:06 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests. Previous and New Committee members introduced themselves.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the June 2023 Minutes subject to amendments noted by the Minutes subcommittee. Judge Russell moved to adopt the Minutes as amended. Judge Cornish seconded. The Minutes were unanimously approved.

(3) RULE 104. DIVORCE DECREE UPON AFFIDAVIT

Ms. Susan Vogel reintroduced the work of the Self-Help Center and presented a brief update on the work done on creating the online assistance program and MyCase as well as how they work. She noted that there are many forms that persons must file on any given issue including with divorce. Specific to Rule 104, Ms. Vogel summarized that the amendments she has been working on will allow the Declaration of Jurisdiction and Grounds to be a part of the final divorce papers rather than a separate document. She noted that this is in keeping with the Center's mission of trying to make it easier for self-represented persons to understand the necessary documents for divorces and to retire the use of declarations of jurisdiction and grounds as it is difficult to understand all the papers to be filed and the order in which to file them. She also summarized the concerns of Judges Cornish and Stone in ensuring the initial petition that was served and the final order are consistent in default divorce cases. The Self-Help team with the input of other stakeholders are continuing to address the Rule and will present a proposed Rule at the October 2023 meeting.

(4) RULE 101. LANGUAGE CHANGE FROM OSC TO "MOTION TO ENFORCE ORDER AND FOR SANCTIONS"

Mr. Jim Hunnicut reported that only one small section is being updated in Rule 101. He explained that beginning at Rule 100, the Rules only deal with family law, and Rule 101 is only about family law where there are domestic commissioners. He noted that a few years ago language was changed in the Rules from "motion for order to show cause" to "motion to enforce order and for sanctions." The amendment will correct an oversight in the language of Rule 101(k) to match the previous amendments. Judge Cornish moved to approve the amendment. Mr. Michael Stahler seconded. The motion passed unanimously.

(5) RULE 56. MSJ DEADLINE FEEDBACK FROM UTAH SUPREME COURT

Ms. Lauren DiFrancesco summarized the issue on Motion for Summary Judgment proposal. The Supreme Court agrees with the proposal, and it has been sent out for public comment but there is a concern that with no procedural deadline, cases might go on indefinitely. The Supreme Court would like to see more comprehensive language or time guides to ensure that cases are moving forward. Specifically, to consider modifying the language of subparagraph (b) to include that judges may set deadlines for motions for summary judgment, certificates of readiness for trial, or any language that would establish a timeline to move the case forward. Ms. DiFrancesco will send the proposal back to the Subcommittee before it is discussed generally.

(6) RULE 7A AND 37. MOTIONS TO ENFORCE DISCOVERY ORDERS

Ms. DiFrancesco gave a brief overview on behalf of Mr. Clint Hansen who was unable to attend the meeting. She summarized that the issue Mr. Hansen brought to the Committee is that he has attempted to use Rule 37 to enforce a statement of discovery issues order after the opposing party failed/refused to participate in discovery; but the judge rejected it under Rule 7A noting that the procedure was incorrect. He has experienced this more than once. Ms. DiFrancesco invited discussion from the Committee but noted that ultimately a Subcommittee will be needed to work on the issue.

Mr. Jim Hunnicut discussed the history of Rule 7A and 37 amendments and volunteered to be on the Subcommittee. He noted that he sees where more clarity would be appropriate. Judge Cornish volunteered to chair the Subcommittee. Judge Russell also volunteered to sit on the Committee.

(7) RULE 3(a)(2)—PREFILING SERVICE OF COMPLAINT

Mr. Trevor Lee explained the issue for the new members however no action was taken on this Rule to allow for more stakeholder feedback particularly from debtor representatives. He also expressed that another way forward might be to invite stakeholders to the next meeting.

Ms. Vogel also explained the history of the proposals where Utah has the highest level of indebtedness by persons with most of the debt being medical debt. She noted that Utah has a novel procedure where a complaint can be served without first filing a complaint. Therefore, creditors are serving persons with debt collection complaints and telling them to call the court to see if a case was filed. Many times, the case cannot be found for reasons such as an incorrect spelling of the party's name and the debtor defaults on the suit. She recounted examples of people having default judgments against them when they have made many efforts to find the case against them. Ms. Vogel noted that all the creditors have attorneys while about

2% of the debtors have no legal representation. The Committee discussed some of the appropriate stakeholders to seek input from such as volunteer Clinics, and pro-bono attorneys that volunteer for the debt collection calendar.

Mr. Michael Stahler questioned what the purpose is for initiating a suit by service whether it was for only debt collection or for other types of cases. He also asked for clarification on the time for response from the time of summons.

(8) REVIEW OF SUBCOMMITTEES

Ms. Di Francesco explained the general mandate of the various Subcommittees for the new members. Each Subcommittee chair gave an overview of their members and the status of assignments that the Subcommittee has undertaken. The Committee members got the opportunity to discuss the subcommittee memberships and volunteer for Subcommittees.

(9) RULE 65 (C). APPOINTMENT OF COUNSEL IN POST CONVICTION RELIEF PROCEEDINGS

Mr. Ian Quiel introduced himself and his organization, the Utah Indigent Postconviction Division (IADD) to the Committee. He explained that the legislature amended the Post-Conviction Remedies Act last year to create his office and allow the court to appoint IADD to represent plaintiffs in post-conviction proceedings. He noted that the statute and Rule 65 (c) (j) now conflicts. He suggested adding the appointment language from the statute as well as the factors that a court should look at when appointing counsel. He explained that the Rule lists only two of the five factors listed in the statute that may be considered by the court when deciding whether to appoint counsel and suggested referencing the statute in the Rule.

Ms. DiFrancesco opened the discussion and asked Mr. Quiel whether the reference to the statute is necessary as the Committee generally does not reference specific statutes in the Rules due to the rapid cycle of legislative amendments. Ms. Jensie Anderson expressed that she supports the proposal to make the Rule consistent with the statute. The Committee generally discussed the factors the court should look at when appointing counsel in post-conviction relief cases. Ms. Jensie moved to accept the proposal without the inclusion of the statutory reference. Ms. Susan Vogel seconded the motion. The motion passed unanimously.

(11) DECEMBER MEETING

Ms. DiFrancesco notified the Committee that the December meeting with be held on December 6, 2023, at 4:00 p.m. There will be no meeting in November.

(12) ADJOURNMENT.

The meeting was adjourned at 5:47 p.m. The next meeting will be October 25, 2023, at 4:00 p.m.

Tab 2

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: August 23, 2023

Utah Courts

Rules of Civil Procedure – Comment Period Closes October 7, 2023

URCP056. Summary judgment. AMEND. The proposed changes to subparagraph (b) is aimed to provide clarity to the deadline for filing motions for summary judgment so as not to be dependent upon the close of discovery.

This entry was posted in **-Rules of Civil Procedure**, **URCP056**.

« Rules of Juvenile Procedure – Comment Period Closes October 13, 2023

Rules of Professional Conduct – Comment Period Closed September 10, 2023 »

UTAH COURTS

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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

9 thoughts on "Rules of Civil Procedure – Comment Period Closes October 7, 2023"

Axel Trumbo
August 23, 2023 at 12:13 pm

This is a good amendment. I do not like the 28-day deadline because it often does not make sense when a trial is scheduled long after discovery. I see no reason to discourage late-stage motions for summary judgment when the legal issue may inevitably be raised in a motion for judgment as a matter of law.

Reply

Michelle Quist
August 23, 2023 at 12:29 pm

This rule change effectively deletes any deadline for summary judgment motions. By the time courts are setting Rule 16 pretrial conferences, cases are ready for trial; summary judgment deadlines at this late stage would stall trial proceedings. If a change must be made, at the very least, summary judgment motion deadlines should be tied to the close of expert discovery or a certain number of days before trial. Changing the rule to eliminate any deadline but allowing for the circumstance that the court "may" set a deadline sometime in the future is really no rule, or deadline, at all. I would leave the rule as it is.

Reply

Mark Woodbury
August 28, 2023 at 10:40 am

I am in favor of this change. I never really saw any purpose to the 28 day restriction. Trials are often scheduled long after discovery closes, and I don't really see any reason that summary judgment shouldn't be available at any point in proceedings, as long as it's not used as a tool to delay trial. Summary judgment is often useful for narrowing the issues at trial, and it's not uncommon for the parties to realize late in the proceedings that there is some discrete legal or factual issue that needs to be resolved. Allowing full briefing on those issues is much better

- -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
- CJA01-0302
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0101
- 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
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- CJA02-0211
- CJA02-0212
- CJA03-0101
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- CJA03-0111.01

than trying to raise them at trial or trying to shoehorn them into another type of motion because a motion for summary judgment isn't available.

Reply

Beau Burbidge
September 6, 2023 at 12:31 pm

I oppose this rule change. Having no deadline at all for summary judgment will encourage last minute motions, increasing the expense of litigation as well as the uncertainty. In cases where no deadline is set, late motions could quite possibly delay trial (or hastily-decided motions due to impending trials could delay or deny proper justice to the parties). The current 28-day deadline sets a reasonable expectation amongst the parties. And I have never seen a judge deny a reasonable request for an extension of that deadline. In short, the current rule gives attorneys some expectation of how litigation will proceed and does not prejudice anyone.

The permissive language of "may" in the proposed change means that there will not be any uniform practice or expectations for a summary judgment deadline–each judge will be free to do it his or her own way. Thus, we trade some modicum of consistency of expectation and practice (which is the entire purpose of the rules in the first place, isn't it?) in exchange for no rule with a discretionary option for one. That is a bad trade.

This amendment is a solution looking for a problem where one does not exist.

Reply

Scott Lythgoe
September 6, 2023 at 1:05 pm

I agree with comments made by Michelle Quist. Based on my experience she accurately represents the reality of what happens in litigation:

This rule change effectively deletes any deadline for summary judgment motions. By the time courts are setting Rule 16 pretrial conferences, cases are ready for trial; summary judgment deadlines at this late stage would stall trial proceedings. If a change must be made, at the very least, summary judgment motion deadlines should be tied to the close of expert discovery or a certain number of days before trial. Changing the rule to eliminate any deadline but allowing for the circumstance that the court "may" set a deadline sometime in

the future is really no rule, or deadline, at all. I would leave the rule as it is.
Reply

Matt McCune
September 7, 2023 at 10:50 am

Concur with and adopt other oppositions, including specifically Beau Burbidge's opposition, dated September 6, 2023 at 12:31 pm.

Reply

Richard D. Burbidge
September 7, 2023 at 1:10 pm

As a trial lawyer with over 50 years of experience in state and federal courts in California and Utah, I join voices in opposition to the proposed rule change to Rule 56. There is nothing wrong with the current rule. Judges seem to exercise appropriate discretion in not allowing the motions to go forward without adequate discovery and not impeding them when adequate discovery has been accomplished.

Allowing wider discretion in the timing of motions for summary judgment would have the effect of postponing trial settings or interfering with trial settings.

Reply

Dan Steele
September 12, 2023 at 9:39 am

I too oppose this change. Summary judgment motions should be filed within 30 to 45 days after the close of expert discovery and no later. Summary judgment should be sought as early as possible so as to avoid delay of trial and save the parties costs and fees.

Reply

James
September 18, 2023 at 12:34 am

- CJA04-0202.07
- CJA04-0202.08
- CJA04-0202.09
- CJA04-0202.10
- CJA04-0202.11
- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206
- CJA04-0208
- CJA04-0302
- CJA04-0401
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- CJA04-0901
- CJA04-0902
- CJA04-0903
- CJA04-0904
- CJA04-0905
- CJA04-0906
- CJA04-0907
- CJA05-0101
- CJA05-201
- CJA06-0101
- CJA06-0102

I am in favor of motions for summary judgment being dependent upon the close of discovery. That's clear and it makes sense to have a bright-line rule in this case.

Reply

Leave a Reply

Your email address will not be published. Required fields are marked *

Comment *

Name *

Email *

Website

POST COMMENT

- CJA06-0104
- CJA06-0301
- CJA06-0303
- CJA06-0401
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- CJA06-0507
- CJA06-0601
- CJA07-0101
- CJA07-0102
- CJA07-0301
- CJA07-0302
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- CJA07-0307
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- CJA09-0302
- CJA09-109
- CJA10-1-203
- CJA10-1-602
- CJA11-0101
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- CJA11-0513
- CJA11-0591
- CJA14-0515
- CJA14-0721
- CJA_Appx_F
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Rule 56. Summary judgment.

(a) Motion for summary judgment or partial summary judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion. The motion and memoranda must follow Rule 7 as supplemented below.

~~(a)~~(1) Instead of a statement of the facts under Rule 7, a motion for summary judgment must contain a statement of material facts claimed not to be genuinely disputed. Each fact must be separately stated in numbered paragraphs and supported by citing to materials in the record under paragraph (c)(1) of this rule.

~~(a)~~(2) Instead of a statement of the facts under Rule 7, a memorandum opposing the motion must include a verbatim restatement of each of the moving party's facts that is disputed with an explanation of the grounds for the dispute supported by citing to materials in the record under paragraph (c)(1) of this rule. The memorandum may contain a separate statement of additional materials facts in dispute, which must be separately stated in numbered paragraphs and similarly supported.

~~(a)~~(3) The motion and the memorandum opposing the motion may contain a concise statement of facts, whether disputed or undisputed, for the limited purpose of providing background and context for the case, dispute and motion.

~~(a)~~(4) Each material fact set forth in the motion or in the memorandum opposing the motion under paragraphs (a)(1) and (a)(2) that is not disputed is deemed admitted for the purposes of the motion.

(b) Time to file a motion. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may move for summary judgment at any time after service of a motion for summary judgment by the adverse party or after

21 days from the commencement of the action. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move for summary judgment at any time. ~~Unless the court orders otherwise, a party may file a motion for summary judgment at any time no later than 28 days after the close of all discovery.~~ The court may set a deadline under Rule 16 to file motions for summary judgment.

(c) Procedures.

~~(c)~~**(1) Supporting factual positions.** A party asserting that a fact cannot be genuinely disputed or is genuinely disputed must support the assertion by:

~~(c)(1)~~(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

~~(c)(1)~~(B) showing that the materials cited do not establish the absence or presence of a genuine dispute.

~~(c)~~**(2) Objection that a fact is not supported by admissible evidence.** A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

~~(c)~~**(3) Materials not cited.** The court need consider only the cited materials, but it may consider other materials in the record.

~~(c)~~**(4) Affidavits or declarations.** An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, must set out facts that would be admissible in evidence, and must show that the affiant or declarant is competent to testify on the matters stated.

(d) When facts are unavailable to the nonmoving party. If a nonmoving party shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

~~(d)~~(1) defer considering the motion or deny it without prejudice;

~~(d)~~(2) allow time to obtain affidavits or declarations or to take discovery; or

~~(d)~~(3) issue any other appropriate order.

(e) Failing to properly support or address a fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by paragraph (c), the court may:

~~(e)~~(1) give an opportunity to properly support or address the fact;

~~(e)~~(2) consider the fact undisputed for purposes of the motion;

~~(e)~~(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the moving party is entitled to it; or

~~(e)~~(4) issue any other appropriate order.

(f) Judgment independent of the motion. After giving notice and a reasonable time to respond, the court may:

~~(f)~~(1) grant summary judgment for a nonmoving party;

~~(f)~~(2) grant the motion on grounds not raised by a party; or

~~(f)~~(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to grant all the requested relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or declaration submitted in bad faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result.

The court may also hold an offending party or attorney in contempt or order other appropriate sanctions.

Advisory Committee Notes

The objective of the 2015 amendments is to adopt the class of Federal Rule of Civil Procedure 56 without changing the substantive Utah law. The 2015 amendments also move to this rule the special briefing requirements of motions for summary judgment formerly found in Rule 7. Nothing in these changes should be interpreted as changing the line of Utah cases regarding the burden of proof in motions for summary judgment.

Effective: ~~*November 2015*~~ *May/Nov. 1, 20__*

Tab 3

RESEARCH MEMORANDUM

TO: Advisory Committee on Utah Rules of Civil Procedure

FROM: Rule 60(b)(3) Subcommittee

SUBJECT: Referral by *In re Terry R. Spencer*, 2022 UT 28, ¶31 n.8, 513 P.3d 759.

I. The Referral.

> We note that we seem to have interpreted our rule 60 without acknowledging the line other courts have drawn between "fraud of an adverse party" and "fraud on the court" when interpreting similarly-worded rules. *See, e.g., United States v. Sierra Pac. Indus., Inc.*, 862 F.3d 1157, 1167-68 (9th Cir. 2017) (emphasizing that "not all fraud is fraud on the court" (citation omitted)); *Torres v. Bella Vista Hosp., Inc.*, 914 F.3d 15, 19 (1st Cir. 2019) (defining fraud on the court as "fraud that seriously affects the integrity of the normal process of adjudication, defile[s] the court itself, and prevents the judicial machinery from performing its usual function" (alteration in original) (citation omitted) (internal quotation marks omitted)); *Fernandez v. Fernandez*, 358 P.3d 562, 566- 68 (Alaska 2015) (limiting fraud on the court to fraud that "involve[s] far more than an injury to a single litigant" and "defiles the court itself" (citations omitted)); see also 12 JAMES WM MOORE, MOORE'S FEDERAL PRACTICE§§ 60.21[4], 60.4 3[1] (Matthew Bender 3d ed. 2021) (addressing the difference between fraud by an opposing party and fraud on the court). As a result, our rule may be out of step with how those jurisdictions offer relief from a judgment procured by fraud on the court. *See, e.g., McGee v. Gonyo*, 140 A.3d 162, 165 (Vt. 2016) ("[A] claim of fraud 'upon the court' is 'governed by the catch-all provision of Rule 60(b)(6).'" (citation omitted)); *accord Carter v. Anderson*, 585 F.3d 1007, 1011 (6th Cir. 2009); *Sierra Pac. Indus., Inc.*, 862 F.3d at 1167 (acknowledging a party's ability to seek relief from the rendering court for fraud on the court under federal rule 60(d)(3)). We recognize that our deviation from those decisions may reflect different policy concerns. Or it may merely be an unintended consequence caused by the wording of our rule compared to that of the federal rule. *Compare* Utah R. Civ. P. 60(d), *with* Fed. R. Civ. P. 60(d); *see also United States v. Buck*, 281 F.3d 1336, 1341-42 (10th Cir. 2002) (explaining that there are two "avenues for relief from fraud upon the court" under federal rule 60(d): "[t]he first ... is an independent action," and "[t]he second ... is to invoke the inherent power of a court to set aside its judgment if procured by fraud upon the court"). In any event, the parties have not raised these issues, so without proper briefing, we are not in a position to address them. ***Rather than wait for another case to examine whether our rule 60 properly balances finality against the need to***

> ***ensure that fraud on the court can be effectively addressed, we refer the question to our Advisory Committee on the Rules of Civil Procedure.***

In re Terry R. Spencer, 2022 UT 28, ¶31 n.8, 513 P.3d 759.

II. Comparison of Utah Rule 60(d) with Federal Rule 60(d).

UTAH RULE	FEDERAL RULE
(d) **Other power to grant relief.** This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.	(d) **Other Powers to Grant Relief.** This rule does not limit a court's power to: (1) entertain an independent action to relieve a party from a judgment, order, or proceeding;…or (3) set aside a judgment for fraud on the court.

III. Background.

A. Setting Aside Order or Judgment by Motion.

Rule 60(b)(3) permits a court "[o]n motion and upon just terms," to set aside a judgment, order or proceeding for "fraud (whether previously called intrinsic or extrinsic), misrepresentation or other misconduct of an opposing party." Utah R. Civ. P. 60(b)(3). However, a party must pursue a Rule 60(b)(3) motion "within a reasonable time" and "not more than 90 days after entry of the judgment or order or, if there is no judgment or order, from the date of the proceeding." Utah R. Civ. P. 60(c).

On occasion, a party alleging fraud on the court has attempted to escape the 90-day deadline imposed by Rule 60(c) by attempting to characterize their motion as one brought under Rule 60(b)(6)'s catchall provision offering relief "for . . . any other reason that justifies relief." Utah R. Civ. P. 60(b)(6). However, the Utah Supreme Court has made it clear that

> [A] motion seeking relief from a judgment based upon an allegation of fraud on the court necessarily falls under paragraph (b)(3), not paragraph (b)(6).
>
> Under the plain language of rule 60, a party seeking to be relieved from a judgment or order based upon an allegation of fraud on the court must do so under paragraph (b)(3). Motions under paragraph (b)(6), on the other hand, must be based on a reason other than those listed in paragraphs (b)(1) through (5).

In re Estate of Willey, 2016 UT 53, ¶¶8-9, 391 P.3d 171.

Recently, in *In re Terry R. Spencer*, 2022 UT 28, 513 P.3d 759, the Utah Supreme Court addressed an appeal from a trial court's denial of a motion to set aside that was brought 1 year after judgment was entered. The movant brought the motion under Rule 60(b)(3) and alleged

fraud on the court as the grounds. In affirming the trial court, the Utah Supreme Court expressed concern that, perhaps, Rule 60's failure to distinguish between fraud on a party and fraud on the court resulted in an imbalance between finality and effectively addressing fraud on the court. The Utah Supreme Court suggested that Rule 60(d) has a role to play in that balance, noted (without specifying) a difference in the language of Utah Rule 60(d) and Federal Rule 60(d), noted that courts in other jurisdictions have recognized a distinction between fraud on the court and fraud of an adverse party, and asked the Rules Committee to consider whether the proper balance had been struck. *See In re Terry R. Spencer*, 2022 UT 28, ¶31 n.8, 513 P.3d 759.

B. Collaterally Attacking an Order or Judgment through New Lawsuit.

In considering changes to Rule 60, whether to make a distinction between extrinsic and intrinsic fraud or to modify the deadline within which a motion or new suit must be brought, it is important to keep in mind the interplay between Rule 60(b)(3) and Rule 60(d). Rule 60(d) provides:

> This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Utah R. Civ. P. 60(d). Stated differently, Rule 60(d) preserves the right of a party to bring an independent action stating a claim for fraud or misrepresentation when they are damaged by another's fraud.

Importantly, the 90-day deadline applicable to a motion to set aside under Rule 60(b)(3) does not apply to an independent action. *See, e.g., St. Pierre v. Edmonds*, 645 P.2d 615, 618 (Utah 1982) ("[Rule 60(b)(3)], with its short time limitation, does not . . . limit the power of a court to entertain an independent common law action to set aside a judgment or decree for fraud or duress after the three-month period has expired."). Instead, "the doctrine of laches and other equitable principles determine the time within which the action must be brought." *Id.* at 618.

IV. Historically, the Utah Supreme Court Did Recognize a Distinction Between Fraud on the Court and Fraud on an Opposing Party.

Interestingly, in making the referral to this Committee to review the deadlines applicable to a motion to set aside brought on the grounds of fraud on the court, the Utah Supreme Court noted that "we seem to have interpreted our rule 60 without acknowledging the line other courts have drawn between 'fraud of an adverse party' and 'fraud on the court' when interpreting similarly-worded rules." *In re Terry R. Spencer*, 2022 UT 28 at ¶31 n.8. But that statement is not entirely accurate. The Utah Supreme Court long ago recognized a distinction between extrinsic and intrinsic fraud when approaching motions to set aside and then overruled the use of that distinction. In other words, the primary issue sent to this Committee for consideration has long been guided by Utah Supreme Court precedent.

A. Prior to 1980.

Prior to roughly 1980, and despite the express language of Rule 60(b)(3) including as ground for relief both extrinsic and intrinsic fraud,[1] the Utah Supreme Court permitted a motion to set aside a judgment or order on the ground that it was obtained by fraud or deceit only when there were allegations of extrinsic fraud, *i.e.* fraud on the court.[2] *See Haner v. Haner*, 373 P.2d 577, 578 (Utah 1962).

> It seems more realistic to say that when it appears that the processes of justice have been so completely thwarted or distorted as to persuade the court that in fairness and good conscience the judgment should not be permitted to stand, relief should be granted. However, inasmuch as the plaintiff here seems to be relying on the ground of fraud, there is a distinction which it is necessary to point out. ***In order to justify granting relief, the alleged wrong would have to be of the type characterized as extrinsic fraud: that is, fraud based on conduct or activities outside of the court proceedings themselves; and which is designed and has the effect of depriving the other party of the opportunity to present his claim or defense.*** This type of fraud, which is regarded as a fraud not only upon the opponent, but upon the court itself, can be accomplished in a number of ways, such as making false statements or representations to the other party or to witnesses to prevent them from contesting the issues; or by that means or otherwise preventing the attendance of the parties or witnesses; or by destroying or secreting evidence; so that a fair trial of the issues is effectively prevented.

Id. at 578-79 (emphasis added). Prior to 1980, the Utah Supreme Court distinguished extrinsic fraud (as defined above) from intrinsic fraud, "where there is no prevention of the party from contesting the issues in a trial, and where the complaint is simply that one party presented

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[1] *See Bish's Sheet Metal Co. v. Luras*, 359 P.2d 21, 22 n.1 (Utah 1961) (quoting 1961 version of Rule 60(b) as follows: "Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); ***(3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;*** (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action." (emphasis added)).

[2] Decades later, the Utah Supreme Court would suggest that *Haner* did not involve a motion to set aside based on Rule 60(b), in large part because the *Haner*-Court failed to recognize that "Rule 60(b)(3) expressly provides that a party may be relieved from a final judgment in cases of 'fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party . . . .'" *Boyce v. Boyce*, 609 P.2d 928, 931 n.1 (Utah 1980).

perjured testimony or false evidence." *Id.* at 579; *see also Clissold v. Clissold*, 519 P.2d 241, 242 (Utah 1974), *overruled by St. Pierre v. Edmonds*, 645 P.2d 615, 619 n.2 (Utah 1982).

At the core of the Supreme Court's rule distinguishing between intrinsic and extrinsic fraud was a policy balance between the finality of judgments and the need to ensure that fraud on the court could be addressed. The Supreme Court explained that

> [i]t is the purpose of the law to afford the parties full opportunity to have themselves and their witnesses present; and to present their evidence and their contentions to the court. When this has been done and the court has made its determination, that should end the matter, except for the right of appeal. It is so patent as to hardly justify comment that a judgment should not be set aside merely to grant the losing party another chance to accomplish the task at which he just failed: to prove that he was right and that the opponent was wrong. To reopen a case just because a party persists in asserting and attempting to prove that his version of the dispute was the truth and that of the opponent was false would open the door to a repetition of that procedure, whoever won the next time; and thus to keeping the dispute going ad infinitum with no way of determining when the merry-go-round of the law suit would end. This would involve not only a waste of time, energy and expense but also would result in such uncertainty as to people's rights that the very purpose of a lawsuit, the settling of disputes and putting them at rest, would be defeated. Resort to the courts would be frustrating and impracticable unless there were some point at which decisions became final so that parties could place reliance thereon, leave their troubles behind and proceed to the future. It is for these reasons that courts accord to judgments regularly entered a high degree of sanctity; and would overturn a judgment such as the instant one on the ground of fraud only if it were shown that the complaining party had been wrongfully deprived of the opportunity to meet and contest the issues at the trial.

Haner v. Haner, 373 P.2d at 579; *see also Clissold*, 219 P.2d at 242.

B. In the Early 1980s, the Utah Supreme Court Abandoned Any Distinction Between Extrinsic and Intrinsic Fraud, even in the Context of an Independent Action Brought under Rule 60(d).

In *McBride v. Jones*, 615 P.2d 431 (Utah 1980), the Utah Supreme Court was presented with allegations of intrinsic fraud. More specifically, a wife was alleging that husband had misrepresented the value of a marital business in a divorce. Wife sought to set aside and modify the decree to award her a portion of the value that was realized by husband on the later sale of the business assets.

The specific facts of *McBride* led the Utah Supreme Court to create an exception to the extrinsic/intrinsic fraud rule "in a case such as this of inter-family feuding, where the contentions make it appear that there is a substantial likelihood that the proof may show that a party was so cheated, imposed upon, or unfairly dealt with that it should shock the conscience of the court to allow it to stand, the court should resolve doubts in favor of permitting the parties to present their evidence and have the issues determined." *Id.* at 433. The Court initially took care to limit the holding to domestic cases, reasoning that "[i]n some husband-wife relationships, it would not be unreasonable to believe that the husband had superior knowledge of property which he was

handling in the family's interest; and that the wife would be justified in reposing confidence in his knowledge and his representations concerning value. In situations relating to family welfare, the parties should be held to a higher than usual degree of responsibility in making full and fair disclosure of the facts of which each has special knowledge." *Id.* at 434.

Despite cracking open the door to permit a motion to set aside to be premised on intrinsic fraud, the Supreme Court acknowledged awareness of and expressed appreciation for its prior cases, like *Haner*, that stated the general rule that "the only type of fraud which will justify granting relief from a judgment is extrinsic fraud, that is, the deception or misrepresentation was outside the proceedings and effectively prevented the party from meeting and having the issue determined." *McBride*, 615 P.2d at 433. Nonetheless, the Supreme Court revisited its balancing of finality against a court's ability to address fraud and held that, in some narrow cases, intrinsic fraud could be a ground for setting aside a prior judgment.

> It is not to be doubted that, in appropriate circumstances, there may be merit to the just-stated distinction between intrinsic and extrinsic fraud, and the allowance of a belated collateral attack upon a judgment only for the latter. The principal reason for this is that there must be some end to litigation; and to serve that purpose, the findings and judgment on issues previously tried or triable should have respect and solidarity; and this includes all matters which could, with reasonable diligence, have been presented and resolved in the trial. And for that reason a judgment should not be disturbed except for compelling reasons where the interests of justice so demand. The other side of that proposition is that the courts should not forsake the interests of justice; and when it appears that an egregious deception or oppression may have been practiced, it should neither be condoned nor rewarded. Particularly, that this should not be done by allowing one to seek refuge in niceties of legal terminology.
>
> Consistent with that principle, though we remain committed to the desirability of respecting judgments and preserving their solidarity, we have heretofore recognized that it is more important to give consideration to the degree of the injustice that may have resulted than to terminology or labels as to the type of fraud alleged.

McBride, 615 P.2d at 433.

By 1982, the Utah Supreme Court retreated from applying any distinction between extrinsic and intrinsic fraud whether with respect to a motion to set aside or for an independent action. *St. Pierre v. Edmonds*, 645 P.2d 615 (Utah 1982) dealt with an independent action attacking a judgment, the Utah Supreme Court undertook a discussion of the differences between extrinsic and intrinsic fraud and reasoned that "[d]rawing a distinction between extrinsic and intrinsic fraud . . . has little merit. . . . 'since there is "little real basis for the distinction between extrinsic and intrinsic fraud," it would be unfortunate if the ancient learning on this point were to be resurrected as a limitation on independent actions not that it is a t last decently buried with regards to motions.'" *Id.* at 619 (quoting 11 Wright & Miller's 2861 at 196 (1931). At that time, the Supreme Court undertook a survey of case law and concluded that "The perpetuation of this extrinsic-intrinsic distinction has led the federal courts into a thicket of inconsistency, because the distinction is unnecessary, often irrational, and potentially productive of injustices not outweighed by the interests of finality." *Id.*

In *St. Pierre*, the Utah Supreme Court expressly held that an "extrinsic-intrinsic distinction fails to provide a rational basis for the harsh legal consequences which flow from it. We, therefore, . . . hold that the distinction should be abandoned in determining whether an independent action may lie to set aside a judgment or decree on the ground that it was obtained by fraud." *Id.* at 619.

Rule 60. Relief from judgment or order.

Effective: 5/1/2016

(a) **Clerical mistakes.** The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The court may do so on motion or on its own, with or without notice. After a notice of appeal has been filed and while the appeal is pending, the mistake may be corrected only with leave of the appellate court.

(b) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc.** On motion and upon just terms, the court may relieve a party or its legal representative from a judgment, order, or proceeding for the following reasons:

~~(b)~~(1) mistake, inadvertence, surprise, or excusable neglect;

~~(b)~~(2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

~~(b)~~(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or other misconduct of an opposing party;

~~(b)~~(4) the judgment is void;

~~(b)~~(5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or vacated, or it is no longer equitable that the judgment should have prospective application; or

~~(b)~~(6) any other reason that justifies relief.

(c) **Timing and effect of the motion.** A motion under paragraph (b) must be filed within a reasonable time and for reasons in paragraph (b)(1), (2), or (3), not more than 90 days after entry of the judgment or order or, if there is no judgment or order, from the date of the proceeding. The motion does not affect the finality of a judgment or suspend its operation.

(d) **Other power to grant relief.** This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Advisory Committee Notes

The 1998 amendment eliminates as grounds for a motion the following: "(4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action." This basis for a motion is not found in the federal rule. The committee concluded the clause was ambiguous and possibly in conflict with rule permitting service by means other than personal service.

Note adopted [YEAR]

2016 amendments

The deadlines for a motion are as stated in this rule, but if a motion under paragraph (b) is filed within 28 days after the judgment, it will have the same effect on the time to appeal as a motion under Rule 50, 52, or 59. See the 2016 amendments to Rule of Appellate Procedure 4(b).

Note adopted [YEAR]

Tab 4

Updated: October 21, 2023

Memorandum

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

From: Affidavit/Unsworn Declaration Subcommittee (Ash McMurray, Bryan Pattison, and Giovanna Palacios)

Re: Affidavits, Unsworn Declarations, and Verified Documents

The Utah Rules of Civil Procedure ("Rules") variously refer to affidavits, declarations, unsworn declarations, and verified documents. These references lack formal definitions within the rules themselves, but the general distinction between them was largely eliminated in 2018, when the Utah Legislature enacted the Uniform Unsworn Declaration Act, Utah Code Title 78B, Chapter 18a (the "Act"). The Act provides that an "unsworn declaration" meeting the requirements of the Act has the same effect as a sworn declaration (including a sworn statement, verification, certificate, and affidavit) whenever a sworn declaration is required by Utah law, including by a "rule of court." Utah Code §§ 78B-18a-102(1), (4)(b), -104(1). An "unsworn declaration" meets the requirements of the Act if it includes a signed statement verifying the accuracy of the declaration under criminal penalty of law. *Id.* §§ 78B-18a-102(5), -106.

Thereafter, Rule 11 was amended to codify the effect of Act in the Rules themselves. Specifically, Rule 11(a)(2) provides: "If a rule requires an affidavit or a notarized, verified or acknowledged signature, the person may submit an unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act." Notwithstanding this change, usage of and references to affidavits, declarations, and unsworn declarations has remained inconsistent throughout the Rules. This inconsistency can be confusing for both self-represented parties as well as attorneys who may not be familiar with Rule 11(a)(2).

The Subcommittee has reviewed the Rules and provided suggested revisions for the Committee's consideration. The revisions are intended to make the Rules more consistent and can be generally summarized as follows:

1. References to "affidavits," "declarations," and "unsworn declarations" have been consolidated into the single term "declarations," which is defined in a new proposed Rule 87.

2. The new proposed Rule 87 borrows its language almost verbatim from the Act and section 78B-5-701 of the Utah Judicial Code (Taking of affidavits in this state).

3. The new proposed Rule 87(e) provides the sufficient conditions for a document to be "verified" under the rules.

In addition to the suggestions above, the Subcommittee has made suggestions to make the Rules more consistent with the Supreme Court's Style Guide for Drafting and Editing Court Rules (e.g., "shall" has been changed to "must"). Please note however that these changes were made wherever a deviation from the style guide was noticed and are not comprehensive.

The Subcommittee welcomes the Committee's feedback and suggestions regarding any of the proposed changes.

Sincerely,

Affidavit/Unsworn Declaration Subcommittee

Rule 4. Process.

(d) Methods of service. The summons and complaint may be served in any state or judicial district of the United States. Unless service is accepted, service of the summons and complaint must be by one of the following methods:

[…]

(5) Other service.

(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. ~~An affidavit or~~ A declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

[…]

(e) Proof of service.

(1) The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by ~~affidavit or unsworn~~ declaration ~~as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act~~.

Comment [AM1]: References to oaths, affidavits, declarations, and unsworn declarations have been highlighted in yellow.

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

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

(1) electronically file the original ~~affidavit~~ declaration with a notary acknowledgment as provided by Utah Code ~~Section~~ 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.

Rule 6. Time.

(e) Filing or service by inmate.

(1) For purposes of Rule 45(i) and this paragraph (e), an inmate is a person confined to an institution or committed to a place of legal confinement.

(2) ~~Papers~~ Documents filed or served by an inmate are timely filed or served if they are deposited in the institution's internal mail system on or before the last day for filing or service. Timely filing or service may be shown by a contemporaneously filed ~~notarized statement or written~~ declaration setting forth the date of deposit and stating that first-class postage has been, or is being, prepaid, or that the inmate has complied with any applicable requirements for legal mail set by the institution. Response time will be calculated from the date the ~~papers~~ documents are received by the court, or for ~~papers~~ documents served on parties that do not need to be filed with the court, the postmark date the ~~papers~~documents were deposited in U.S. mail.

(3) The provisions of paragraph (e)(2) do not apply to service of process, which is governed by Rule 4.

Rule 7A. Motion to enforce order and for sanctions.

(b) Verification~~Affidavit~~. The motion must be verified and must state the title and date of entry of the order that the moving party seeks to enforce. ~~The motion must be verified, or must be accompanied by at least one supporting affidavit or declaration that is based on personal knowledge and shows that the affiant or declarant is competent to testify on the matters set forth.~~ The verified motion~~, affid avit,~~ or supporting declaration must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

[…]

(d) Service of the order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting ~~affidavits~~declarations served on the nonmoving party at least 28 days before the hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28–day period if:

(1) the motion requests an earlier date; and

(2) it clearly appears from specific facts shown by ~~affidavit~~the verified motion or supporting declaration that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

Rule 7B. Motion to enforce order and for sanctions in domestic law matters.

(b) Verification~~Affidavit~~. The motion must be verified and must state the title and date of entry of the order that the moving party seeks to enforce. ~~The motion must be verified, or must be accompanied by at least one supporting affidavit that is based on personal knowledge and shows that the affiant is competent to testify on the matters set forth.~~ The verified motion or ~~affidavit~~supporting declaration must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

[…]

(d) Service of the order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting ~~affidavits~~ declarations served on the nonmoving party at least 28 days before the hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28~~-~~-day period if:

(1) the motion requests an earlier date; and

(2) it clearly appears from specific facts shown by ~~affidavit~~ the verified motion or supporting declaration that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

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

(a) Signature.

(a)(1) Every pleading, written motion, and other ~~paper~~document must be signed by at least one attorney of record, or, if the party is not represented, by the party.

(a)(2) A person may sign a ~~paper~~document using any form of signature recognized by law as binding. Unless required by statute or rule, a ~~paper~~document need not be accompanied by ~~affidavit~~ declaration or have a notarized, verified, or acknowledged signature. ~~If a rule requires an affidavit or a notarized, verified or acknowledged signature, the person may submit an unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act~~. If ~~an affidavit~~a declaration or a ~~paper~~ document with a notarized, verified, or acknowledged signature is filed, then the filing party must comply with Rule 5(f).

Comment [AM2]: Replaced by new Rule 87

(a)(3) An unsigned ~~paper~~document will be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Rule 23A. Derivative actions by shareholders.

(a) The complaint in a derivative action brought by one or more shareholders or members to enforce a right of a corporation or of an unincorporated association ~~shall~~ must be verified and ~~shall~~ must allege: [….]

Rule 27. Depositions before action or pending appeal.

(a) Before action.

(a)(1) Petition. A person who desires to perpetuate testimony regarding any matter that may be cognizable in any court of this state may file a verified petition in the district court of the county in which any expected adverse party may reside. The petition ~~shall~~ must be entitled in the name of the petitioner and ~~shall~~ must state: (1) that the petitioner expects to be a party to an action cognizable in a court of this state but is presently unable to bring it or cause it to be brought, (2) the subject matter of the expected action and the petitioner's interest therein, (3) the facts to be established by the proposed testimony and the reasons to perpetuate it, (4) the names or a description of the persons expected to be adverse parties and their addresses so far as known, and (5) the names and addresses of the persons to be examined and the substance of the testimony expected to be elicited from each, and ~~shall~~ must ask for an order authorizing the petitioner to take the depositions of the persons to be examined named in the petition, for the purpose of perpetuating their testimony.

Rule 26.1. Disclosure and discovery in domestic relations actions.

(c) Financial declaration. Each party must serve on all other parties a fully completed Financial Declaration, using the court-approved form, and attachments. Each party must attach to the Financial Declaration the following:

(1) For every item and amount listed in the Financial Declaration, excluding monthly expenses, copies of statements verifying the amounts listed on the Financial Declaration that are reasonably available to the party.

[…]

(7) If the foregoing documents are not reasonably available or are in the possession of the other party, the party disclosing the Financial Declaration must estimate the amounts entered on the Financial Declaration, the basis for the estimation and an explanation why the documents are not available.

(d) Certificate of service. Each party must file a Certificate of Service with the court certifying that he or she has provided the Financial Declaration and attachments to the other party.

(e) Exemptions.

(1) Agencies of the State of Utah are not subject to these disclosure requirements.

(2) In cases where assets are not at issue, such as paternity, modification, and grandparents' rights, a party must only serve:

(A) the party's last three current paystubs and the previous year tax return;

(B) six months of bank and profit and loss statements if the party is self-employed; and

(C) proof of any other assets or income relevant to the determination of a child support award.

The court may require the parties to complete a full Financial Declaration for purposes of determining an attorney fee award or for any other reason. Any party may by motion or through the discovery process also request completion of a full Financial Declaration.

(f) Sanctions. Failure to fully disclose all assets and income in the Financial Declaration and attachments may subject the non-disclosing party to sanctions under Rule 37 including an award of non-disclosed assets to the other party, attorney's fees or other sanctions deemed appropriate by the court.

Rule 26.2. Disclosures in personal injury actions.

(c) Defendant's additional disclosures. Defendant's Rule 26(a) disclosures ~~shall~~ must also include:

(c)(1) A statement of the amount of insurance coverage applicable to the claim, including any potential excess coverage, and any deductible, self-insured retention, or reservations of rights, giving the name and address of the insurer.

(c)(2) Unless the plaintiff makes a written request for a copy of an entire insurance policy to be disclosed under Rule 26(a)(1)(D), it is sufficient for the defendant to disclose a copy of the declaration page or coverage sheet for any policy covering the claim.

Rule 33. Interrogatories to parties.

(b) **Answers and objections.** The responding party ~~shall~~ must serve a written response within 28 days after service of the interrogatories. The responding party ~~shall~~ must restate each interrogatory before responding to it. Each interrogatory ~~shall~~ must be answered separately and fully in a verified writing ~~under oath or affirmation~~, unless it is objected to. If an interrogatory is objected to, the responding party shall state the reasons for the objection. Any reason not stated is waived unless excused by the court for good cause. An interrogatory is not objectionable merely because an answer involves an opinion or argument that relates to fact or the application of law to fact. The responding party ~~shall~~ must answer any part of an interrogatory that is not objectionable.

Rule 43. Evidence.

(d) Evidence on motions. When a motion is based on facts not in the record, the court may hear the matter on ~~affidavits,~~ declarations, oral testimony, or depositions.

Rule 45. Subpoena.

(f) **Duties in responding to subpoena.**

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

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

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

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

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

Rule 47. Jurors.

(r) Declaration of verdict. When the jury or three-fourths of them, or such other number as may have been agreed upon by the parties pursuant to Rule 48, have agreed upon a verdict they must be conducted into court, their names called by the clerk, and the verdict rendered by their foreperson; the verdict must be in writing, signed by the foreperson, and must be read by the clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the jury to be polled, which ~~shall~~ must be done by the court or clerk asking each juror if it is the juror's verdict. If, upon such inquiry or polling there is an insufficient number of jurors agreeing therewith, the jury must be sent out again; otherwise the verdict is complete and the jury ~~shall~~ must be discharged from the cause.

Rule 54. Judgments; costs.

(d)(2) How assessed. The party who claims costs must not later than 14 days after the entry of judgment file and serve a verified memorandum of costs. A party dissatisfied with the costs claimed may, within 7 days after service of the memorandum of costs, object to the claimed costs.

Rule 55. Default.

(b) Judgment. Judgment by default may be entered as follows:

(b)(1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain, upon request of the plaintiff the clerk ~~shall~~ must enter judgment for the amount claimed and costs against the defendant if:

(b)(1)(A) the default of the defendant is for failure to appear;

(b)(1)(B) the defendant is not an infant or incompetent person;

(b)(1)(C) the defendant has been personally served pursuant to Rule 4(d)(1); and

(b)(1)(D) the plaintiff, through a verified complaint ~~, an affidavit,~~ or ~~an unsworn~~ declaration ~~as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act,~~ submitted in support of the default judgment, sets forth facts necessary to establish the amount of the claim, after deducting all credits to which the defendant is entitled, and verifies the amount is warranted by information in the plaintiff's possession.

Rule 56. Summary judgment.

(a) Motion for summary judgment or partial summary judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court ~~shall~~ must grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion. The motion and memoranda must follow Rule 7 as supplemented below.

[…]

(c) Procedures.

(c)(1) Supporting factual positions. A party asserting that a fact cannot be genuinely disputed or is genuinely disputed must support the assertion by:

(c)(1)(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, ~~affidavits or~~ declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(c)(1)(B) showing that the materials cited do not establish the absence or presence of a genuine dispute.

[…]

(c)(4) ~~Affidavits or d~~Declarations. A~~n affidavit or~~ declaration used to support or oppose a motion must be made on personal knowledge, must set out facts that would be admissible in evidence, and must show that the ~~affiant or~~ declarant is competent to testify on the matters stated.

(d) When facts are unavailable to the nonmoving party. If a nonmoving party shows by ~~affidavit or~~ declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(d)(1) defer considering the motion or deny it without prejudice;

(d)(2) allow time to obtain ~~affidavits or~~ declarations or to take discovery; or

(d)(3) issue any other appropriate order.

[…]

(h) ~~Affidavit or d~~Declaration submitted in bad faith. If satisfied that ~~an affidavit or~~a declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. The court may also hold an offending party or attorney in contempt or order other appropriate sanctions.

Rule 58A. Entry of judgment; abstract of judgment.

(i) Judgment by confession. If a judgment by confession is authorized by statute, the party seeking the judgment must file with the clerk a statement, verified by the defendant, as follows:

(i)(1) If the judgment is for money due or to become due, the statement must concisely state the claim and that the specified sum is due or to become due.

(i)(2) If the judgment is for the purpose of securing the plaintiff against a contingent liability, the statement must state concisely the claim and that the specified sum does not exceed the liability.

(i)(3) The statement must authorize the entry of judgment for the specified sum.

The clerk must sign the judgment for the specified sum.

Rule 58C. Motion to renew judgment.

(a) Motion. A judgment creditor may renew a judgment by filing a motion under Rule 7 in the original action before the statute of limitations on the original judgment expires. A copy of the judgment must be filed with the motion.

(b) ~~Affidavit~~Declaration. The motion must be supported by ~~an affidavit or~~a declaration~~s~~:

(b)(1) accounting for the original judgment and all post-judgment payments, credits, and other adjustments provided for by law or contained in the original judgment; and

(b)(2) affirming that notice was sent to the most current address known for the judgment debtor, stating what efforts the creditor has made to determine whether it is the debtor's correct address.

Rule 59. New trial; altering or amending a judgment.

(a) Grounds. Except as limited by Rule 61, a new trial may be granted to any party on any issue for any of the following reasons:

(1) irregularity in the proceedings of the court, jury or opposing party, or any order of the court, or abuse of discretion by which a party was prevented from having a fair trial;

(2) misconduct of the jury, which may be proved by the ~~affidavit or~~ declaration of any juror;

(3) accident or surprise that ordinary prudence could not have guarded against;

(4) newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the trial;

(5) excessive or inadequate damages that appear to have been given under the influence of passion or prejudice;

(6) insufficiency of the evidence to justify the verdict or other decision; or

(7) that the verdict or decision is contrary to law or based on an error in law.

(b) Time for motion. A motion for a new trial must be filed no later than 28 days after entry of the judgment. When the motion for a new trial is filed under paragraph (a)(1), (2), (3), or (4), it must be supported by ~~affidavits or~~ declarations. If a motion for a new trial is supported by ~~affidavits or~~ declarations, they must be served with the motion.

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

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

(1) A bond given under Subdivision (b) 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 form execution. Sureties on personal bonds ~~shall~~ must make and file a declaration setting forth in reasonable detail the assets and liabilities of the surety.

[…]

(4) A bond ~~shall~~ must 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~~documents 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.

Rule 63. Disability or disqualification of a judge.

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

(b) Motion to disqualify; ~~affidavit or~~ declaration.

(b)(1) A party to an action or the party's attorney may file a motion to disqualify a judge. The motion must be accompanied by a certificate that the motion is filed in good faith and must be supported by ~~an affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act~~a declaration stating facts sufficient to show bias, prejudice, or conflict of interest. The motion must also be accompanied by a request to submit for decision.

[…]

(b)(3) Signing the motion or ~~affidavit or~~ declaration constitutes a certificate under Rule 11 and subjects the party or attorney to the procedures and sanctions of Rule 11.

[…]

(b)(5) If timeliness of the motion is determined under paragraph (b)(2)(C) or paragraph (b)(4), the ~~affidavit or~~ declaration supporting the motion must state when and how the party came to know of the reason for disqualification.

(c) Reviewing judge.

(c)(1) The judge who is the subject of the motion must, without further hearing or a response from another party, enter an order granting the motion or certifying the motion and ~~affidavit or~~ declaration to a reviewing judge. The judge must take no further action in the case until the motion is decided. If the judge grants the motion, the order will direct the presiding judge of the court to assign another judge to the action or hearing. Assignment in justice court cases will be in accordance with Utah Code of Judicial Administration Rule 9-109. The presiding judge of the court, any judge of the district, or any judge of a court of like jurisdiction may serve as the reviewing judge.

(c)(2) If the reviewing judge finds that the motion and ~~affidavit or~~ declaration are timely filed, filed in good faith and legally sufficient, the reviewing judge ~~shall~~ must assign another judge to the action or hearing or request the presiding judge to do so. Assignment in justice court cases will be in accordance with Utah Code of Judicial Administration Rule 9-109.

(c)(3) In determining issues of fact or of law, the reviewing judge may consider any part of the record of the action and may request of the judge who is the subject of the motion ~~an affidavit or~~ a declaration responding to questions posed by the reviewing judge.

Rule 64. Writs in general.

(d) Issuance of writ; service

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

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

(d)(2)(A) If the writ is issued ex parte before judgment, the clerk ~~shall~~ must attach to the writ plaintiff's ~~affidavit~~declaration, detailed description of the property, notice of hearing, order authorizing the writ, notice of exemptions and reply form.

(d)(2)(B) If the writ is issued before judgment but after a hearing, the clerk ~~shall~~ must attach to the writ plaintiff's ~~affidavit~~ declaration and detailed description of the property.

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

[…]

(d)(3)(C) Return; inventory. Within 14 days after service, the officer ~~shall~~ must return the writ to the court with proof of service. If property has been seized, the officer ~~shall~~ must include an inventory of the property and whether the property is held by the officer or the officer's designee. If a person refuses to give the officer ~~an affidavit~~a declaration describing the property, the officer ~~shall~~ must indicate the fact of refusal on the return, and the court may require that person to pay the costs of any proceeding taken for the purpose of obtaining such information.

Rule 64A. Prejudgment writs in general.

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

[…]

(d) Statement. The ~~affidavit~~declaration supporting the motion ~~shall~~ must state facts sufficient to show the following information:

[…]

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

(g) Reply. The defendant may file a reply to the ~~affidavit~~ declaration for a prejudgment writ at least 24 hours before the hearing. The reply may:

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

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

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

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

(g)(5) claim a set off.

[…]

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

[….]

Rule 64D. Writ of garnishment.

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

[…]

(d) Defendant identification. The plaintiff ~~shall~~must submit with the ~~affidavit~~ declaration or application a copy of the judgment information statement described in Utah Code ~~Section~~ section 78B-5-201 or the defendant's name and address and, if known, the last four digits of the defendant's social security number and driver license number and state of issuance.

(e) Interrogatories. The plaintiff ~~shall~~must submit with the ~~affidavit~~ declaration or application interrogatories to the garnishee inquiring:

[…]

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

[….]

Rule 64E. Writ of execution.

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

[…]

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

Rule 65A. Injunctions.

(b) **Temporary restraining orders.**

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

Rule 65C. Post-conviction relief.

(e) Attachments to the petition. If available to the petitioner, the petitioner ~~shall~~must attach to the petition:

(1) ~~affidavits, unsworn~~ declarations ~~as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act~~, copies of records, and other evidence in support of the allegations;

[….]

Rule 69A. Seizure of property.

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

[…]

(c)(3) In the discretion of the officer, property of extraordinary size or bulk, property that would be costly to take into custody or to store and property not capable of delivery may be seized by serving the writ and a description of the property on the person holding the property. The officer ~~shall~~must request of the person holding the property ~~an affidavit~~a declaration describing the nature, location, and estimated value of the property.

Rule 69C. Redemption of real property after sale.

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

[…]

(c)(3) ~~an affidavit~~a declaration showing the amount due on the judgment or lien.

Rule 69C. Redemption of real property after sale.

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

[…]

(i)(2) Upon written request served on the purchaser before the time for redemption expires, the purchaser ~~shall~~must prepare and serve on the requester a written and verified account of rents and profits. The period for redemption is extended to 7 days after the accounting is served. If the purchaser fails to serve the accounting within 30 days after the request, the redemptioner may, within 60 days after the request, bring an action to compel an accounting. The period for redemption is extended to 21 days after the order of the court.

Rule 73. Attorney fees.

(c) **Supporting affidavit.** The motion must be supported by ~~an affidavit or~~ a declaration that reasonably describes the time spent and work performed, including for each item of work the name, position (such as attorney, paralegal, administrative assistant, etc.), and hourly rate of the persons who performed the work, and establishes that the claimed fee is reasonable.

(d) **Liability for fees.** The court may decide issues of liability for fees before receiving submissions on the value of services. If the court has established liability for fees, the party claiming them may file ~~an affidavit~~a declaration and a proposed order. The court will enter an order for the claimed amount unless another party objects within 7 days after the ~~affidavit~~declaration and proposed order are filed.

[…]

f) **Fees.** Attorney fees awarded under this rule may be augmented upon submission of a motion and supporting ~~affidavit~~declaration meeting the requirements of paragraphs (b) and (c) within a reasonable time after the fees were incurred, except as provided in paragraphs (f)(1), (f)(2) and (f)(3), and only where the augmented fees sought exceed those already awarded.

(f)(1) **Fees upon entry of uncontested judgment.** When a party seeks a judgment, the responding party does not contest entry of judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has complied with paragraph (e) of this rule, the request for judgment may include a request for attorney fees, and the clerk or the court ~~shall~~must allow any amount requested up to $350.00 for such attorney fees without a supporting ~~affidavit~~declaration.

(f)(2) **Fees upon entry of judgment after contested proceeding.** When a party seeks a judgment, the responding party contests the judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has established its right to attorney fees, the request for judgment may include a request for attorney fees, and the clerk or the court ~~shall~~must allow any amount requested up to $750 for such attorney fees without a supporting ~~affidavit~~declaration.

(f)(3) **Post Judgment Collections.** When a party has established its entitlement to attorney fees under any paragraph of this rule, and subsequently:

(f)(3)(A) applies for any writ pursuant to Rules 64, 64A, 64B, 64C, 64D, or 64E; or

(f)(3)(B) files a motion pursuant to Rules 64(c)(2) or 58C or pursuant to Utah Code ~~§~~ section 35A-4-314, the party may request as part of its application for a writ or its motion that the party's judgment be augmented according to the following schedule, and the clerk or the court ~~shall~~must allow such augmented attorney fees request without a supporting ~~affidavit~~declaration if it approves the writ or motion:

[…]

Advisory Committee Notes:

2018 Amendments

An overwhelming number of cases filed in the courts, especially debt collection cases, result in the entry of an uncontested judgment. The work required in most cases to obtain an uncontested judgment does not typically depend on the amount at issue. As such, the prior schedule of fees based on the amount of damages has been eliminated, and instead replaced by a single fee upon entry of an uncontested judgment that is intended to approximate the work required in the typical case. A second amount is provided where the case is contested and fees are allowed, again in an effort to estimate the typical cost of litigating such cases. Where additional work is required to collect on the judgment, the revised rule provides a default amount for writs and certain motions and eliminates the "considerable additional efforts" limitation of the prior rule. It also recognizes that defendants often change jobs, and thus provides for such default amounts to vary depending on whether a new garnishee is required to collect on the outstanding amount of the judgment. Thus, the amended rule attempts to match the scheduled amounts to the work required of attorneys, rather than tying the scheduled amounts solely to the damages claimed. But the rule remains flexible so that when attorney fees exceed the scheduled amounts, a party remains free to file ~~an affidavit~~ a declaration requesting appropriate fees in accordance with the rule.

Rule 83. Vexatious litigants.

(d) Prefiling orders in a pending action.

(1) If a vexatious litigant is subject to a prefiling order in a pending action requiring leave of the court to file any ~~paper~~document, pleading, or motion, the vexatious litigant ~~shall~~must submit any proposed ~~paper~~document, pleading, or motion to the judge assigned to the case and must:

(A) demonstrate that the ~~paper~~document, pleading, or motion is based on a good faith dispute of the facts;

(B) demonstrate that the ~~paper~~document, pleading, or motion is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(C) include ~~an~~ oath~~, affirmation or~~ a declaration ~~under criminal penalty~~ that the proposed ~~paper~~document, pleading or motion is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter;

[…]

(e) Prefiling orders as to future claims.

(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims ~~shall~~must submit an application seeking an order before filing. The presiding judge of the judicial district in which the claim is to be filed ~~shall~~must decide the application. The presiding judge may consult with the judge who entered the vexatious litigant order in deciding the application. In granting an application, the presiding judge may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

(2) To obtain an order under paragraph (e)(1), the vexatious litigant's application must:

(A) demonstrate that the claim is based on a good faith dispute of the facts;

(B) demonstrate that the claim is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(C) include ~~an~~ oath~~, affirmation, or~~ a declaration ~~under criminal penalty~~ that the proposed claim is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent, or scandalous matter;

(D) include a copy of the proposed petition, complaint, counterclaim, cross-claim, or third party complaint; and

(E) include the court name and case number of all claims that the applicant has filed against each party within the preceding seven years and the disposition of each claim.

Rule 86. Licensed paralegal practitioners.

(d) **Licensed paralegal practitioner fees.** Where these rules refer to attorney fees, they also mean licensed paralegal practitioner fees. Under Rule 73, licensed paralegal practitioners may recover fees with a supporting ~~affidavit~~declaration. Rule 73(f)(1)-(3) does not apply to licensed paralegal practitioners.

Rule 87. Affidavits, declarations, and verified documents.

(a) **Definitions.** Throughout these rules:

(1) "Declaration" means a sworn declaration or unsworn declaration.

(2) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic symbol, sound, or process.

(3) (A) "Sworn declaration" means a declaration in a signed record given under oath before any judge, the clerk of any court, any justice court judge, or any notary public in this state.

(B) "Sworn declaration" includes a sworn statement, verification, certificate, affidavit, or other document with a notarized, verified, or acknowledged signature.

(4) "Unsworn declaration" means a declaration in a signed record not given under oath but given under penalty of Title 76, Chapter 8, Part 5 Falsification in Official Matters.

(5) "Verified" means verified by a declaration in accordance with paragraph (e) of this rule.

(b) **Validity of unsworn declaration**.

(1) Except as provided in paragraph (b)(2), if a rule requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this rule has the same effect as a sworn declaration.

(2) This rule does not apply to a Financial Declaration given under Rule 26.1.

(c) **Form of unsworn declaration.** An unsworn declaration must be in substantially the following form:

> I declare under criminal penalty under the law of Utah that the foregoing is true and correct.
>
> Signed on the ___ day of _____, _____, at _____.
> Date Month Year City or other location, and state or country
>
> _____
> Printed name
>
> _____
> Signature

(e) **Verified documents.** If a rule requires or permits a document to be verified, the document may be verified by a declaration, in the same document or in one or more separate supporting documents, that is based the declarant's personal knowledge and shows that the declarant is competent to testify on the matters set forth.

(f) **Filing.** If a declaration is filed, then the filing party must comply with Rule 5(f).

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Comment [AM3]: Include?

Comment [AM4]: Language borrowed from Utah Code 78B-5-701

Comment [AM5]: Delete in light of paragraph (e) below?

Comment [AM6]: Delete in light of paragraph (e) below?

Comment [AM7]: Language borrowed from Rule 11.

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Rule 101. Motion practice before court commissioners.

(a) Written motion required. An application to a court commissioner for an order must be by motion which, unless made during a hearing, must be made in accordance with this rule.

(1) A motion must be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought. Any evidence necessary to support the moving party's position must be presented by way of one or more ~~affidavits or~~ declarations or other admissible evidence. The motion may also include a supporting memorandum.

[…]

(b) Time to file and serve. The moving party must file the motion and any supporting ~~papers~~documents with the clerk of the court and obtain a hearing date and time. The moving party must serve the responding party with the motion and supporting ~~papers~~documents, together with notice of the hearing at least 28 days before the hearing. If service is more than 90 days after the date of entry of the most recent appealable order, service may not be made through counsel.

(c) Response. Any other party may file a response, consisting of any responsive memorandum~~,~~ ~~affidavit(s)~~ or declaration~~(s)~~. The response must be filed and served on the moving party at least 14 days before the hearing.

(d) Reply. The moving party may file a reply, consisting of any reply memorandum~~, affidavit(s)~~ or declaration~~(s)~~. The reply must be filed and served on the responding party at least 7 days before the hearing. The contents of the reply must be limited to rebuttal of new matters raised in the response to the motion.

[…]

(f) Necessary documentation. Motions and responses regarding temporary orders concerning alimony, child support, division of debts, possession or disposition of assets, or litigation expenses, must be accompanied by verified financial declarations with documentary income verification attached as exhibits, unless financial declarations and documentation are already in the court's file and remain current. Attachments for motions and responses regarding child support and child custody must also include a child support worksheet.

(g) No other ~~papers~~documents. No moving or responding ~~papers~~documents other than those specified in this rule are permitted.

(h) Exhibits; objection to failure to attach.

(1) Except as provided in paragraph (h)(3) of this rule, any documents such as tax returns, bank statements, receipts, photographs, correspondence, calendars, medical records, forms, or photographs must be supplied to the court as exhibits to one or more ~~affidavits~~ declarations (as appropriate) establishing the necessary foundational requirements. Copies of court ~~papers~~documents such as decrees, orders, minute entries, motions, or ~~affidavits,~~ declarations already in the court's case file, may not be filed as exhibits. Court ~~papers~~documents from cases

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other than that before the court, such as protective orders, prior divorce decrees, criminal orders, information or dockets, and juvenile court orders (to the extent the law does not prohibit their filing), may be submitted as exhibits.

(2) If ~~papers~~documents or exhibits referred to in a motion or necessary to support the moving party's position are not served with the motion, the responding party may file and serve an objection to the defect with the response. If ~~papers~~documents or exhibits referred to in the response or necessary to support the responding party's position are not served with the response, the moving party may file and serve an objection to the defect with the reply. The defect must be cured within 2 business days after notice of the defect or at least 3 business days before the hearing, whichever is earlier.

[…]

(i) Length. Initial and responding memoranda may not exceed 10 pages of argument without leave of the court. Reply memoranda may not exceed 5 pages of argument without leave of the court. The total number of pages submitted to the court by each party may not exceed 25 pages, including ~~affidavits,~~declarations, attachments, and summaries, but excluding financial declarations and income verification. The court commissioner may permit the party to file an over-length memorandum upon ex parte application and showing of good cause.

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

(k) Limit on order to show cause. An application to the court for an order to show cause may be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by ~~affidavit~~ declaration or other evidence sufficient to show cause to believe a party has violated a court order.

(l) Hearings.

(1) The court commissioner may not hold a hearing on a motion for temporary orders before the deadline for an appearance by the respondent under Rule 12.

(2) Unless the court commissioner specifically requires otherwise, when the statement of a person is set forth in ~~an affidavit,~~ a declaration or other document accepted by the commissioner, that person need not be present at the hearing. The statements of any person not set forth in ~~an affidavit,~~ a declaration or other acceptable document may not be presented by proffer unless the person is present at the hearing and the commissioner finds that fairness requires its admission.

[…]

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

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

Rule 104. Divorce decree upon ~~affidavit~~declaration.

A party in a divorce case may apply for entry of a decree without a hearing in cases in which the other party fails to make a timely appearance after service of process or other appropriate notice, waives notice, stipulates to the withdrawal of the answer, or stipulates to the entry of the decree or entry of default. ~~An affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act,~~A declaration in support of the decree must accompany the application. The ~~affidavit~~declaration must contain evidence sufficient to support necessary findings of fact and a final judgment.

Rule 105. Shortening 30- -day waiting period in divorce actions.

A motion for a hearing less than 30 days from the date the petition was filed ~~shall~~must be accompanied by ~~an affidavit~~a declaration setting forth the date on which the petition for divorce was filed and the facts constituting extraordinary circumstances.

Rule 108. Objection to court commissioner's recommendation.

(a) A recommendation of a court commissioner is the order of the court until modified by the court. A party may file a written objection to the recommendation within 14 days after the recommendation is made in open court or, if the court commissioner takes the matter under advisement, within 14 days after the minute entry of the recommendation is served. A judge's counter-signature on the commissioner's recommendation does not affect the review of an objection.

(b) The objection must identify succinctly and with particularity the findings of fact, the conclusions of law, or the part of the recommendation to which the objection is made and state the relief sought. The memorandum in support of the objection must explain succinctly and with particularity why the findings, conclusions, or recommendation are incorrect. The time for filing, length and content of memoranda, ~~affidavits~~declarations, and request to submit for decision are as stated for motions in Rule 7.

Tab 5

CHANGES REQUESTED FOR MYCASE TRANSITION
RULE 76
At the request of the Self Help Center and MyCase developers
October 25, 2023

CURRENT RULE 76

Rule 76. Notice of contact information change.
Effective: 11/1/2022

An attorney and unrepresented party must promptly notify the court in writing of any change in that person's address, e-mail address, and phone number for purposes of receiving service and communications from the court and other parties. The same notice must be provided to other parties, unless a protective order, stalking injunction, or other court order provides otherwise.

WHY WE REQUEST IT BE MODIFIED

We are close to having functionality available in MyCase such that when a MyCase user updates their email address, their email address in CORIS updates automatically. When that happens, there will be a note entered in the case history. That means that the need for this update to URCP 76 will become more acute - because if the rule is *not* changed, then lots of folks (litigants, lawyers, JAs) will likely be confused.

PROPOSED MODIFICATIONS

Rule 76. Notice of contact information change.

Attorneys and self-represented parties must keep their contact information (address, email and phone number) current with the court while involved in a court case so they can receive notices from the court and from other parties. If their contact information changes, they must promptly file with the court a Notice of Contact Information Change and must provide a copy of the Notice to all other parties in the case through informal (Rule 5) service unless prohibited from doing so by a protective order, stalking injunction, or other court order. If a party needs to change their email address only, they may update it in MyCase, which satisfies the requirements of this rule and notifies the other parties in the case who have electronic filing accounts.

Rule 76. Notice of contact information change.
Effective: 11/1/2022

~~An A~~attorneys and ~~un~~self-represented ~~party~~ part-ies must keep their contact information ~~promptly notify the court in writing of any change in that person's~~ (address, e-mail ~~address,~~ and phone number) current with the court while involved in a court case so they can receive notices ~~for purposes of receiving service and communications~~ from the court and from other parties. If their contact information changes, they must promptly file with the court a Notice of Contact Information Change and must provide a copy of the Notice to all other parties in the case through informal (Rule 5) service unless prohibited from doing so by ~~The same notice must be provided to other parties, unless~~ a protective order, stalking injunction, or other court order ~~provides otherwise~~. If a party needs to change their email address only, they may update it in MyCase, which satisfies the requirements of this rule and notifies the other parties in the case who have electronic filing accounts.

FINALLY, HERE IS WHAT CLAUDE AI CHANGES 76 TO (at a 5th grade level):

Lawyers and people representing themselves must keep their address, email, and phone number updated with the court during a case. That way the court and other parties can contact them. If their contact information changes, they must quickly file a Notice of Contact Information Change with the court. They must also give a copy to all other parties, unless a court order stops them. If they only need to update an email address, they can do that in MyCase. That will notify parties with electronic filing accounts.

[Might need to be more specific, re a court order that prevents them from communicating with the other party like a stalking injunction or a protective order.]

Tab 6

URCP Rule 74
Contact information upon withdrawal of counsel

Judge Holmberg noticed the mailing address for a client may not be sufficient contact information when an attorney withdraws from a case. The proposal is to add that an attorney provide the physical mailing address, the email address, and the cell phone number of the client in the withdrawal of counsel.

Rule 74. Withdrawal of counsel.

(a) **Notice of withdrawal.** An attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the physical mailing address, email address and cell phone number of the attorney's client and a statement that no motion is pending and no hearing or trial has been set. If a motion is pending or a hearing or trial has been set, an attorney may not withdraw except upon motion and order of the court. The motion to withdraw shall describe the nature of any pending motion and the date and purpose of any scheduled hearing or trial.

(b) **Withdrawal of limited appearance.** An attorney who has entered a limited appearance under Rule 75 shall withdraw from the case upon the conclusion of the purpose or proceeding identified in the Notice of Limited Appearance:

~~(b)~~(1) by filing and serving a notice of withdrawal; or

~~(b)~~(2) if permitted by the judge, by orally announcing the withdrawal on the record in a proceeding.

An attorney who seeks to withdraw before the conclusion of the purpose or proceeding shall proceed under subdivision (a).

(c) **Notice to Appear or Appoint Counsel.** If an attorney withdraws other than under subdivision (b), dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall serve a Notice to Appear or Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed with the court. No further proceedings shall be held in the case until 21 days after filing the Notice to Appear or Appoint Counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.

(d) **Substitution of counsel.** An attorney may replace the counsel of record by filing and serving a notice of substitution of counsel signed by former counsel, new counsel and the client. Court approval is not required if new counsel certifies in the notice of substitution that counsel will comply with the existing hearing schedule and deadlines.

Effective date:

Tab 7