

Agenda

Advisory Committee on Rules of Civil Procedure

October 23, 2002
4:00 to 6:00 p.m.

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

Approval of minutes	Fran Wikstrom
Formatting court rules	Tim Shea
Rule 3. Filing fee	Fran Wikstrom
Rule 24. Notice to AG of challenge to constitutionality of a statute	Fran Wikstrom
Provisional and final remedies	Tim Shea
Selective Recodification of Code of Judicial Administration into Rules of Civil Procedure	Cullen Battle
Statement of the case as part of discovery plan. Rule 26	Tim Shea
Soldiers' & Sailors' Relief Act affidavit for default judgment	Tim Shea

Meeting Schedule

November 20 (3rd Wednesday)
January 22, 2003
February 26
March 26
April 23
May 28
September 24
October 22
November 19 (3rd Wednesday)

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, September 25, 2002
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, David W. Scofield, Thomas R. Karrenberg, Cullen Battle, Francis J. Carney, R. Scott Waterfall, Terrie T. McIntosh, Honorable Ronald N. Boyce, Honorable Anthony W. Schofield, Leslie W. Slaugh, Thomas R. Lee, Todd M. Shaughnessy, Virginia Smith, Glenn C. Hanni

STAFF: Tim Shea, Esther Chelsea-McCarty

EXCUSED: Honorable K. L. McIff, Paula Carr, Debora Threedy, Honorable Anthony B. Quinn

WELCOME AND APPROVAL OF MINUTES

The meeting was called to order at 4:00 p.m. The minutes of the May 22, 2002, meeting were reviewed and approved.

INTRODUCTION OF NEW MEMBERS

Francis Wikstrom welcomed Judge Schofield, James Blanch, Frank Carney, David Scofield, and Jan Smith as new members of the Committee. Mr. Wikstrom also reported that Judge McIff will be resigning from the Committee and that Judy Wolferts will be the new secretary of the Committee.

REPORT ON SUPREME COURT ACTION

Mr. Wikstrom reported that he had met recently with the Supreme Court and that the Court had approved the various changes to the Rules recommended by the Committee. The changes will be effective November 1.

CODE OF JUDICIAL ADMINISTRATION

Cullen Battle reported on recent activities of the Committee considering incorporating the Rules of Judicial Administration into the various sets of procedural rules. The Committee is recommending incorporation of some of those rules into the Rules of Civil Procedure. One suggestion is that these rules could be numbered 100 and higher. The Civil Procedure Committee will need to decide whether to recommend adopting such an approach and what input should be provided from this Committee concerning such revisions to the rules. Tim Shea will work on various approaches to this issue for the Committee to consider. Mr. Wikstrom will approach various probate practitioners and domestic relations practitioners to enlist their

cooperation on subcommittees in considering how to deal with the rules that relate to those practice areas.

RULE CHANGES SUGGESTED BY CHRISTOPHER DAINES

Tim Shea discussed the proposed rule changes suggested by Christopher Daines in his letter to the Committee dated May 1, 2002. Mr. Daines suggested rule changes requiring parties to submit proposed orders in connection with motions and requiring parties to meet and confer prior to filing any motion.

Mr. Wikstrom suggested that it may be premature to discuss these proposals prior to the contemplated incorporation of portions of the Rules of Judicial Administration into the Rules of Civil Procedure.

Many Committee members expressed skepticism concerning the proposal requiring counsel to meet and confer prior to filing motions. Committee members were divided on whether it is advisable to require proposed orders to be submitted in connection with motions. The Committee will discuss these issues further at future meetings.

PROVISIONAL AND FINAL REMEDIES

Tim Shea recapped the Committee's work to date in considering potential wholesale revisions to the Rule 64 series governing provisional and final remedies. These topics were the subject of Mr. Shea's memorandum to the Committee dated September 3, 2002.

Mr. Shea summarized his memorandum, explaining the various areas of potential revision that are before the Committee for consideration.

The Committee discussed Professor Lee's concern that draft Rule 64(o), permitting attachment in contract cases due to impairment of a plaintiff's remedy, but prior to any actual or anticipatory breach by defendant, permits unripe actions in violations of Utah's jurisdictional statutes. Professor Lee moved to eliminate Rule 64(o) from the draft rules. The motion was seconded, and it passed unanimously.

Mr. Shea explained that he favors including a rule that a party seeking a prejudgment writ must show substantial likelihood of success on the merits. He also recommended a rule requiring appraisal of real estate prior to judicial sales and permitting sale only if the defendant's equity in the property exceeds 20% of the appraised value. Following discussion, the Committee agreed that Mr. Shea will incorporate into future drafts of the proposed rules a requirement for a showing of likelihood of success on the merits. Concerning the proposed prohibition on real property sales where the defendant's equity is less than 20% of the appraised value, the Committee determined not to include such a provision in the rules.

The Committee discussed whether the Rules can be reformatted in such a way that they will be more readable. Leslie Slaugh proposed potential renumbering of the rules, but other Committee members expressed concern that we would lose the ability easily to research the same rules in other jurisdictions. Many Committee members believe that the rules can simply be reformatted physically, with the same numbers, so that different levels of subsections are indented differently from the left-hand margin. Mr. Shea will discuss this with the publisher.

The Committee turned its attention to the specific language of the proposed rules. The Committee decided to use the term “seize,” rather than “levy,” throughout the proposed rules. The Committee also decided to use the term “writ” throughout.

Concerning the definition of “claim,” the Committee decided to eliminate the definition because the term is already defined in Rule 8.

Many Committee members felt the use of the term “defendant” is confusing in the Rule because it does not necessarily refer to the party defendant in the action. The Committee will consider potential alternative terms to use instead of “defendant.”

Leslie Slaugh suggested that Rule 1.3 should merely require written notice, rather than requiring mailing. The Committee adopted this change so as to make clear that hand-delivery of a notice is permissible.

The Committee discussed various approaches to amending the definition of “property” subject to seizure under section 1.10 of the rules. Tom Karrenberg suggested that the definition should refer to the defendant’s “assets,” rather than the defendant’s “property.” Tom Karrenberg also stated that he felt certain types of personal services currently omitted from the definition of “property” should not be exempt from execution. Leslie Slaugh proposed that the definition should merely be “all forms of property recognized by law.” Following further discussion, the Committee crafted a definition of “property” addressing many of the Committee members’ concerns. Tim Shea will incorporate this definition into future drafts of the rule.

Concerning paragraph 2.1 of the draft rules, the Committee considered whether to provide that security should be sufficient to cover attorney’s fees, as well as costs. Frank Carney suggested that the language from the rule governing injunction bonds could simply be incorporated into the rules governing attachment.

The Committee will return to the issue of provisional and final remedies in future meetings.

FILING FEE

Tim Shea reminded the Committee of its prior work on the filing fee issue. The Committee then considered Mr. Shea’s proposed revision to Rule 3 attached to his memorandum to the Committee dated September 3, 2002. Some Committee members expressed concern that the proposed revision of the rule is confusing. Following discussion, the Committee agreed upon revised language that Mr. Shea will incorporate into the rule and present to the Committee for consideration.

NOTICE TO ATTORNEY GENERAL of challenge to constitutionality of a statute

Tim Shea explained his proposed addition to Rule 24 requiring notice to the Attorney General of actions drawing into question the constitutionality of state statutes. Some Committee members suggested that subsection (d)(4), expressly permitting courts to reconsider orders if the rule is not followed, should be dropped. Many Committee members felt courts would have discretion to do this anyway and that it would be unwise expressly to invite the filing of such motions. Upon motion duly made and seconded, the Committee voted unanimously to drop subsection (d)(4) from the proposed rule.

The Committee further voted unanimously to strike the language “affecting the public interest” and to replace the language “draws into question” with “questions.” The Committee also voted unanimously to strike the language following “intervene” in subsections (d)(1) and (d)(2). The Committee also voted unanimously to drop subsection (d)(3) of the proposed rule. Tim Shea will generate another draft of the amendment for the Committee to consider, including language borrowed from the rule’s federal counterpart providing that failure to comply does not affect the validity of the action.

ADJOURNMENT

The meeting adjourned at 6:00 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, October 23, 2002, at the Administrative Office of the Courts.

From: Tim Shea [mailto:Timmys@email.utcourts.gov]
Sent: Thursday, September 26, 2002 1:23 PM
To: Molly.Campbell@lexisnexis.com
Cc: FWikstrom@pblutah.com
Subject: Formatting Utah Court Rules

Molly,

Several attorneys have complained that it is difficult to follow the Utah court rules into subparagraphs. Because all paragraphs are indented equally, it's sometimes difficult to distinguish what is part of a preceding section and begins a new section. We do what we can to limit how deep sub- sub- sub (etc) paragraphs go, but sometimes that depth is unavoidable.

What are our options to format court rules so that subparagraphs are indented one level more than the primary paragraph of which it is a part (and sub- sub- paragraphs following seriatim)? I think most applications of indentations would be leave a reasonable page width for text. (Although a few might be so deep as to leave little more than half the page. A significant waste in this day and age.) Another option mentioned was to successively indent the first line of each paragraph with the remaining lines returning to the left margin. We discussed using a different numbering system (1.1.1.1., for example), but everyone recognized the huge inertia of the current numbering system.

What are some of the tricks editors play to make the relationship of paragraphs with subparagraphs more obvious? If, as we continue to discuss this, there is general support for using indentation as the clue, how do we go about making that happen? Is it best if we edit our documents and send them to you? Or is it just as easy for you to edit your documents in the first instance?

Thanks for you opinions.
Tim

Tim, as promised:

Thanks for passing on the complaints. I can see that it would be more helpful to have visual cues showing you what level of the text you're in. In the Utah Code, we indent (left side only) each level 2 ems more than the level above it. If you have a print code, see, e.g., § 59-10-103. (If you don't, I can fax these examples to you.) This section goes down to 5 levels, which is about as far down as a statute or rule would normally go, so you can see how much white space there is at the subsections that are indented the most. Something like this would be one way to indicate the relationships of paragraphs. This will make the book slightly bigger because it will add lines to rules with a lot of subsections. The increase will be small, but possibly not insignificant because the rules book right now is getting close to the limit of how many pages we can put in one binding.

The other option you mentioned, successively indenting the first line of each paragraph with the remaining lines returning to the left margin, would use less space but (in my opinion) wouldn't look as good. I'll try to find some examples of that to share with you.

Another option that occurs to me is to print the full designation on each paragraph -- e.g.:

- (a) xxxxxxxxxxxx
- (a)(1) xxxxxxxxxxxx
- (a)(2)(A) xxxxxxxxxxxxxx
- (a)(2)(B) xxxxxxxxxxxxxx

We store your rules data in a structured database and we can produce output in a variety of styles, including these. Maybe we can talk next week about what would be best for you and the attorneys of Utah?

Thanks,
Molly
800-446-3410, ext. 7520

1 **Rule 3. Commencement of action.**

2 (a) How commenced. A civil action is commenced (1) by filing a complaint with the court, or
3 (2) by service of a summons together with a copy of the complaint in accordance with Rule 4. If
4 the action is commenced by the service of a summons and a copy of the complaint, then the
5 complaint, the summons and proof of service, must be filed within ten days of such service. If, in
6 a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of
7 service are not filed within ten days of service, the action commenced shall be deemed dismissed
8 and the court shall have no further jurisdiction thereof; ~~provided, however, that the foregoing~~
9 ~~provision shall not change the requirement of Utah Code Ann. Section 12-1-8 (1986).~~ If a party
10 dishonors a check or other form of payment, the party shall make valid payment upon
11 notification by the court. Failure of a party to honor a check or other form of payment does not
12 affect the validity of the filing, but may be grounds for such sanctions as the court deems
13 appropriate, which may include dismissal of the action and the award of costs and attorney fees.

14 (b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the
15 complaint or service of the summons and a copy of the complaint.

1 Rule 24. Intervention.

2 (a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an
3 action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant
4 claims an interest relating to the property or transaction which is the subject of the action and he
5 is so situated that the disposition of the action may as a practical matter impair or impede his
6 ability to protect that interest, unless the applicant's interest is adequately represented by existing
7 parties.

8 (b) Permissive intervention. Upon timely application anyone may be permitted to intervene
9 in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's
10 claim or defense and the main action have a question of law or fact in common. When a party to
11 an action relies for ground of claim or defense upon any statute or executive order administered
12 by a governmental officer or agency or upon any regulation, order, requirement, or agreement
13 issued or made pursuant to the statute or executive order, the officer or agency upon timely
14 application may be permitted to intervene in the action. In exercising its discretion the court shall
15 consider whether the intervention will unduly delay or prejudice the adjudication of the rights of
16 the original parties.

17 (c) Procedure. A person desiring to intervene shall serve a motion to intervene upon the
18 parties as provided in Rule 5. The motions shall state the grounds therefor and shall be
19 accompanied by a pleading setting forth the claim or defense for which intervention is sought.

20 (d) Constitutionality of statutes and ordinances.

21 (1) If a party challenges the constitutionality of a statute in an action in which the Attorney
22 General has not appeared, the party raising the question of constitutionality shall notify the
23 Attorney General of such fact. The court shall permit the state to intervene.

24 (2) If a party challenges the constitutionality of a county or municipal ordinance in an action
25 in which the county or municipal attorney has not appeared, the party raising the question of
26 constitutionality shall notify the county or municipal attorney of such fact. The court shall permit
27 the county or municipality to intervene.

1 (3) The state, county or municipality has all the rights and liabilities of a party as to court
2 costs to the extent necessary for a proper presentation of the facts and law relating to the question
3 of constitutionality.

4 (4) Failure of a party to provide notice as required by this rule is not a waiver of any
5 constitutional right otherwise timely asserted.

6
7 **1. Definitions.**

8 1.1.¹ Defendant means the party against whom a claim is filed or against whom judgment has
9 been entered.

10 1.2. Deliver. When the officer is directed by these rules or court order to deliver property or
11 the proceeds of the sale of property, it is sufficient that the officer make the property reasonably
12 available and give to the person entitled to delivery written notice of availability.

13 1.3.² Disposable earnings means that part of earnings for a pay period remaining after the
14 deduction of all amounts required by law to be withheld.

15 1.4.³ Earnings means compensation, however denominated, for personal services, including
16 periodic payments pursuant to a pension or retirement program. Earnings accrue on the last day
17 of the period in which they were earned. If the writ is served before the earnings have been paid,
18 the writ shall be deemed to have been served at the time the earnings accrued. For a judgment for
19 failure to support dependent children, earnings also include periodic payments pursuant to
20 insurance policies, unemployment compensation, and gain derived from capital or labor,
21 including profit gained through the sale or conversion of capital.

22 1.5.⁴ Notice of exemptions means the form that advises the defendant or a third person that
23 certain property is or may be exempt from seizure under state or federal law. The notice shall list
24 examples of exempt property and indicate that other exemptions may be available. The notice
25 shall instruct the defendant how to claim exemptions.

¹ 64D(a)(iv), 64E

² 64D(d)(viii)

³ 64D(d)(vi), (vii)

⁴ 69(g)

1 1.6. Officer means the person to whom the writ is issued, including the sheriff or constable
2 and any deputy. The officer may appoint the defendant as an agent to hold the property.⁵

3 1.7.⁶ Plaintiff means the party filing a claim or in whose favor judgment has been entered.

4 1.8.⁷ Property means the defendant's property of any type not exempt from seizure. Property
5 includes but is not limited to real and personal property, tangible and intangible property, the
6 right to property whether due or to become due, and an obligation of a third person to perform
7 for the defendant. Property includes any portion of the property.

8 1.9. Seize means to control the property sufficient for actual or constructive possession.

9 **2.⁸ Security.**

10 2.1. Amount. When security is required of a party, the party shall provide security in the sum
11 and form the court deems adequate to reimburse other parties for damages, costs and attorney
12 fees incurred as a result of a writ improvidently issued. In fixing the amount of the security, the
13 court may consider any relevant factor, including the amount of indebtedness claimed and the
14 value of the property subject to the writ. The court may relieve a party from the necessity of
15 providing security if it appears that none of the parties will incur damages, costs and attorney
16 fees as a result of a writ improvidently issued or if there exists some other substantial reason for
17 dispensing with the security.⁹ The amount of security shall not establish or limit the amount of
18 damages, costs and attorney fees incurred as the result of a writ improvidently issued.

19 2.2 Jurisdiction over surety. A surety upon a bond or undertaking submits to the jurisdiction
20 of the court and irrevocably appoints the clerk of the court as agent upon whom papers affecting
21 the surety's liability may be served. The surety's liability may be enforced on motion without the
22 necessity of an independent action. The motion and such notice of the motion as the court
23 prescribes may be served on the clerk of the court who shall forthwith mail copies to the surety.
24 If the opposing party recovers judgment or if the writ is improvidently issued, the surety will pay
25 the judgment, damages, costs and attorney fees not to exceed the sum specified in the contract.
26 The surety is responsible for return of property if return is ordered.

⁵ 69(f)

⁶ 64D(a)(iv), 64E

⁷ 64C(a), 64D(a)(iii), 69(b)

⁸ 64B(c), (d), 64C(b), (c), (f), (g)

⁹ 64F; 65A(c)

1 2.3 Objection. The court may issue additional writs upon the original security as often as
2 required subject to the objection of the opposing party. The opposing party may object to the
3 sufficiency of the security or the sufficiency of the sureties within five days after service of the
4 writ. The burden to show the sufficiency of the security and the sufficiency of the sureties is on
5 the proponent of the security.

6 **3. Inquiry and orders in aid of replevin, attachment, garnishment or execution.**

7 3.1. Master. The court may appoint a master.

8 3.2.¹⁰ Witnesses. The court or master may require the defendant or any other person to appear
9 and testify regarding the defendant's property. The court or master may order witness fees and
10 mileage paid as provided by statute.

11 3.3.¹¹ Delivery or description of property. The court or master may order personal property
12 capable of manual delivery be delivered to the officer on such terms as may be just. In the
13 alternative or if the property is not capable of manual delivery, the court or master may require a
14 person to prepare a memorandum describing the nature and value of personal property. If a
15 person refuses to give the memorandum to the officer, the court or master may require that
16 person to pay the costs of any proceeding taken for the purpose of obtaining such information.

17 3.4.¹² Restraint. The court or master may forbid any person from transferring, disposing or
18 interfering with the property until its further order. The court or master may order such
19 proceedings as necessary for the application of the property toward the satisfaction of the
20 judgment.

21 3.5.¹³ Receiver. Before a receiver is vested with real property the receiver shall record a
22 certified copy of the appointment in the office of the recorder of the county in which the real
23 property is located.

24 **4. Issuance of writ, service**

25 4.1.¹⁴ Clerk to issue writs. Unless the judgment or order authorizing the writ is stayed, the
26 clerk of the court shall issue the writ. A court in which a transcript or abstract of the judgment or

¹⁰ 69(o), (p), (r); 64C(i).

¹¹ 64C(i)

¹² 69(q), (s), (t)

¹³ 69(t) Move to Rule 66

1 order has been filed has the same authority to issue the writ as the court that entered the
2 judgment or order. If the writ seizes real property, the clerk of the court shall issue the writ to the
3 sheriff of the county where the real property is located. If the writ seizes personal property, the
4 clerk of the court shall issue the writ to the officer of any county.

5 4.2.¹⁵ Content of writ. As appropriate to the circumstances of the action, the writ shall direct
6 the officer to take possession of the property, to keep the property safe until further order of the
7 court or as directed in the writ, to deliver the property to the plaintiff, or to sell the property. The
8 writ shall specify the court from which it is issued and the caption and number of the case to
9 which it refers. If the writ is to enforce a judgment or order for the payment of money, the writ
10 shall specify the amount ordered to be paid and the amount due. The writ shall state that some
11 property may be exempt and state the deadline for filing a reply. If the writ is issued ex parte
12 before judgment, the clerk shall attach to the writ plaintiff's affidavit, notice of hearing, order
13 authorizing the writ, notice of exemptions and reply form. If the writ is issued after judgment, the
14 clerk shall attach to the writ plaintiff's affidavit, *the judgment*, notice of exemptions and reply
15 form.

16 4.3. Service of writ.

17 4.3.1.¹⁶ Manner of service. The officer shall serve the writ and accompanying papers on the
18 defendant, and, as applicable, the garnishee and any person named by the plaintiff as claiming an
19 interest in the property. Service shall be in the same manner as service of a summons.

20 4.3.2.¹⁷ Order of service, return, inventory. The officer shall promptly serve writs in the order
21 received. The officer may simultaneously serve notice of the date, time and place of sale. Within
22 10 days after service, the officer shall return the writ to the court with a certificate of
23 proceedings, including an inventory of the property and proof of service. Failure to file a return
24 does not affect the validity of the seizure. The officer shall request the person served to prepare a
25 memorandum with a description and value of personal property not capable of manual delivery,
26 and, if the memorandum is refused, the officer shall indicate the fact of refusal on the return.

¹⁴ 69(c)

¹⁵ 64A(8), 64B(c), (h)(2), 64C(d), 64D(d), 69(d)

¹⁶ 64A(7), 64B(c), 64C(e), 64D(e), 69(f)

¹⁷ 64A(7), 64B(c), (h)(3), 64C(e)(7), (h), 64D(e), 69(e)

1 4.3.3.¹⁸ Service of a writ of execution by publication.

2 4.3.3.1. If service of a writ of execution is by publication, at least the following notice must
3 be published under the caption of the case:

4 To _____, Defendant:

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

7 [Quoting body of writ]

8 You have the right to claim property exempt from seizure under statutes of the United States
9 or this state, including Utah Code Annotated, Title 78, Chapter 23.

10 4.3.3.2 The notice shall be published in a newspaper of general circulation in each county in
11 which the property is located at least 10 days prior to the due date for the reply or at least 10 days
12 prior to the date of any sale, or as the court may order. The date of publication is the date of
13 service.

14 **5.¹⁹ Claim to property by third person.**

15 5.1. Claimant's rights. Any person claiming an interest in the property has the same rights
16 and obligations as the defendant with respect to the writ and with respect to providing and
17 objecting to security. Any claimant named by the plaintiff and served with the writ and
18 accompanying papers shall exercise those rights and obligations within the same time allowed
19 defendant. Any claimant not named by the plaintiff and not served with the writ and
20 accompanying papers may exercise those rights and obligations at any time before the property is
21 sold or delivered to plaintiff.

22 5.2. Join claimant as defendant. The court may order the claimant joined as a defendant. The
23 plaintiff shall serve the order on the claimant in the manner required for service of summons.
24 The claimant is thereafter a defendant to the action and shall answer within 10 days, setting forth
25 any claim or defense. The court may render judgment for or against the claimant as in other
26 cases.

¹⁸ 69(g)

¹⁹ 64B(i), 64C(m), 64D(l), 69(n)

1 5.3. Plaintiff's security. If the plaintiff requests a officer to seize property claimed by a
2 person other than the defendant, the officer may require the plaintiff to file security.

3 **6. Discharge of writ, release of property.**

4 6.1.²⁰ By defendant. At any time before the property is sold or delivered to the plaintiff, the
5 defendant may file security and a motion to discharge the writ and release the property. The
6 plaintiff may object to the sufficiency of the security or the sufficiency of the sureties within five
7 days after service of the motion. At any time before the property is sold or delivered to the
8 plaintiff, the defendant may file a motion to discharge the writ and release the property on the
9 ground that the writ was improperly issued. The court shall give the plaintiff reasonable
10 opportunity to correct any defect. The defendant shall serve the order upon the officer,
11 defendant, garnishee and any third person claiming an interest in the property.

12 6.2. By plaintiff. The plaintiff may discharge the writ and release the property by filing a
13 release and serving it upon the officer, defendant, garnishee and any third person claiming an
14 interest in the property.

15 6.3.²¹ Proceedings where defendant prevails. If the defendant prevails, the court shall order
16 the writ discharged and any security, proceeds of sales and remaining property delivered to the
17 defendant.

18 6.4.²² Copy filed with county recorder. When an order discharges a writ upon property seized
19 by filing with the county recorder, the officer shall file a certified copy of the order with the
20 county recorder.

21 6.5.²³ Service on officer, disposition of property. If the order discharging the writ and
22 releasing the property is served on the officer:

23 6.5.1. before the writ is served, the officer shall return the writ to the court;

24 6.5.2. after the writ has been served, the officer shall return the property to the defendant; or

25 6.5.3. after the property is sold, the officer shall deliver the proceeds of the sale to the
26 defendant.

²⁰ 64A(6), 64B(e), 64C(f)(1), (4)

²¹ 64C(l)

²² 64C(m)

²³ 64C(3)

1 **7. Prejudgment writs in general.**

2 7.1. Availability. A writ of replevin, attachment or garnishment is available after the claim
3 has been filed and before judgment only upon written order of the court.

4 7.2.²⁴ Affidavit elements. To obtain a writ of replevin, attachment or garnishment before
5 judgment, plaintiff shall, in addition to the requirements for the specific writ, file security and an
6 affidavit stating facts showing at least one of the following:²⁵

7 7.2.1. that the defendant is concealed or is avoiding service of process;

8 7.2.2. that the defendant has assigned, disposed of or concealed, or is about to assign, dispose
9 of or conceal, the property with intent to defraud creditors;

10 7.2.3. that the defendant has left or is about to leave the state with intent to defraud creditors;

11 7.2.4. that the defendant has fraudulently contracted the debt or incurred the obligation that is
12 the subject of the action;

13 7.2.5. that the property will decline in value through use or the passage of time; or

14 7.2.6. probable cause to be apprehensive of losing the remedy unless the court issues the writ.

15 7.3 Affidavit further elements. The affidavit also shall state facts showing all of the
16 following:

17 7.3.1. that the writ is not sought to hinder, delay or defraud a creditor of the defendant;

18 7.3.2. a description of the property, including its value;

19 7.3.3. that the property is not exempt from execution;

20 7.3.4.²⁶ that the property is not earnings;

21 7.3.5. that the property has not been taken for a tax, assessment or fine;

22 7.3.6. that the property has not been seized under a writ against the property of the plaintiff or
23 that it is exempt from seizure;

24 7.3.7. that the threatened injury to the plaintiff outweighs the damage the writ may cause the
25 defendant; and

26 7.3.8. a substantial likelihood that the plaintiff will prevail on the merits of the underlying
27 claim.

²⁴ 65C(a)

²⁵ Not currently required for replevin.

²⁶ 64D(a)(i)

1 7.4. Notice, hearing. The court may order a writ of replevin, attachment or garnishment be
2 issued before judgment after notice to the defendant and opportunity to be heard.

3 7.5. Method of service. The affidavit for the prejudgment writ shall be served on the
4 defendant and any person named by the plaintiff as claiming an interest in the property in a form
5 and in a manner directed by the court that will expeditiously give actual notice of the hearing.

6 7.6.²⁷ Reply. The defendant may file a reply to the affidavit for a prejudgment writ at the
7 hearing or at any time prior to the hearing. The reply may:

8 7.6.1. challenge the issuance of the writ;

9 7.6.2. object to the sufficiency of sureties;

10 7.6.3. request return of the property;

11 7.6.4. claim the property is exempt; or

12 7.6.5. allege any matter which would charge the plaintiff with liability.

13 7.7. Burden of proof. At the hearing the burden is on the plaintiff to prove the facts set forth
14 in the affidavit.

15 7.8. Ex parte writ before judgment. The court may order a writ be issued before judgment
16 without notice to the defendant and opportunity to be heard only if the court makes written
17 findings of immediate and irreparable injury from delay. If a writ is issued without notice to the
18 defendant and opportunity to be heard, the court shall set a hearing for the earliest reasonable
19 time, and the writ and the order authorizing the writ shall:

20 7.8.1. designate the date and time of issuance and the date and time of expiration;

21 7.8.2. forthwith be filed in the clerk's office and entered of record;

22 7.8.3. expire 10 days after issuance unless the court establishes an earlier expiration date, the
23 defendant consents that the order and writ be extended or the court extends the order and writ
24 after hearing;

25 7.8.4. be served on the defendant and any person named by the plaintiff as claiming an
26 interest in the property in a form and in a manner directed by the court that will expeditiously
27 give actual notice of the hearing.

28 **8. Replevin.**

²⁷ 64D(h), 69(g)

1 8.1.²⁸ Availability. A writ of replevin is available to compel delivery to plaintiff of specific
2 personal property held by defendant.

3 8.2.²⁹ Affidavit. To obtain a writ of replevin, plaintiff shall, in addition to the requirements of
4 sections 7.2 and 7.3, file an affidavit stating facts showing:

5 8.2.1.³⁰ that plaintiff is entitled to possession;

6 8.2.2.³¹ that defendant wrongfully detains the property; and

7 8.2.3. the name and address of any person known to the plaintiff to claim an interest in the
8 property.

9 **9. Attachment.**

10 9.1.³² Availability. A writ of attachment is available in the actions described in subsection 9.2
11 to seize property³³ other than earnings.

12 9.2.³⁴ Affidavit. To obtain a writ of attachment, plaintiff shall, in addition to the requirements
13 of sections 7.2 and 7.3, file an affidavit stating facts showing:

14 9.2.1. that the defendant is indebted to the plaintiff, specifying the amount and nature of the
15 indebtedness;

16 9.2.2. that the action is upon a contract;

17 9.2.3 that the action is against a defendant who is not a resident of this state or against a
18 foreign corporation not qualified to do business in this state;

19 9.2.4. that payment of the claim has not been secured by a lien upon property in this state, *or,*
20 *if originally secured, that the security has become impaired through no act of the plaintiff or of*
21 *the person to whom the security was given;*³⁵ and

22 9.2.5. the name and address of any person known to the plaintiff to claim an interest in the
23 property.

24 **10. Garnishment.**

²⁸ 64B(a)

²⁹ 64B(b)

³⁰ 64B(b)(2)

³¹ 64B(b)(3), (4)

³² 65C(a), (o)

³³ Should this specify “property in the possession or under the control of the defendant”?

³⁴ 65C(a)

³⁵ Should petitioner be limited when security is impaired?

1 10.1.³⁶ Availability. A writ of garnishment is available to seize personal property of the
2 defendant in the possession or under the control of a third party. A writ of garnishment is
3 available after judgment or after the claim has been filed and prior to judgment. If the writ is
4 issued before judgment, the property may not be earnings. The maximum portion of disposable
5 earnings of an individual subject to seizure is the lesser of:

6 10.1.1. 50% of defendant's disposable earnings for a writ to enforce payment of a judgment
7 for failure to support dependent children or 25% of defendant's disposable earnings for any other
8 writ; or

9 10.1.2. the amount by which the defendant's disposable earnings for a pay period exceeds the
10 number of weeks in that pay period multiplied by thirty times the federal minimum hourly wage
11 prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable.

12 10.2. Affidavit before judgment.³⁷ To obtain a writ of garnishment before judgment, plaintiff
13 shall, in addition to the requirements of sections 7.2 and 7.3, file the garnishee's fee established
14 by §78-7-44 with an affidavit stating facts showing:

15 10.2.1. that the defendant is indebted to the plaintiff, specifying the amount and nature of the
16 indebtedness;

17 10.2.2. that the action is upon a contract,

18 10.2.3. that the action is against a defendant who is not a resident of this state or against a
19 foreign corporation not qualified to do business in this state;

20 10.2.4. that payment of the claim has not been secured by a lien upon property in this state,
21 *or, if originally secured, that the security has become impaired through no act of the plaintiff or*
22 *of the person to whom the security was given;*

23 10.2.5. the identity of the garnishee;

24 10.2.6. that the garnishee possesses or controls property of the defendant; and

25 10.2.7. the name and address of any person known to the plaintiff to claim an interest in the
26 property.

³⁶ 64D(a)(i), (ii)

³⁷ 64D(b)(i), (ii)

1 10.3. Affidavit after judgment.³⁸ To obtain a writ of garnishment after judgment, plaintiff
2 shall file the garnishee's fee established by §78-7-44 with an affidavit stating facts showing:

3 10.3.1. the identity of the garnishee;

4 10.3.2. a description of the property;

5 10.3.3. whether any of the property consists of earnings;

6 10.3.4. the amount due;

7 10.3.5. the name and address of any person known to the plaintiff to claim an interest in the
8 property; and

9 10.3.5.³⁹ if the affidavit is for a writ of continuing garnishment, stating that there is no other
10 writ of continuing garnishment in effect in favor of plaintiff against these earnings.

11 10.4.⁴⁰ Interrogatories. The plaintiff shall submit with the affidavit interrogatories to the
12 garnishee inquiring:

13 10.4.1. whether the garnishee is indebted to the defendant;

14 10.4.2. whether the garnishee possesses or controls any property of the defendant and, if so,
15 the nature and value of the property;

16 10.4.3. whether the garnishee knows of any property of the defendant in the possession or
17 under the control of another, and, if so, the nature and value of the property and the name and
18 address of the person with possession or control;

19 10.4.4. whether the garnishee is deducting an amount in satisfaction of a claim against the
20 plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;

21 10.4.5.⁴¹ the date and manner in which the garnishee has served the defendant and any third
22 persons;

23 10.4.6.⁴² the dates on which previously served writs of continuing garnishment are expected
24 to terminate; and

³⁸ 64D(c)

³⁹ 64D(v)(iii)

⁴⁰ 64D(d)(ii)

⁴¹ 64D(d)(iii), 64D(g)

⁴² 64D(v)(iii)

1 10.4.7. any other relevant information plaintiff may desire, including defendant's position,
2 defendant's rate and method of compensation, defendant's pay period and the computation of the
3 amount of defendant's disposable earnings.

4 10.5.⁴³ Content of writ, priority. The writ shall instruct the garnishee to complete the
5 obligations in subsection 10.6 and instruct the garnishee how to deliver the property. Several
6 writs may be issued at the same time so long as there is only one garnishee named in a writ.
7 Priority among writs of garnishment shall be in order of their service. Only one writ of
8 garnishment shall be in effect at one time.

9 10.6.⁴⁴ Garnishee's responsibilities. The writ shall direct the garnishee to complete the
10 following within seven business days of service of the writ upon the garnishee:

11 10.6.1. answer the interrogatories under oath or affirmation;

12 10.6.2.⁴⁵ serve the answers to the interrogatories on the plaintiff;

13 10.6.3.⁴⁶ serve the writ, answers to interrogatories, notice of exemptions and two copies of
14 the reply form upon the defendant and any other person shown by the records of the garnishee to
15 have an interest in the property; and

16 10.6.4. file with the clerk of the court the original answers to the interrogatories.

17 10.7.⁴⁷ Reply to answer of garnishee; request for hearing.

18 10.7.1. The plaintiff and defendant may file and serve upon the garnishee a reply to the
19 answers and request a hearing. The reply shall be filed and served within 10 days after service of
20 the answers to the interrogatories, but the court may deem the reply timely if filed before the
21 property is sold or delivered to the plaintiff. The reply may:

22 10.7.1.1. challenge the issuance of the writ;

23 10.7.1.2. challenge the accuracy of the answers to interrogatories;

24 10.7.1.3. claim the property is exempt; or

25 10.7.1.4. allege any matter that would charge the garnishee with liability.

⁴³ 64D(c), 64D(d)(i), (v), 64D(v)(iii)

⁴⁴ 64D(d)(iii)

⁴⁵ 5(b)

⁴⁶ 5(b)

⁴⁷ 64D(h), (i)

1 10.7.2. The reply shall be deemed denied, and the court shall set the matter for hearing within
2 10 days after the reply is filed.

3 10.7.3. If a person served by the garnishee fails to reply, as to that person:

4 10.7.3.1. the garnishee's answers to interrogatories are correct; and

5 10.7.3.2. the property is not exempt, except as reflected in the answers to interrogatories.

6 10.8.⁴⁸ Delivery of property. A garnishee shall not deliver property until the property is due
7 the defendant. Unless otherwise directed in the writ, the garnishee shall retain the property until
8 20 days after service by the garnishee under subsection 10.6. If the garnishee receives a reply
9 within that time, the garnishee shall retain the property and comply with the order of the court
10 entered after the hearing on the reply. Otherwise, the garnishee shall dispose of the property as
11 provided in the writ.

12 10.9. Release of garnishee for amount paid.

13 10.9.1.⁴⁹ A garnishee who acts in accordance with this rule is released from liability, unless
14 answers to interrogatories are successfully controverted.

15 10.9.2.⁵⁰ Any person indebted to the defendant may pay to the officer the amount of the debt
16 or so much as is necessary to satisfy the writ, and the officer's receipt discharges the debtor for
17 the amount paid.

18 10.10.⁵¹ Liability of garnishee. If the garnishee fails to comply with this rule, the writ or an
19 order of the court, the court may order the garnishee to appear and show cause why the garnishee
20 should not be held in contempt. Upon a finding of contempt, the court may order the garnishee to
21 pay such amounts as are just, including the value of the property or the balance of the judgment,
22 whichever is less, and payment of reasonable cost and attorney fees incurred by parties as a
23 result of garnishee's failure.

24 10.11.⁵² Claims of garnishee against plaintiff or defendant. A garnishee may deduct from the
25 property any claim against the plaintiff or defendant.

⁴⁸ 64D(h)(i), (iii), (iv), 64D(r)

⁴⁹ 64D(k)

⁵⁰ 69(m)

⁵¹ 64D(j)

⁵² 64D(m)

1 10.12.⁵³ Liability on negotiable instruments. No person is liable as garnishee by reason of
2 having drawn, accepted, made or endorsed any negotiable instrument that is not in the possession
3 or control of the garnishee at the time of service of the writ.

4 10.13. Property as security.

5 10.13.1.⁵⁴ If property secures payment of a debt to the garnishee, the property need not be
6 applied at that time but shall remain subject to being applied pending payment in full of the debt.
7 If property secures payment of a debt to the garnishee, the plaintiff may obtain an order
8 authorizing the plaintiff to pay the debt and requiring the garnishee to deliver the property.

9 10.13.2.⁵⁵ If property secures an obligation that does not require the personal performance of
10 the defendant and can be performed by a third person, the plaintiff may obtain an order
11 authorizing the plaintiff or a third person to perform the obligation and requiring the garnishee to
12 deliver the property upon completion of the performance or tender of performance that is
13 refused.

14 10.14.⁵⁶ Writ of continuing garnishment on disposable earnings.

15 10.14.1. Plaintiff may obtain a writ of continuing garnishment on disposable earnings after
16 the court has entered its final judgment. All provisions of this rule apply to this subsection, but
17 this subsection governs over a contrary provision.

18 10.14.2. A writ of continuing garnishment is a continuing lien on disposable earnings of the
19 defendant from the date of service of the writ until the earlier of the following events:

20 10.14.2.1. 120 days from the date of service of the writ or, in the case of multiple writs, 120
21 days from the date a writ becomes effective;

22 10.14.2.2. the end of the last pay period after the defendant's employment relationship is
23 terminated;

24 10.14.2.3. the judgment is stayed, vacated or satisfied in full; or

25 10.14.2.4 the writ is discharged.

26 10.14.3. Within seven days after the end of each pay period, the garnishee shall:

⁵³ 64D(n)

⁵⁴ 64D(o)

⁵⁵ 64D(p)

⁵⁶ 64D(v)

- 1 10.14.3.1. answer under oath or affirmation interrogatories relevant to the pay period;
- 2 10.14.3.2. serve the answers to the interrogatories on the plaintiff, defendant and any other
- 3 person shown by the records of the garnishee to have an interest in the earnings;
- 4 10.14.3.3. file with the clerk of the court the original answers to the interrogatories; and
- 5 10.14.3.4. deliver the disposable earnings as provided in the writ.
- 6 10.14.4. Any person served by the garnishee may reply as in subsection 10.7, but whether to
- 7 grant a hearing is within the judge's discretion.
- 8 10.14.5. A writ of continuing garnishment issued to enforce a judgment obtained by the
- 9 Office of Recovery Services within the Department of Human Services:
- 10 10.14.5.1. is not limited to a 120-day lien;
- 11 10.14.5.2. has priority over other writs of continuing garnishment; and
- 12 10.14.5.3. if served during the term of a lien created by another writ of continuing
- 13 garnishment, tolls the term of that lien and preserves all priorities until the expiration of the
- 14 Office of Recovery Services' writ.

15 **11. Execution.**

- 16 11.1.⁵⁷ Availability. A writ of execution is available at any time within eight years following
- 17 entry of a judgment or order requiring the delivery of property or the payment of money.
- 18 11.2.⁵⁸ Affidavit. To obtain a writ of execution, plaintiff shall file an affidavit:
- 19 11.2.1. stating the amount of the judgment and the amount due on the judgment;
- 20 11.2.2. describing the property; and
- 21 11.2.3 stating the name and address of any person known to the plaintiff to claim an interest
- 22 in the property.
- 23 11.3.⁵⁹ Death of plaintiff. If the plaintiff dies, a writ of execution may be issued upon the
- 24 affidavit of an authorized executor or administrator or successor in interest.
- 25 11.4.⁶⁰ Reply to writ; request for hearing.

⁵⁷ 69(a), (c)

⁵⁸ 69(d)

⁵⁹ 69(c)

⁶⁰ 69(h)

1 11.4.1. The defendant may reply to the writ and request a hearing. The reply must be filed
2 and served within 10 days after the service upon the defendant of the writ and accompanying
3 papers under subsection 4.3.

4 11.4.2. If a reply is filed, the court shall set the matter for hearing within 10 days from the
5 filing of the reply. If the court determines at the hearing that the writ was issued improperly, or
6 that property is exempt from seizure, the court shall issue an order directing the officer to release
7 the property. If the court finds that the writ was properly issued and the property is not exempt,
8 the court shall issue an order directing the officer to proceed to sell or deliver the property. If the
9 date of sale has passed, notice of the rescheduled sale shall be given. No sale may be held until
10 the court has decided upon the issues presented at the hearing.

11 11.4.3. If a reply is not filed, the officer shall proceed to sell or deliver the property.

12 11.5.⁶¹ Mortgage foreclosure governed by statute. Utah Code Annotated, Title 78, Chapter
13 37, governs mortgage foreclosure proceedings over contrary provisions of this rule.

14 **12.⁶² Method of seizing property.** The officer is entitled to recover the reasonable and
15 necessary cost of seizure and storage of property. The officer shall seize property as follows:

16 12.1.⁶³ Debtor's preference. When there is more property than necessary to satisfy the
17 amount due, the officer shall seize such part of the property as the defendant may indicate. If the
18 debtor does not indicate a preference, the officer shall first seize personal property, and if
19 sufficient personal property cannot be found, then the officer shall seize real property.

20 12.2 Real property. Real property shall be seized by filing the writ and a description of the
21 property with the county recorder and leaving the writ and description with an occupant of the
22 property. If there is no occupant of the property, the officer shall post the writ and description in
23 a conspicuous place on the property. If another person claims an interest in the real property, the
24 officer shall serve the writ and description on the other person.

25 12.3. Growing crops. Crops growing upon real property shall be seized by filing the writ and
26 a description of the crops and the property upon which the crops are growing with the county
27 recorder and leaving the writ and description with an occupant of the property. If there is no

⁶¹ 69(g)

⁶² 64C(e)

⁶³ 69(f)

1 occupant of the property, the officer shall post the writ and description in a conspicuous place on
2 the property. If another person claims an interest in the real property or the crops, the officer
3 shall serve the writ and description on the other person.

4 12.4. Personal property capable of manual delivery. When severed, crops are personal
5 property capable of manual delivery. Except as provided in subsections 12.5 and 12.6, personal
6 property capable of manual delivery shall be seized by serving the writ and a description of the
7 property on the person holding the property and taking the property into custody.

8 12.5. Range stock. Range stock, such as cattle, horses, sheep and other livestock, may be
9 seized by filing the writ and a description of the property, specifying the number and marks or
10 brands, with the county recorder. Range stock may be seized by taking it into custody, but any
11 additional cost of taking it into custody will not be allowed if the court finds that taking the
12 property into custody was unnecessary.

13 12.6. Certificated securities. Unless transfer of a certificate is enjoined or the certificate is
14 surrendered to the corporation issuing it, certificated securities of a corporation shall be seized by
15 serving the writ and a description of the property on the president, secretary, cashier or other
16 managing agent of the corporation and taking the certificate into custody.

17 12.7. Personal property not capable of manual delivery. Debts, credits, non-certificated
18 securities and other personal property not capable of manual delivery shall be seized by serving
19 the writ and a description of the property on the person owing the debt, or having possession or
20 control of the credit or other personal property.

21 **13. Delivery and sale.**

22 13.1. Delivery of property. The officer shall deliver the property to the plaintiff, if directed
23 by the writ to do so.

24 13.2.⁶⁴ Sale of property. The officer is entitled to recover the reasonable and necessary cost
25 of sale of property.

26 13.2.1.⁶⁵ Sale before judgment. The officer may sell the property before judgment if it is
27 perishable or threatens to decline speedily in value. The court may order the officer to sell the

⁶⁴ 69(i)

⁶⁵ 64C(j)

1 property before judgment if the court finds that the interest of the parties will be served by a sale.
2 The proceeds of the sale shall be kept safe subject to further order of the court.

3 13.2.2. Notice of sale. The officer shall set the date, time and place for sale and serve notice
4 thereof on the defendant and on any third party named by the plaintiff or garnishee. Service on
5 the defendant and third party shall be not later than the initial publication of notice. The officer
6 shall publish notice of the date time and place of sale as follows:

7 13.2.2.1. If the property is perishable or threatens to decline speedily in value, the officer
8 shall post written notice of the date, time and place of sale and a general description of the
9 property to be sold in the courthouse from which the writ was issued and in at least three other
10 public places of the county or city where the sale is to take place. The officer shall post the notice
11 for such time as the officer determines is reasonable, considering the character and condition of
12 the property.

13 13.2.2.2. If the property is other personal property, the officer shall post written notice of the
14 date, time and place of sale and a general description of the property to be sold in the courthouse
15 from which the writ was issued and in at least three other public places of the county or city
16 where the sale is to take place. The officer shall post the notice for at least 7 days and publish the
17 same at least one time not less than one day preceding the sale in a newspaper of general
18 circulation in the county where the sale is to take place, if there is one.

19 13.2.2.3. If the property is real property, the officer shall post written notice of the date, time
20 and place of sale and a particular description of the property to be sold on the property, at the
21 place of sale, at the district courthouse of the county where the real property is situated, and in at
22 least three other public places of the county or city where the sale is to take place. The officer
23 shall post the notice for at least 21 days and publish the same at least 3 times once a week for 3
24 successive weeks immediately preceding the sale in a newspaper of general circulation in the
25 county, if there is one.

26 13.2.3. Postponement. If the officer finds sufficient cause, the officer may postpone the sale.
27 The officer shall declare the postponement at the time and place set for the sale. If the
28 postponement is longer than 72 hours, notice of the rescheduled sale shall be given in the same
29 manner as the original notice of sale.

1 13.2.4. Conduct of sale. All sales shall be at auction to the highest bidder, Monday through
2 Saturday, legal holidays excluded, between the hours of 9 o'clock a.m. and 8 o'clock p.m. at a
3 place reasonably convenient to the public. The officer shall sell only so much property as is
4 necessary to satisfy the amount due. The officer shall not purchase property or be interested in
5 any purchase. Personal property capable of manual delivery must be within view of those who
6 attend the sale. The property must be sold in such parcels as are likely to bring the highest price.
7 Severable lots of real property must be sold separately. Real property claimed by a third party
8 must be sold separately if requested by the third party. Real property must be sold at the
9 courthouse of the county in which the property is situated. The defendant may direct the order in
10 which the property is sold.

11 13.2.5. Accounting. Upon request of the defendant, the plaintiff shall deliver an accounting
12 of the sale. The officer shall apply the property in the following order up to the amount due or
13 the value of the property, whichever is less:

14 13.2.5.1. pay the cost of seizure and sales;

15 13.2.5.2. deliver to the plaintiff the remaining proceeds of the sale;

16 13.2.5.3. deliver to the defendant the remaining property and proceeds of the sale.

17 13.2.6. Purchaser refusing to pay. Every bid is an irrevocable offer. If a person refuses to pay
18 the amount bid, the person is liable for the difference between the amount bid and the ultimate
19 sale price and the person is guilty of contempt of court. If a person refuses to pay the amount bid,
20 the officer may:

21 13.2.6.1. offer the property to the next highest bidder;

22 13.2.6.2. renew bidding on the property; and

23 13.2.6.3. reject any other bid of such person.

24 13.2.7. Personal property capable of manual delivery. Upon payment of the amount bid, the
25 officer shall deliver to the purchaser of personal property capable of manual delivery the
26 property and a certificate of sale stating that all right, title and interest which the defendant had in
27 the property is transferred to the purchaser.

1 13.2.8. Personal property not capable of manual delivery.⁶⁶ Upon payment of the amount bid,
2 the officer shall deliver to the purchaser of personal property not capable of manual delivery a
3 certificate of sale describing the property and stating that all right, title and interest which the
4 defendant had in the property is transferred to the purchaser. The officer shall mail a duplicate of
5 the certificate to the person controlling the property.

6 13.2.9. Real property. Upon payment of the amount bid, the officer shall deliver to the
7 purchaser of real property a certificate of sale for each lot containing:

8 13.2.9.1. a particular description of the real property;

9 13.2.9.2. the price paid;

10 13.2.9.3. a statement that all right, title, interest of the defendant in the property is conveyed
11 to the purchaser; and

12 13.2.9.4. a statement whether the sale is subject to redemption. The officer shall file a
13 duplicate of the certificate in the office of the county recorder.

14 13.3.⁶⁷ Redemption. Real property may be redeemed unless the estate is less than a leasehold
15 of a two-years' unexpired term, in which event the sale is absolute.

16 13.3.1. Who may redeem. Real property subject to redemption may be redeemed by the
17 defendant or by a creditor having a lien on the property subsequent to that on which the property
18 was sold. If the defendant redeems, the effect of the sale is terminated and the defendant is
19 restored to the defendant's estate. If the property is redeemed by a creditor, any other creditor
20 having a right of redemption may redeem.

21 13.3.2. How made. The redemptioner shall pay the amount required to the officer or to the
22 purchaser and shall serve on the officer or purchaser: (A) a certified copy of the judgment or lien
23 under which the redemptioner claims the right to redeem; (B) an assignment, properly
24 acknowledged or proved if necessary to establish the claim; and (C) an affidavit showing the
25 amount due on the judgment or lien.

26 13.3.3. Time for redemption. The property may be redeemed within 180 days after the sale.

⁶⁶ New.

⁶⁷ 69(j)

1 13.3.4. Redemption price. The price to redeem property is the sale price plus 6 percent. The
2 price for a subsequent redemption is the redemption price plus 3 percent. If the purchaser or
3 redemptioner has filed with the county recorder notice of the amount paid for taxes, assessments,
4 fire insurance, necessary maintenance or repair of improvements upon the property, and a lien
5 prior to that of the person seeking redemption other than the lien upon which the redemption was
6 made, the redemption price shall include such amounts plus interest.

7 13.3.5. Dispute regarding price. If there is a dispute about the redemption price, the
8 redemptioner may pay into court the amount necessary for redemption less the amount in dispute
9 and file and serve upon the purchaser a petition setting forth the items to which the redemptioner
10 objects and the grounds for objection. The court shall enter an order determining the redemption
11 price. The redemptioner shall pay to the clerk any additional amount within 7 days after the
12 court's order.

13 13.3.6. Certificate of redemption. The purchaser shall forthwith execute and deliver to the
14 redemptioner a certificate of redemption containing:

15 13.3.6.1. a particular description of the real property;

16 13.3.6.2. the price paid;

17 13.3.6.3. a statement that all right, title, interest of the purchaser in the property is conveyed
18 to the redemptioner; and

19 13.3.6.4. whether the sale is subject to redemption. The redemptioner shall file a duplicate of
20 the certificate in the office of the county recorder.

21 13.4.⁶⁸ Conveyance. The purchaser or last redemptioner is entitled to conveyance upon the
22 expiration of the time permitted for redemption.

23 13.5.⁶⁹ Rents and profits, request for accounting, extension of time for redemption.

24 13.5.1. The purchaser is entitled to the rents of the property or the value of the use and
25 occupation of the property from the time of sale until redemption. A redemptioner is entitled to
26 the rents of the property or the value of the use and occupation of the property from the time of

⁶⁸ 69(j)(6)

⁶⁹ 69(j)(7)

1 redemption until a subsequent redemption. Rents and profits are a credit upon the redemption
2 price.⁷⁰

3 13.5.2. Upon written request served on the purchaser before the expiration of time for
4 redemption, the purchaser shall prepare and serve on the requester a written and verified account
5 of rents and profits. The period for redemption is extended to 5 days after the accounting is
6 served. If the purchaser fails to serve the accounting within 30 days after the request, the
7 redemptioner may, within 60 days after the request, bring an action to compel an accounting.
8 The period for redemption is extended to 15 days after the order of the court.

9 13.6.⁷¹ Remedies.

10 13.6.1. For waste. A purchaser or redemptioner may file a motion requesting the court to
11 restrain the commission of waste on the property. It is not waste for the person in possession of
12 the property during the period allowed for redemption to continue to use the property in the same
13 manner in which it was previously used, to use it in the ordinary course of husbandry, to make
14 necessary repairs or improvements, or to use wood or timber on the property for repairing fences
15 or as fuel for a family. After the estate has become absolute, the purchaser or redemptioner may
16 file an action to recover damages for injury to the property by the tenant.

17 13.6.2. If the conveyance fails. If the conveyance fails a purchaser or redemptioner may file a
18 motion for judgment against the plaintiff for the price paid plus interest. If the conveyance fails
19 because of irregularity in the sale or because the property was exempt, the purchaser or
20 redemptioner may in addition file a motion to revive the original judgment against the defendant
21 in the name of the purchaser or redemptioner for the amount paid plus interest.

22 13.7.⁷² Contribution and reimbursement. A defendant may claim contribution or
23 reimbursement from other defendants by filing a motion.

⁷⁰ Policy in favor: Treats income producing property the same as non-income producing property. Policy against: If the purchaser is entitled to the rent then the rent should not be a credit against a future redemption.

⁷¹ 69(k)

⁷² 69(l)



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Civil Procedures Committee
From: Tim Shea
Date: October 15, 2002
Re: Recodification of the CJA in the URCP

An ad hoc group of representatives from all of the Supreme Court's advisory committees has identified several rules in the Code of Judicial Administration (CJA) that are primarily procedural. The Supreme Court and Judicial Council have agreed that procedural rules should be repealed from the CJA and incorporated as necessary into the various rules of procedure.

What to include.

Cullen Battle, Alicia Davis and I have met to develop a recommended treatment of the rules targeted for the Utah Rules of Civil Procedure. We have been very aggressive in identifying provisions within these CJA rules that, while procedural by any measure, nevertheless should be omitted from the URCP. Usually, the omitted provision is governed by a statute or another rule. In addition, we tried to identify provisions that:

- Go without saying.
- Don't need to be regulated.
- Are not the current practice.
- Are an absurd policy. (Questionable policies we have left for committee discussion.)

Sometimes an entire rule can be omitted because it is adequately governed by other law. At other times, the analysis is a paragraph or a sentence at a time. The resulting list of rules is heavily annotated with footnotes to give some indication of our thinking.

Content.

We have addressed some of the worst of the style issues. With a few exceptions we intend no change in policies. Changes to the domestic rules are being reviewed by the executive committee of the Family Law Section, and changes to the probate rules are being reviewed by the executive committee of the Estate Planning Section.

Rule placement and remaining issues.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

CJA	Recommended Placement	Remaining Issues
4-102	Omit.	
4-105	URCP 7(b)(3).	4-105(1) makes no sense, so it's difficult to know what the policy on continuances is. I've drafted a proposed policy into URCP 7(b)(3).
4-107	URCP 42(a).	
4-501	New URCP 72.	Should the suggestion by Christopher Daines to require a proposed order be submitted with a motion be included? I've drafted it as an option for the parties. A reasonable reading of URCP 7(b)(1) yields the conclusion that including the order with the motion is already required. Should ¶(2), specific to motions for summary judgment be integrated instead into URCP 56? Should ¶(3), dealing with hearings, be amended to permit the parties greater latitude to request a hearing on a non-dispositive motion? I've drafted an amendment to do so.
4-503	Omit.	A few amendments to URCP 51 to replace parts of 4-503.
4-504	Combine provisions on orders with New URCP 72. Integrate ¶8 into URCP 9.	There remain three paragraphs on stipulations: ¶¶ 3, 7 & 9. 4-504(7) and (9) appear to conflict with each other so it's difficult to know what the policy is. 4-507(3) imposes a requirement that is of little use to the court. Do we need these provisions? A provision on stipulations could be integrated into URCP 41(a)(ii).
4-505	New URCP 74. (Could be integrated with URCP 54.)	There are two rules governing attorney fees in probate cases (6-501 and 6-502), which are identical to each other and substantially similar to 4-505. The draft incorporates as factors relevant to reasonableness of attorney fees the non-repetitive factors from 6-501 and 6-502. Are these factors really relevant to reasonableness?
4-505.01	New URCP 75. (Could be integrated with URCP 54.)	
4-506	New URCP 76.	
4-507	Omit.	
4-508	Omit.	
4-509	New URCP 73.	This rule governs the content of property bonds pledged as security. It does not regulate when a bond is required. We have several provisions regulating bonds (Rules 62, 64B, 64C, 64F, 65A, and 66). We will, as part of our work on the remedies rules, develop a single security provision for prejudgment writs. Should we modify that work to create an omnibus security rule? In this approach any number of rules might require or permit security in particular circumstances, but the omnibus rule would govern the

CJA	Recommended Placement	Remaining Issues
		process and minimum requirements.
4-801	Leave in CJA. If not, incorporate into Small Claims Procedure Rule 1.	
4-802	Omit.	
4-803	Small Claim Procedures 12. (Recommendations from a study committee will be made later this year or early next.	
4-901	New URCP 100.	
4-902	New URCP 110.	If proposed legislation passes, this rule should be repealed with appropriate amendments to 4-901 to direct how transfer of cases from one court to another should work.
4-903	New URCP 101.	Except for renumbering the amendments are currently out for comment.
4-905	New URCP 102.	
4-911	New URCP 103.	
4-912	New URCP 104.	
4-913	New URCP 105.	
6-403	New URCP 106.	
6-404	New URCP 107.	
6-406	New URCP 108.	6-406(7) directs that the court as part of its order will address whether the birth parents should have notice of the petition. Appears to come a little too late to be effective. The rule should be restructured to give notice to the birth parents as part of notice to the attorney/placement agency.
6-407	New URCP 109.	Currently requires certain information about petitioner as part of a pleading that is inappropriate under the statute. Proposed that the information be provided in the petition. Is the information needed? Is it routinely provided elsewhere so that it can be removed from this rule?
6-501	Integrate into 4-505 (New URCP 74).	
6-502	Integrate into 4-505 (New URCP 74).	
6-503	New URCP 90.	6-503 and 6-504 are identical but apply, respectively, to guardianships and conservatorships. Can they be combined?

CJA	Recommended Placement	Remaining Issues
6-504	New URCP 91.	Combine with 6-504 (new URCP 90) if possible.
6-505	New URCP 92.	

Encl. Draft Rules.

1 ~~**Rule 4-102. Law and motion calendar.**~~

2 ~~**Intent:**~~

3 ~~To establish a uniform procedure of scheduling matters on the law and motion calendar.~~

4 ~~To establish uniform notice requirements and filing deadlines for law and motion matters.~~

5 ~~**Applicability:**~~

6 ~~This rule shall apply to all civil and criminal proceedings in the District Court.~~

7 ~~**Statement of the Rule:**~~

8 ~~(1) Law and motion matters.~~

9 ~~(A) In multi judge districts, law and motion matters arising in connection with a case which~~
10 ~~has been assigned for all purposes to a particular judge shall be heard by the assigned judge.⁷³~~

11 ~~(B) If the assigned judge is unavailable, the case shall not be assigned or transferred to any~~
12 ~~other judge for handling without the approval of the presiding judge.⁷⁴~~

13 ~~(2) Notice and filing requirements.~~

14 ~~(A) Orders to show cause and other matters requiring written notice shall be heard only after~~
15 ~~written notice served no less than five days prior to the date of the hearing, unless the court for~~
16 ~~good cause shown orders the period of time for notice of hearing shortened.⁷⁵~~

17 ~~(B) Affidavits in support of law and motion matters must be filed with the motion or~~
18 ~~memorandum of points and authorities supporting or opposing the motion. Other documents~~
19 ~~filed in support of or in opposition to law and motion matters, including returns of service on~~
20 ~~supplemental orders, orders to show cause and bench warrants, must be filed in the clerk's office~~
21 ~~at least two working days before the hearing on the matter, together with a copy of the signed~~
22 ~~order showing the date and time of the required appearance.⁷⁶~~

⁷³ Goes without saying. This is the defining feature of individual calendaring.

⁷⁴ The case itself is never reassigned. A substitute judge might hear an emergency L&M matter. This might have been needed 20 years ago when individual calendaring was getting started, but now it's best left to the local court to figure out. It's probably ignored as often as it's followed. Also, it's covered by URCP 7(b)(3).

⁷⁵ Governed by URCP 6(d).

⁷⁶ First sentence governed by 4-501. Second sentence: OSC, warrants and orders to appear should already be part of the court file. Deadline for return of service governed by URCP 5(d): "before or within a reasonable time after service."

1 ~~(C) Proceedings based upon supporting documents which are not filed in accordance with~~
2 ~~this rule may be dismissed.~~⁷⁷

3 ~~(3) Ex parte matters, stipulated matters and supplemental proceedings.~~⁷⁸

4 ~~(A) Ex parte matters based upon stipulations may be presented at any time to the assigned~~
5 ~~judge. Proceedings on the law and motion calendar involving the taking of evidence may be~~
6 ~~heard after those not requiring the taking of evidence. Add ons may be heard on the day set for~~
7 ~~hearing, provided proper notice has been given and the convenience of the court permits such~~
8 ~~hearing.~~

9 ~~(B) Motions for supplemental proceedings may be set on the weekly supplemental~~
10 ~~proceedings calendar or before the judge assigned to the case on the assigned judge's regular law~~
11 ~~and motion calendar.~~

12 **Rule 4-105. Continuances in special circumstances.**⁷⁹

13 **Intent:**

14 ~~To establish uniform procedures governing the granting and denial of continuances in civil~~
15 ~~and criminal cases.~~

16 **Applicability:**

17 ~~This rule shall apply to the trial courts of record.~~

18 **Statement of the Rule:**

19 (1) In civil law and motion matters, except orders to show cause and bench warrants, matters
20 may be continued upon stipulation of the parties and notice to the clerk of the judge to whom the
21 case is assigned, except that when a matter has been placed upon the official law and motion
22 calendar, the matter may be continued only upon approval of the court.⁸⁰

⁷⁷ Sanctions for late filings are probably inherent in the discretion of the judge. If express authority is needed, incorporate it into URCP 11 or 4-501.

⁷⁸ Goes without saying. The judge has inherent discretion to call the calendar in whatever order makes sense.

⁷⁹ Whatever the policy ends up being, integrate into URCP 7(b)(3) or URCP 40(b).

⁸⁰ This paragraph makes no sense, (There is no "official" L&M calendar, so when a party needs court approval for a continuance is unclear.) but it raises the legitimate issue: Should the courts have a uniform policy on continuance? If so, should the parties control continuances or should the court have to approve? If a blend of both, when does responsibility shift from one to the other? At what point do penalties, such as in ¶3 apply?

1 ~~(2) In sexual abuse cases involving minor victims, continuances may be granted upon a~~
2 ~~written finding by the court, or written minute entry which shall include the reason(s) for the~~
3 ~~continuance.~~⁸¹

4 (3) A motion to continue made on or within 10 days prior to the date of a hearing may be
5 granted by the court upon a showing of good cause and upon such conditions as the court
6 determines to be just, including but not limited to the payment of costs and attorney fees.

7 ~~(4) If the hearing is an "important criminal justice hearing" or an "important juvenile justice~~
8 ~~hearing" as defined by ' 77-38-2 of which the victim has requested notification, the court should~~
9 ~~consider the impact of the continuance upon the victim.~~⁸²

10 **Rule 4-107. Consolidation of cases.**⁸³

11 **Intent:**

12 ~~To provide a procedure for hearing motions to consolidate cases and for the consolidation of~~
13 ~~cases.~~

14 **Applicability:**

15 ~~This rule shall apply to civil and criminal proceedings in all courts of record.~~

16 **Statement of the Rule:**

17 ~~(1) Motions to consolidate cases shall be heard by the judge assigned to either the lowest~~
18 ~~numbered or the first filed case.~~

19 ~~(2) Notice of a motion to consolidate shall be given to all parties in each action involved, and~~
20 ~~a copy shall be filed in each case involved. The order denying or granting the motion shall also~~
21 ~~be filed in each file involved.~~

22 ~~(3) In the event a motion to consolidate is granted, the order shall specify the case number~~
23 ~~under which all future papers shall be filed, which shall be the lowest of the case numbers~~
24 ~~involved. Thereafter, that number shall be used exclusively for all papers filed, and such papers~~
25 ~~shall be filed only in the designated case file.~~

⁸¹ Criminal only.

⁸² Criminal only.

⁸³ Integrate into URCP 42.

1 ~~(4) If a motion to consolidate is granted, the case shall be heard by the judge who was~~
2 ~~assigned to the lowest numbered of the cases involved, except that for good cause shown the~~
3 ~~presiding judge may assign the case to another judge.~~

4 **Rule 4-501. Rule 72. Motions and orders.**⁸⁴

5 **Intent:**

6 ~~To establish a uniform procedure for filing motions, supporting memoranda and documents~~
7 ~~with the court.~~

8 ~~To establish a uniform procedure for requesting and scheduling hearings on dispositive~~
9 ~~motions.~~

10 ~~To establish a procedure for expedited dispositions.~~

11 **Applicability:**

12 ~~This rule shall apply to motion practice in all trial courts of record except proceedings before~~
13 ~~the court commissioners and small claims cases. This rule does not apply to petitions for habeas~~
14 ~~corpus or other forms of extraordinary relief.~~

15 **Statement of the Rule:**

16 ~~(4)(a)~~ Filing and service of motions and memoranda.

17 ~~(A)(1)~~ Motion and supporting memoranda. All motions, except uncontested or ex-parte
18 ~~matters motions~~, shall be accompanied by a memorandum of points and authorities with citation
19 to or a copy of controlling or persuasive precedent, appropriate affidavits, and copies of or
20 pinpoint citations by page number to relevant portions of ~~depositions, exhibits or other~~
21 ~~documents the record~~ relied upon in support of the motion. The moving party may include
22 proposed findings and a proposed order. Memoranda ~~supporting or opposing a motion~~ shall not
23 exceed ten pages ~~in length~~ exclusive of the "statement of material facts" as provided in paragraph
24 (2), except as waived by order of the court on ex-parte application. If an ex-parte application is
25 made to file an over-length memorandum, the application shall state the length of the principal
26 memorandum, and, if the memorandum ~~is in excess of~~ exceeds ten pages, the application shall
27 include a summary of the memorandum, not to exceed five pages.

⁸⁴ Proposed to recodify as URCP 72. Includes portions of 4-504 governing orders. Includes suggestion by Christopher Daines that proposed findings and order be included. (Makes them optional, not required.) A reasonable reading of URCP yields the conclusion that including the order with the motion is already required.

1 ~~(B)~~(2) Memorandum in opposition to motion. ~~The~~ Within ten days after service of a motion,
2 the responding party shall file ~~and serve upon all parties within ten days after service of a~~
3 ~~motion, a memorandum~~ in opposition to the motion, ~~and all supporting documentation a~~
4 memorandum of points and authorities with citation to or a copy of controlling or persuasive
5 precedent, appropriate affidavits, copies of or pinpoint citations to relevant portions of the record
6 relied upon and objections to the moving party's order. The responding party may include
7 proposed findings and a proposed order. If the responding party fails to timely file a
8 memorandum in opposition to the motion ~~within ten days after service of the motion~~, the moving
9 party may notify the clerk to submit the matter to the court for decision as provided in paragraph
10 (1)(D) ~~of this rule.~~

11 ~~(C)~~(3) Reply memorandum. The moving party may ~~serve and~~ file a reply memorandum
12 within five days after service of the responding party's memorandum. The reply memorandum
13 may include objections to the responding party's order.

14 ~~(D)~~(4) Notice to submit for decision. Upon the expiration of the five-day period to file a
15 reply memorandum, either party may notify the clerk to submit the matter to the court for
16 decision. The notification shall be in the form of a separate written pleading and captioned
17 "Notice to Submit for Decision." The Notice to Submit for Decision shall state the date on which
18 the motion was served, the date the memorandum in opposition, if any, was served, the date the
19 reply memorandum, if any, was served, and whether a hearing has been requested. ~~The~~
20 ~~notification shall contain a certificate of mailing to all parties.~~ If neither party files a notice, the
21 motion will not be submitted for decision.

22 ~~(2)~~(b) Motions for summary judgment.

23 ~~(A)~~(1) Memorandum in support of a motion. The points and authorities in support of a
24 motion for summary judgment shall begin with a section that contains a concise statement of
25 material facts as to which ~~movant~~ moving party contends no genuine issue exists. The facts shall
26 be stated in separate numbered sentences, ~~and shall specifically refer to those~~ For each fact the
27 moving party shall provide a pinpoint citation to the portions of the record upon which the
28 ~~movant~~ moving party relies.

1 ~~(B)(2)~~ Memorandum in opposition to a motion. The points and authorities in opposition to a
2 motion for summary judgment shall begin with a section that contains a verbatim restatement of
3 each of the ~~movant's moving party's~~ statement of facts as to which the party contends a genuine
4 issue exists followed by a concise statement of material facts which support the party's
5 contention. Each disputed fact shall be stated in separate numbered sentences. ~~and shall~~
6 ~~specifically refer~~ For each disputed fact, the responding party shall provide a pinpoint citation to
7 those portions of the record upon which the ~~opposing responding~~ party relies. All material facts
8 set forth in the ~~movant's moving party's~~ statement and properly supported by an accurate
9 reference to the record ~~shall be are~~ deemed admitted for the purpose of summary judgment
10 unless specifically controverted by the ~~opposing responding~~ party's statement.

11 ~~(3)(c)~~ Hearings.

12 ~~(A) A decision on a motion shall be rendered~~ (1) The court shall decide a motion without a
13 hearing unless ordered by the court, or requested by the parties ~~as provided in paragraphs (3)(B)~~
14 ~~or (4) below.~~

15 ~~(B)(2)~~ In cases ~~where the in which~~ granting ~~of~~ a motion would dispose of the action or any
16 claim in the action on the merits with prejudice, either party at the time of filing the principal
17 memorandum in support of or in opposition to a motion may file a written request for a hearing.

18 ~~(C) Such request shall be granted~~ (3) The court shall grant the request unless the court finds
19 that ~~(a) the motion or opposition to the motion is frivolous or (b) that the dispositive issue or set~~
20 ~~of issues governing the granting or denial of the motion~~ has been authoritatively decided.

21 ~~(D)(4)~~ When a request for hearing is denied, the court shall notify the requesting party. When
22 a request for hearing is granted, the court shall set the matter for hearing or notify the requesting
23 party that the matter shall be heard, and the requesting party shall schedule the matter for hearing
24 and notify all parties of the date and time.

25 ~~(E) In those cases where~~ (5) If a hearing is granted, a courtesy copy of the motion,
26 memorandum of points and authorities and all documents supporting or opposing the motion
27 shall be delivered to the judge hearing the matter at least two ~~working~~ days before the ~~date set for~~
28 hearing. Copies shall be clearly marked as courtesy copies and indicate the date and time of the
29 hearing. Courtesy copies shall not be filed with the clerk of the court.

1 ~~(F)(6)~~ If no written request for a hearing is made at the time the parties file their principal
2 memoranda, a hearing on the motion shall be is deemed waived.

3 ~~(G) All dispositive motions shall be heard at least thirty (30) days before the scheduled trial~~
4 ~~date.~~ ~~(7)~~ No dispositive motions shall be heard ~~after that date~~ less than 30 days before the trial
5 date without leave of the court.

6 ~~(H)(8)~~ If a hearing has been requested and the non-moving party fails to file a memorandum
7 in opposition, the moving party may withdraw the request or the court ~~on its own motion~~ may
8 strike the request and decide the motion without oral argument.

9 ~~(4)(d)~~ Expedited dispositions. Upon motion and notice and for good cause shown, the court
10 may ~~grant a request for an expedited~~ expedite disposition in any ~~ease where~~ motion in which
11 time is of the essence and compliance with the provisions of this rule would be impracticable or
12 ~~where~~ the motion does not raise significant legal issues and ~~could can~~ be resolved summarily.

13 ~~(5) Telephone conference. The court on its own motion or at a party's request may direct~~
14 ~~arguments of any motion by telephone conference without court appearance. A verbatim record~~
15 ~~shall be made of all telephone arguments and the rulings thereon if requested by counsel.~~⁸⁵

16 (e) Orders.⁸⁶ Unless the court approves the proposed findings and order submitted in support
17 of or in opposition to a motion, the prevailing party shall, within fifteen days after the court's
18 decision or within such shorter time as the court directs, file proposed findings and order in
19 conformity with the court's decision. Objections to the proposed findings and order shall be filed
20 within five days after service.

21 (1) Orders, judgments and decrees shall state whether they are entered upon stipulation,
22 motion or the court's initiative.

23 (2) Unless otherwise directed by the court, judgments and decrees shall be separate
24 documents and not include any matters by reference. Unless otherwise directed by the court,
25 orders other than judgments and decrees may be made a part of or refer to the documents
26 containing the stipulation or motion upon which the order is based.

27 **Rule 4-503. Requests for jury instructions.**⁸⁷

⁸⁵ Governed by CJA 4-106, which is not proposed for inclusion in the URCP.

⁸⁶ Those parts of 4-504 governing orders.

⁸⁷ Governed by URCP 51.

1 Intent:

2 ~~To establish a uniform procedure for submitting and requesting jury instructions.~~

3 Applicability:

4 ~~This rule shall apply to the District and Justice Courts.~~

5 Statement of the Rule:

6 ~~(1) All jury instruction requests shall be presented to the court five days prior to the~~
7 ~~scheduled trial date unless otherwise ordered by the court. The court, in its discretion, may allow~~
8 ~~the presentation of jury instructions at any time prior to the submission of the case to the jury. At~~
9 ~~the time of presentation to the court, a copy of the requested instructions shall be furnished to~~
10 ~~opposing counsel.~~

11 ~~(2) Jury instruction requests must be in writing and state in full the instruction requested.~~
12 ~~Each request shall be upon a separate sheet of paper, the original and copies of which shall be~~
13 ~~free from red lines and firm names and shall be entitled:~~

14 "Instruction No. _____"

15 The number of the request shall be written in lead pencil.

16 ~~(3) If case citations are used in support of a requested instruction, at least one copy of the~~
17 ~~requested instruction furnished to the court shall be submitted without the citations. Citations~~
18 ~~may be provided upon separate sheets attached to the particular instruction to which the citation~~
19 ~~applies.~~

20 **Rule 4-504. Written orders, judgments and decrees.**

21 Intent:

22 ~~To establish a uniform procedure for submitting written orders, judgments, and decrees to the~~
23 ~~court. This rule is not intended to change existing law with respect to the enforceability of~~
24 ~~unwritten agreements.~~

25 Applicability:

26 ~~This rule shall apply to all civil proceedings in courts of record except small claims.~~

27 Statement of the Rule:

1 ~~(1) In all rulings by a court, counsel for the party or parties obtaining the ruling shall within~~
2 ~~fifteen days, or within a shorter time as the court may direct, file with the court a proposed order,~~
3 ~~judgment, or decree in conformity with the ruling.~~⁸⁸

4 ~~(2) Copies of the proposed findings, judgments, and orders shall be served upon opposing~~
5 ~~counsel before being presented to the court for signature unless the court otherwise orders.~~
6 ~~Notice of objections shall be submitted to the court and counsel within five days after service.~~⁸⁹

7 (3) Stipulated settlements and dismissals shall also be reduced to in writing and presented to
8 the court for signature within fifteen days of the settlement and dismissal stipulation.⁹⁰

9 ~~(4) All orders, judgments, and decrees shall be prepared in such a manner as to show whether~~
10 ~~they are entered upon the stipulation of counsel, the motion of counsel or upon the court's own~~
11 ~~initiative and shall identify the attorneys of record in the cause or proceeding in which the~~
12 ~~judgment, order or decree is made.~~⁹¹

13 ~~(5) Except where otherwise ordered, all judgments and decrees shall contain, if known, the~~
14 ~~judgment debtor's address or last known address and social security number.~~⁹²

15 ~~(6) All judgments and decrees shall be prepared as separate documents and shall not include~~
16 ~~any matters by reference unless otherwise directed by the court. Orders not constituting~~
17 ~~judgments or decrees may be made a part of the documents containing the stipulation or motion~~
18 ~~upon which the order is based.~~⁹³

19 (7) No orders, judgments, or decrees based upon stipulation shall be signed or entered unless
20 the stipulation is in writing, signed by the attorneys of record for the respective parties and filed
21 with the clerk or the stipulation was made on the record.⁹⁴

22 ~~(8) In all cases where judgment is rendered upon a written obligation to pay money and a~~
23 ~~judgment has previously been rendered upon the same written obligation, the plaintiff or~~

⁸⁸ Integrated into 4-501.

⁸⁹ Integrated into 4-501.

⁹⁰ Does the court care how long between stipulation and order?

⁹¹ Integrated into 4-501.

⁹² Governed by §78-22-1.5.

⁹³ Integrated into 4-501.

⁹⁴ Conflicts with ¶(9).

1 ~~plaintiff's counsel shall attach to the new complaint a copy of all previous judgments based upon~~
2 ~~the same written obligation.~~⁹⁵

3 (9) Nothing in this rule shall be construed to limit the power of any court, upon a proper
4 showing, to enforce a settlement agreement or any other agreement which has not been reduced
5 to writing.⁹⁶

6 **Rule 4-505. Rule 74. Attorney fees affidavits.**

7 **Intent:**

8 ~~To establish uniform criteria and a uniform format for affidavits in support of attorney fees.~~

9 **Applicability:**

10 ~~This rule shall govern the award of attorney fees in the trial courts.~~

11 **Statement of the Rule:**

12 ~~(4)(a) Affidavits in support of an award of attorney fees must shall be filed with the court and~~
13 ~~set forth: specifically~~

14 ~~(1) the legal basis for the award,~~

15 ~~(2) the nature of the work performed by the attorney,~~

16 ~~(3) the number of hours spent to prosecute the claim to judgment, or the time spent in~~
17 ~~pursuing the matter to the stage for which attorney fees are claimed, and affirm the~~
18 ~~reasonableness of the fees for comparable legal services.~~

19 ~~(4) the skill required to perform the legal services properly;~~

20 ~~(5) whether acceptance of this assignment precluded other employment by the attorney;~~

21 ~~(6) the time limitations imposed by the client or the circumstances;~~

22 ~~(7) whether any part of the representation was done for a contingent fee;~~⁹⁷

⁹⁵ As written, this is a pleading requirement and should be added to URCP 9. In substance it appears to be something the court could take notice of under the rules of evidence or proven under URCP 44 and therefore superfluous. It's been part of the rule since 1988.

⁹⁶ Conflicts with ¶(7).

⁹⁷ (4) – (7) are the non-repetitive provisions going to reasonableness contained in CJA 6-501 and 6-502, although it's questionable how preclusion from other work, time limits imposed by the client and contingency fees are relevant to reasonableness. One change from 6-501 and 6-502: Those rules prohibit claims for non-legal staff work whereas this rule permits them.

1 ~~(2) The affidavit must also separately state by (8) the number of~~ hours, hourly rate and nature
2 of work for persons other than attorneys, ~~for time spent, work completed and hourly rate billed.~~
3 and

4 ~~(3) If (9) if~~ the affidavit is in support of attorney fees for services rendered to ~~a person or~~
5 ~~entity who has been assigned an interest in a claim for the purpose of collection~~ an assignee or a
6 person hired by the obligee to collect a debt, the affidavit shall also state that the attorney is not
7 sharing the fee or any portion thereof in violation of Rule of Professional Conduct 5.4.

8 ~~(4)(b)~~ If judgment is being taken by default for a principal sum ~~which it is expected that~~ will
9 require considerable additional work to collect, the following phrase may be included in the
10 judgment after an award consistent with the time spent to the point of default judgment, to cover
11 additional fees incurred in pursuit of collection:

12 "AND IT IS FURTHER ORDERED THAT THIS JUDGMENT SHALL BE AUGMENTED
13 IN THE AMOUNT OF REASONABLE COSTS AND ATTORNEY'S FEES EXPENDED IN
14 COLLECTING SAID JUDGMENT ~~BY EXECUTION OR OTHERWISE~~ AS SHALL BE
15 ESTABLISHED BY AFFIDAVIT."⁹⁸

16 ~~(5)(c)~~ Attorney fees may be awarded pursuant to this rule or pursuant to Rule ~~4-505.1~~ 75.

17 ~~Rule 4-505.01. Rule 75.~~ **Awards of attorney fees in civil default judgments with a**
18 **principal amount of \$5,000 or less.**

19 **Intent:**

20 ~~To provide for uniformity in awards of attorney fees in civil default judgments with a~~
21 ~~principal damages amount of \$5,000 or less.~~

22 ~~To provide for notice of the amount of attorney fees that may be awarded in the event of~~
23 ~~default.~~

24 **Applicability:**

25 ~~This rule shall govern awards of attorney fees in civil default judgments with a principal~~
26 ~~damages amount of \$5,000 or less in which the claimant elects to seek an award of attorney fees~~
27 ~~pursuant to this rule.~~

28 **Statement of the Rule:**

⁹⁸ Is this needed?

1 ~~(1)~~(a) When reasonable attorney fees are provided for by contract or statute and the claimant
2 elects to seek an award of attorney fees pursuant to this rule, such fees shall be computed as
3 follows:

Principal Amount of Damages, Exclusive of Costs and Interest,		Attorney Fees
Between	and:	Allowed
\$0.00	\$700.00	\$150.00
700.01	900.00	175.00
900.01	1,000.00	200.00
1,000.01	1,500.00	250.00
1,500.01	2,000.00	325.00
2,000.01	2,500.00	400.00
2,500.01	3,000.00	475.00
3,000.01	3,500.00	550.00
3,500.01	4,000.00	625.00
4,000.01	4,500.00	700.00
4,500.01	5,000.00	775.00

4 ~~(2)~~(b) Reference to this rule and the amount of attorney fees allowed pursuant to paragraph
5 (1) shall be stated with particularity in the body or prayer of the complaint.

6 ~~(3)~~(c) When a statute provides the basis for the award of attorney fees, reference to the
7 statutory authority shall be included in the complaint.

8 ~~(4)~~(d) Clerks may enter civil default judgments which include attorney fees awarded pursuant
9 to this rule.

10 ~~(5)~~(e) Attorney fees awarded pursuant to this rule may be augmented after judgment pursuant
11 to Rule ~~4-505~~ 74. When the court considers a motion for augmentation of attorney fees awarded
12 pursuant to this rule, it shall consider the attorney time spent prior to the entry of judgment, the
13 amount of attorney fees included in the judgment, and the statements contained in the affidavit
14 supporting the motion for augmentation.

1 ~~(6)(f)~~ Prior to entry of a judgment which grants attorney fees pursuant to this rule, any party
2 may move the court to depart from the fees allowed by paragraph (1) ~~of this rule~~. Such
3 application shall be made pursuant to Rule ~~4-505~~ 74.

4 ~~(7)(g)~~ If a contract or other document provides for an award of attorney fees, an original or
5 copy of the document shall be made a part of the file before attorney fees may be awarded
6 pursuant to this rule.

7 ~~(8)(h)~~ No affidavit for attorney fees need be filed in order to receive an award of attorney
8 fees pursuant to this rule.

9 ~~(9)(i)~~ No attorney fees awarded pursuant to this rule, nor portion thereof, may be shared in
10 violation of Rule of Professional Conduct 5.4.

11 ~~Rule 4-506.~~ **Rule 76. Withdrawal of counsel in civil cases.**

12 ~~Intent:~~

13 ~~To establish a uniform procedure and criteria for withdrawal of counsel in civil cases.~~

14 ~~Applicability:~~

15 ~~This rule shall apply to all counsel in civil proceedings in trial courts of record except~~
16 ~~guardians ad litem and court appointed counsel.~~

17 ~~Statement of the Rule:~~

18 ~~(1) Withdrawal requiring court approval. Consistent with the Rules of Professional Conduct,~~
19 ~~an attorney may withdraw as counsel of record only upon approval of the court when (a) An~~
20 ~~attorney may withdraw as counsel of record by filing notice of withdrawal with the court. If a~~
21 ~~motion has been filed and the court has not issued an order on the motion or after is pending or a~~
22 ~~certificate of readiness for trial has been filed. Under these circumstances, an attorney may not~~
23 ~~withdraw except upon motion and order of the court.~~

24 ~~(2) Withdrawal not requiring court approval. If an attorney withdraws under circumstances~~
25 ~~where court approval is not required, the notice of withdrawal shall include a statement by the~~
26 ~~attorney that no motion has been filed on which the court has not issued an order is pending and~~
27 ~~that no certificate of readiness for trial has been filed.~~

1 ~~(3) If an attorney withdraws as counsel of record, the withdrawing attorney must serve~~
2 ~~written notice of the withdrawal upon the client of the withdrawing attorney⁹⁹ and upon all other~~
3 ~~parties not in default.¹⁰⁰ A certificate of service must be filed with the court.¹⁰¹ If a trial date or~~
4 ~~hearing has been set scheduled, the notice of withdrawal shall include a notification of the trial~~
5 ~~date and nature of the hearing.~~

6 ~~(4)(b) If an attorney withdraws, dies, is suspended from the practice of law, is disbarred, or~~
7 ~~is removed from the case by the court, opposing counsel shall serve a Notice to Appear or~~
8 ~~Appoint Counsel on the unrepresented client self-represented party. ~~The Notice to Appear or~~~~
9 ~~Appoint Counsel must inform the unrepresented client informing the party of the responsibility~~
10 ~~to appear in a court or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must~~
11 ~~be filed with the court. No further proceedings shall be held in the case until 20 days have~~
12 ~~elapsed from after filing ~~of~~ the Notice to Appear or Appoint Counsel unless the client of the~~
13 ~~withdrawing attorney self-represented party waives the time requirement or unless otherwise~~
14 ~~ordered by the court.~~

15 ~~(5)(c) Substitution of counsel. An attorney may replace the current counsel of record by~~
16 ~~filing and serving¹⁰² a notice of substitution of counsel. Filing a substitution of counsel enters the~~
17 ~~appearance of new counsel of record and effectuates the withdrawal of the attorney being~~
18 ~~replaced. Where a request for a delay of proceedings is not made, substitution of counsel does~~
19 ~~not require the approval of the court. Where If new counsel requests a delay of proceedings~~
20 ~~continuance, substitution of counsel requires the approval of the court ~~as provided in this rule~~.~~

21 **Rule 4-507. Disposition of funds on trustee's sale.**¹⁰³

22 **Intent:**

23 ~~To establish a uniform procedure for filing trustee affidavits of deposit and claimant petitions~~
24 ~~for adjudication of priority in trustee's sales.~~

25 ~~To establish a uniform procedure in determining the disposition of funds on trustee's sales.~~

26 **Applicability:**

⁹⁹ Governed by RPC 1.16

¹⁰⁰ Governed by URCP 5(a).

¹⁰¹ Governed by URCP 5(d).

¹⁰² Governed by URCP 5(a).

¹⁰³ Governed by §57-1-29.

1 This rule shall apply to all courts of record.

2 Statement of the Rule:

3 ~~(1) At the time of depositing with the Clerk of the Court any proceeds from a trustee's sale in~~
4 ~~accordance with Utah Code Ann. Section 57-1-29, the trustee shall file an affidavit with the clerk~~
5 ~~setting forth the facts of the deposit and a list of all known claimants, including known addresses.~~
6 ~~The clerk shall notify the listed claimants within 10 days of receiving the affidavit of deposit.~~

7 ~~(2) Any claimant may then file a petition for adjudication of priority to these funds and~~
8 ~~request a hearing before the court. The petitioner requesting the hearing shall give notice of the~~
9 ~~hearing to all claimants listed in the trustee's affidavit of deposit and any others known to the~~
10 ~~petitioner. All persons having or claiming an interest must appear and assert their claim or be~~
11 ~~barred thereafter.~~

12 ~~(3) Pursuant to the determination hearing, the court will establish the priorities of the parties~~
13 ~~to the trustee's sale proceeds and enter an order with the clerk of the court or county treasurer~~
14 ~~directing the disbursement of funds as determined.~~

15 **Rule 4-508. Unpublished opinions.**¹⁰⁴

16 Intent:

17 To establish a uniform standard for the use of unpublished opinions.

18 Applicability:

19 This rule shall apply to all courts of record and not of record.

20 Statement of the Rule:

21 ~~(1) Unpublished opinions, orders and judgments have no precedential value and shall not be~~
22 ~~cited or used in the courts of this state, except for purposes of applying the doctrine of the law of~~
23 ~~the case, res judicata, or collateral estoppel.~~

24 ~~(2) An opinion in a case involving taxation published under CJA 6-103 may be cited.~~

25 ~~(3) For the purposes of this rule, any memorandum decision, per curiam opinion, or other~~
26 ~~disposition of the Court designated "not for official publication" shall be regarded as an~~
27 ~~unpublished opinion.~~

28 **Rule 4-509. Rule 73. Property bonds.**

¹⁰⁴ Contrary to *Grand County v. Rogers*, 2002 UT 25.

1 Intent:

2 ~~To establish criteria for real property bonds posted in civil proceedings.~~

3 Applicability:

4 ~~This rule shall apply to the district court.~~

5 Statement of the Rule:

6 ~~(1) Each (a) A~~ real property bond posted with the court ~~in a civil proceedings~~ shall:

7 ~~(A)(1)~~ be prepared by an owner of record or counsel;

8 ~~(B)(2)~~ be signed by all owners of record;

9 ~~(C)(3)~~ contain the complete legal description of the property and the property tax
10 identification number;

11 ~~(D)(4)~~ be acknowledged before a notary public;

12 ~~(E)(5)~~ be accompanied by a copy of the document by which title is vested in the owners;

13 ~~(F)(6)~~ be accompanied by a copy of the property tax statement for the current or previous
14 year;

15 ~~(G)(7)~~ be accompanied by a current title report, a current foreclosure report, or such other
16 information as required by the court; and

17 ~~(H)(8)~~ be accompanied by a written statement from each lienholder stating:

18 ~~(i)(A)~~ the current balance of the lien;

19 ~~(ii)(B)~~ the date the most recent payment was made;

20 ~~(iii)(C)~~ that the debt is not in default; and

21 ~~(iv)(D)~~ that the lienholder will notify the court if a default occurs or if a foreclosure process
22 is commenced during the period the property bond is in effect.

23 ~~(2) Each property bond accepted by the court shall be recorded (b) Upon acceptance by the~~
24 court, the property owner shall record the bond with the county recorder of the county ~~or~~
25 counties where in which the property is located.

26 ~~(3)(c)~~ Upon exoneration of the bond, the property owner shall present a release of property
27 bond to the court.

1 **Rule 4-801. Transfer of small claims cases.**¹⁰⁵

2 **Intent:**

3 ~~To establish a procedure for the transfer of small claims cases to the appropriate justice court.~~

4 **Applicability:**

5 ~~This rule shall apply to the courts of record and not of record.~~

6 **Statement of the Rule:**

7 ~~(1) Small claims actions filed in a court of record may be assigned to a judge pro tempore, if~~
8 ~~one has been appointed under Rule 11-202 to adjudicate small claims actions. (a) If no judge pro~~
9 ~~tempore has been appointed to adjudicate small claims actions, the case may be transferred to a~~
10 ~~justice court with jurisdiction under Section 78-5-104.~~

11 ~~(2)(b) At the time of the transfer, the court shall also transfer the filing fee, less the portion~~
12 ~~dedicated to the judges' retirement trust fund.~~

13 ~~(3)(c) If there is no justice court with territorial jurisdiction of the small claims action and no~~
14 ~~judge pro tempore, a district judge of the court shall hear and determine the action. The appeal~~
15 ~~shall be as provided in Rule 4-803.~~

16 **Rule 4-802. Motion to reinstate small claims proceedings.**¹⁰⁶

17 **Intent:**

18 ~~To establish a procedure for reinstating small claims proceedings in cases where one of the~~
19 ~~parties fails to appear.~~

20 **Applicability:**

21 ~~This rule shall apply to small claims actions.~~

22 **Statement of the Rule:**

23 ~~(1) Any party to a small claims action who has an affidavit or counter affidavit dismissed for~~
24 ~~failure to appear may request a hearing to show cause why the court should not reinstate the~~
25 ~~cause of action.~~

¹⁰⁵ This rule appears more administrative than procedural. The last sentence should be stricken. It's superfluous and if planned small claims changes are approved will be an incorrect cross reference. If the civil procedures committee agrees with the recodification committee that this rule is procedural, it should be incorporated, as amended, into the rules of small claims procedures Rule 1 or 2.

¹⁰⁶ Governed by Rule of Small Claims Procedures 10.

1 ~~(2) The request must be in the form of a written motion supported by an affidavit setting~~
2 ~~forth the reasons why the party failed to appear and filed within the time prescribed by the Rules~~
3 ~~of Civil Procedure.~~

4 ~~(3) The moving party shall send a copy of the motion and affidavit to the opposing party and~~
5 ~~file with the court a certificate of mailing.~~

6 ~~(4) The clerk of the court shall schedule the motion for hearing and notify the parties of the~~
7 ~~hearing date.~~

8 **Rule 4-803. Trials de novo in small claims cases.**¹⁰⁷

9 **Intent:**

10 To establish uniform procedures governing trials de novo of small claims actions.

11 **Applicability:**

12 This rule shall apply to the trial de novo of small claims actions.

13 **Statement of the Rule:**

14 ~~(1) General provisions.~~

15 ~~(A) Right to trial de novo. Any party to a judgment in a small claims action may appeal the~~
16 ~~judgment in accordance with Section 78-6-10. The appeal shall be by trial de novo.~~

17 ~~(B) Venue. The trial de novo of a justice court adjudication shall be heard in the district court~~
18 ~~location nearest to and in the same county as the justice court from which the appeal is taken.~~
19 ~~The trial de novo from the small claims department of the district court shall be held at the same~~
20 ~~district court location. Either party may move for a change of venue under the applicable Rules~~
21 ~~of Civil Procedure.~~

22 ~~(2) Small claims appeals.~~

23 ~~(A) Filing notice of appeal. Either party may appeal a small claims judgment by filing a~~
24 ~~notice of appeal in the court issuing the judgment within ten days of the notice of entry of the~~
25 ~~judgment.~~

26 ~~(B) Contents of notice of appeal. The notice of appeal shall designate the district court~~
27 ~~location in which the trial de novo will be held, shall specify the parties in their original capacity,~~

¹⁰⁷ That which is not already governed by Rule of Small Claims Procedure 12 will be under recommendations being studied by a small claims work group.

1 shall identify the party obtaining the trial de novo, and shall designate the judgment and the court
2 from which the appeal is taken.

3 (C) Service of notice of appeal. The appellant shall give notice of the filing of the notice of
4 appeal by personally serving or mailing a copy to the counsel of record of each party to the
5 judgment, or, if a party is not represented by counsel, then to the party at his last known address.
6 The appellant shall file proof of service or mailing with the district court.

7 (D) Fees. At the time of filing the notice of appeal, the appellant must deposit into court
8 issuing the judgment the fees established under Utah Code Ann. Section 21-1-5 and Section
9 78-6-14. The payment of the filing fee is necessary for conferring jurisdiction upon the district
10 court. Payment of filing fees may be waived upon filing of an affidavit of impecuniosity pursuant
11 to Utah Code Ann. Section 21-7-3.

12 (E) Stay of judgment. A judgment is automatically stayed upon the filing of a notice of
13 appeal with the court issuing the judgment and the posting of a supersedeas bond with the district
14 court. The stay shall continue until the entry of the judgment or final order of the district court.

15 (F) Procedures — Record of justice court. Within ten days of the filing of the notice of appeal
16 in a justice court, the court shall transmit to the district court the notice of appeal, the district
17 court fees, a certified copy of the docket or register of actions, and the original of all pleadings,
18 notices, motions, orders, judgment, and other papers filed in the case.

19 (G) Orders governing trials de novo. Upon the filing of the notice of appeal, the district court
20 shall issue all further orders governing the trial de novo.

21 (H) Disposition. The trial de novo shall be tried in accordance with the procedures of small
22 claims actions. The enforcement, collection or satisfaction of a judgment shall be according to
23 district court procedures. Upon the entry of the judgment or final order of the district court, the
24 clerk of the district court shall transmit to the justice court which rendered the original judgment
25 notice of the manner of disposition of the case. Such notice shall be for informational purposes
26 only and shall not be construed as a remand of the case.

27 **Rule 4-901. Rule 100. Coordination of cases pending in district court and juvenile court.**

28 Intent:

1 ~~To require parties to notify the court of multiple cases related to the same family before more~~
2 ~~than one judge or commissioner.~~

3 ~~To permit communication among judges and commissioners assigned to cases related to the~~
4 ~~same family regarding consolidation and coordination of the cases.~~

5 ~~To facilitate coordination of proceedings in cases related to the same family.~~

6 ~~Applicability:~~

7 ~~This rule shall apply to the district court, juvenile court and justice court.~~

8 ~~Statement of the Rule:~~

9 ~~(1) Criminal and delinquency cases; Notice to the court.~~

10 ~~(A) In a criminal case all parties have a continuing duty to notify the court of a delinquency~~
11 ~~case pending in juvenile court in which the defendant is a party.~~

12 ~~(B) In a delinquency case all parties have a continuing duty to notify the court:~~

13 ~~(i) of a criminal or delinquency case in which the respondent or the respondent's parent is a~~
14 ~~party; and~~

15 ~~(ii) of an abuse, neglect or dependency case in which the respondent is the subject of the~~
16 ~~petition or the respondent's parent is a party.~~

17 ~~(C) The notice shall be filed with a party's initial pleading or as soon as practicable after~~
18 ~~becoming aware of the other pending case. The notice shall include the case caption, file number~~
19 ~~and name of the judge or commissioner in the other case.¹⁰⁸~~

20 ~~(2)(a) Custody, support and parent time cases.~~

21 ~~(A)(1) Notice to the court. In a civil case in which child custody, child support or parent time~~
22 ~~is an issue, all parties have a continuing duty to notify the court:~~

23 ~~(i)(A) of a case in which a party or the party's child in the instant case is a party to or the~~
24 ~~subject of a petition or order involving child custody, child support or parent time;~~

25 ~~(ii)(B) of a criminal or delinquency case in which a party or the party's child in the instant~~
26 ~~case is a defendant or respondent;~~

27 ~~(iii)(C) of a protective order case involving a party in the instant case regardless whether a~~
28 ~~child of the party is involved.~~

¹⁰⁸ Criminal and delinquency cases only.

1 ~~(B)~~(2) The notice shall be filed with a party's initial pleading or as soon as practicable after
2 becoming aware of the other case. The notice shall include the case caption, file number and
3 name of the judge or commissioner in the other case.

4 ~~(C)~~(3) Communication among judges and commissioners. The judge or commissioner
5 assigned to a case in which child custody, child support or parent time is an issue shall
6 communicate and consult with any other judge or commissioner assigned to any other pending
7 case involving the same issues and the same parties or their children. The judges and
8 commissioners may allow the parties to participate in the communication. The objective of the
9 communication is to consider the feasibility of consolidating the cases before one judge or
10 commissioner or of coordinating hearings and orders.

11 ~~(3)~~(b) Consolidation of cases. If the parties have not participated in the communication, the
12 parties shall be given notice and the opportunity to present facts and arguments before a decision
13 on consolidation is made.

14 ~~(A)~~(1) Within one county and court level. The court on its own motion or motion of a party
15 and upon the agreement of the judges or commissioners assigned to the cases may consolidate
16 the cases within one county and one court level pursuant to §78-3a-115(3), URCP 42, [URCP 78](#),
17 [and URJP 28](#) ~~and CJA 4-107~~.

18 ~~(B)~~(2) Between counties in one court level. The court on its own motion or motion of a party
19 and upon the agreement of the judges or commissioners assigned to the cases may transfer cases
20 in different counties of one court level to any county with venue or to any other county in
21 accordance with §78-13-9.

22 ~~(C)~~(3) Between court levels. If the district court and juvenile court have concurrent
23 jurisdiction over cases, either court may transfer a case to the other court upon the agreement of
24 the judges or commissioners assigned to the cases. The district court shall certify to the juvenile
25 court issues of child custody, support and parent time in accordance with §78-3a-105(3) ~~and CJA~~
26 ~~4-902~~.

27 ~~(4)~~(c) Judicial reassignment. Within a district and a court level, the court may assign cases
28 from different counties to one judge upon the agreement of the judges or commissioners assigned
29 to the cases. A judge of one court or district may hear and determine a case in another court or
30 district upon assignment in accordance with Rule 3-108(3).

1 **Rule 4-902. Rule 110. Certification of district court cases to juvenile court.**

2 **Intent:**

3 ~~To establish a procedure for the district court to certify questions of support, custody or~~
4 ~~parent time to the juvenile court.~~

5 **Applicability:**

6 ~~This rule shall apply to the district and juvenile courts.~~

7 **Statement of the Rule:**

8 ~~(1) Pursuant to §78-3a-105(3), the district court shall certify to the juvenile court for~~
9 ~~determination the question of child custody, support or parent time regarding a minor who is the~~
10 ~~subject of a petition pending in juvenile court or over whom the juvenile court has continuing~~
11 ~~jurisdiction.~~¹⁰⁹

12 ~~(2)(a)~~ When the district court certifies a question to the juvenile court, the clerk of the
13 district court shall transmit the entire case file to the clerk of the juvenile court who shall refer it
14 to the presiding judge for assignment.

15 ~~(3)(b)~~ When the question certified to the juvenile court has been determined by the juvenile
16 court and the appropriate order entered, the clerk of the juvenile court shall transmit the file to
17 the clerk of the district court, who shall refer it back to the judge assigned to handle the matter.

18 **Rule 4-903. Rule 101. Uniform custody evaluations.**¹¹⁰

19 **Intent:**

20 ~~To establish uniform guidelines for the preparation of custody evaluations.~~

21 **Applicability:**

22 ~~This rule shall apply to the district and juvenile courts.~~

23 **Statement of the Rule:**

24 ~~(1)(a)~~ Custody evaluations shall be performed by persons with the following minimum
25 qualifications:

26 ~~(A)(1) Social work evaluations shall be performed by social workers licensed by the state in~~
27 ~~which they practice, workers who hold the designation of Licensed Clinical Social Worker and~~

¹⁰⁹ Governed by §78-3a-105.

¹¹⁰ Except for renumbering the paragraphs in accordance with the Supreme Court's protocol, the amendments to this rule are currently out for comment.

1 are licensed by the state in which they practice may perform custody evaluations within the
2 scope of their licensure.

3 ~~(B)~~ Psychological evaluations shall be performed by (2) Doctoral level psychologists who are
4 licensed by the state in which they practice may perform custody evaluations within the scope of
5 their licensure.

6 ~~(C)~~ (3) Physicians who are board certified in psychiatry and are licensed by the state in which
7 they practice may perform custody evaluations within the scope of their licensure.

8 ~~Psychiatric examinations shall be performed by a licensed physician with a specialty in~~
9 ~~psychiatry.~~

10 (4) Marriage and family therapists who hold the designation of Licensed Marriage and
11 Family Therapist (Masters level minimum) by the state in which they practice may perform
12 custody evaluations within the scope of their licensure.

13 (b) Every motion or stipulation for the performance of a custody evaluation shall include:

14 (1) the name, address, and telephone number of each evaluator nominated, or the evaluator
15 agreed upon;

16 (2) the anticipated dates of commencement and completion of the evaluation and the
17 estimated cost of the evaluation;

18 (3) specific factors, if any, to be addressed in the evaluation.

19 (c) Every order requiring the performance of a custody evaluation shall:

20 (1) require the parties to cooperate as requested by the evaluator;

21 (2) restrict disclosure of the evaluation's findings or recommendations and privileged
22 information obtained except in the context of the subject litigation or other proceedings as
23 deemed necessary by the court;

24 (3) assign responsibility for payment;

25 (4) specify dates for commencement and completion of the evaluation;

26 (5) specify factors, if any, to be addressed in the evaluation;

27 (6) require the evaluator to provide written notice to the court, counsel and parties within five
28 business days of completion or termination of the evaluation and, if terminated, the reason;

1 (7) require counsel or parties to schedule a settlement conference with the court to include
2 the evaluator within 45 days of notice of completion or termination unless otherwise directed by
3 the court.

4 ~~(2)(d)~~ In divorce cases where custody is at issue, one evaluator may be appointed by the
5 Court to conduct an impartial and objective assessment of the parties and submit a written report
6 to the Court. shall perform the evaluation on both parties and shall submit a written report to the
7 court, unless When one of the prospective custodians resides outside of the jurisdiction of the
8 court. ~~In those cases,~~ two individual evaluators may be appointed. In cases in which two
9 evaluators are appointed, the court will designate a primary evaluator. The evaluators must
10 confer prior to the commencement of the evaluation to establish appropriate guidelines and
11 criteria for the evaluation and shall submit only one joint report to the Court.

12 ~~(3)(e)~~ The purpose of the custody evaluation will be to provide the Court with information it
13 can use to make decisions regarding custody and parenting time arrangements that are in the
14 child's best interest. This is accomplished by assessing the prospective custodians' capacity to
15 parent, the developmental, emotional, and physical needs of the child, and the fit between each
16 prospective custodian and child. Unless otherwise specified in the order, Evaluators ~~evaluators~~
17 must consider and respond to each of the following factors:

18 ~~(A)~~(1) the child's preference;

19 ~~(B)~~(2) the benefit of keeping siblings together;

20 ~~(C)~~(3) the relative strength of the child's bond with one or both of the prospective custodians;

21 ~~(D)~~(4) the general interest in continuing previously determined custody arrangements where
22 the child is happy and well adjusted;

23 ~~(E)~~(5) factors relating to the prospective custodians' character or status or their capacity or
24 willingness to function as parents, including:

25 ~~(i)~~(A) moral character and emotional stability;

26 ~~(ii)~~(B) duration and depth of desire for custody;

27 ~~(iii)~~(C) ability to provide personal rather than surrogate care;

28 ~~(iv)~~(D) significant impairment of ability to function as a parent through drug abuse, excessive
29 drinking or other causes;

- 1 ~~(v)~~(E) reasons for having relinquished custody in the past;
- 2 ~~(vi)~~(F) religious compatibility with the child;
- 3 ~~(vii)~~(G) kinship, including in extraordinary circumstances stepparent status;
- 4 ~~(viii)~~(H) financial condition; and
- 5 ~~(ix)~~(I) evidence of abuse of the subject child, another child, or spouse; and
- 6 ~~(x)~~(J) any other factors deemed important by the evaluator, the parties, or the court.

7 (f) In cases in which specific areas of concern exist such as domestic violence, sexual abuse,
8 substance abuse, mental illness, and the evaluator does not possess specialized training or
9 experience in the area(s) of concern, the evaluator shall consult with those having specialized
10 training or experience. The assessment shall take into consideration the potential danger posed to
11 the child's custodian and the child(ren).

12 (g) In cases in which psychological testing is employed as a component of the evaluation, it
13 shall be conducted by a licensed psychologist who is trained in the use of the tests administered,
14 and adheres to the ethical standards for the use and interpretation of psychological tests in the
15 jurisdiction in which he or she is licensed to practice. If psychological testing is conducted with
16 adults and/or children, it shall be done with knowledge of the limits of the testing and should be
17 viewed within the context of information gained from clinical interviews and other available
18 data. Conclusions drawn from psychological testing should take into account the inherent
19 stresses associated with divorce and custody disputes.

20 **Rule 4-905. Rule 102. Domestic pretrial conferences and orders.**

21 ~~Intent:~~

22 ~~To establish a uniform procedure for conducting pretrial conferences in contested domestic~~
23 ~~matters.~~

24 ~~To provide for uniformity in pretrial orders in contested domestic matters.~~

25 ~~Applicability:~~

26 ~~This rule shall apply to the district courts which have court commissioners.~~

27 ~~Statement of the Rule:~~

28 ~~(1)(a)~~ Court commissioners shall conduct pretrial conferences in all contested matters
29 seeking divorce, annulment, paternity or modification of a decree of divorce.

1 ~~(2)~~(b) At the pretrial conference, the commissioner shall discuss the issues with counsel and
2 the parties, may receive proffers of evidence, and may receive evidence if authorized to do so by
3 the presiding district judge.

4 ~~(3)~~(c) Following the pretrial conference, the commissioner shall issue a pretrial order which
5 shall include:

6 ~~(A)~~(1) the issues stipulated to by the parties;

7 ~~(B)~~(2) the issues which remain in dispute; and

8 ~~(C)~~(3) the commissioner's recommendations as to the disputed issues if the commissioner
9 conducted an evidentiary hearing on those issues.

10 ~~(4)~~(d) The commissioner may designate one of the parties' counsel to reduce the pretrial
11 order to writing pursuant to Rule ~~4-504.72~~.

12 ~~(5)~~(e) The disputed issues identified in the pretrial order shall remain at issue for purposes of
13 trial.

14 **Rule 4-911. Rule 103. Motion and order for payment of costs and fees.**

15 **Intent:**

16 ~~To establish the process by which the court may order the payment by one party of the costs~~
17 ~~and fees of another party in a domestic relations or domestic violence action.~~

18 **Applicability:**

19 ~~This rule applies to the district court.~~

20 **Statement of the Rule:**

21 ~~(1)~~(a) In any action designated by ' 30-3-3(1), either party may move the court for an order
22 requiring the other party to provide costs, attorney fees, and witness fees, including expert
23 witness fees, to enable the moving party to prosecute or defend the action. The motion shall be
24 accompanied by an affidavit setting forth the factual basis for the motion and the amount
25 requested. The motion may include a request for costs or fees incurred:

26 ~~(A)~~(1) prior to the commencement of the action;

27 ~~(B)~~(2) during the action; or

28 ~~(C)~~(3) after entry of judgment for the costs of enforcement of the judgment.

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

- 1 ~~(A)~~(1) the moving party lacks the financial resources to pay the costs and fees;
- 2 ~~(B)~~(2) the non-moving party has the financial resources to pay the costs and fees;
- 3 ~~(C)~~(3) the costs and fees are necessary for the proper prosecution or defense of the action;
- 4 and
- 5 ~~(D)~~(4) the amount of the costs and fees are reasonable.

6 ~~(3)~~(c) The court may deny the motion or award limited payment of costs and fees if the court
7 finds that one or more of the grounds in paragraph (2) is missing or enters in the record the
8 reason for denial of the motion.

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

15 **Rule 4-912. Rule 104. Child support worksheets.**

16 **Intent:**

17 ~~To assist judges and commissioners in applying the statutory child support guidelines to~~
18 ~~determine child support awards.~~

19 ~~To assist the Administrative Office in collecting data regarding child support awards in~~
20 ~~compliance with 42 U.S.C. § 667.~~

21 **Applicability:**

22 ~~This rule applies to every final order of child support, including modifications of existing~~
23 ~~awards.~~

24 **Statement of the Rule:**

25 ~~(1) The parties shall prepare a worksheet containing information set forth in Appendix G. If~~
26 ~~the filing party is the Office of Recovery Services, the section on "child care adjustment" need~~
27 ~~not be completed.~~

28 ~~(2) The parties shall file a completed worksheet with the court and the information thereon~~
29 ~~shall be provided to the Administrative Office of the Courts.~~

1 ~~(A) If the information on the worksheet is not electronically transferred to the Administrative~~
2 ~~Office by the filing party, that party shall (a) When filing a child support worksheet required by~~
3 ~~§78-45-7.3, a party may:~~

4 ~~(1) file the worksheet in duplicate with the court. The and the~~ clerk of court shall send one
5 copy ~~of the worksheet~~ to the Administrative Office ~~of the Courts;~~ or

6 ~~(B) If (2) file one worksheet with the court, send~~ the information on the worksheet is
7 electronically ~~transferred~~ to the Administrative Office ~~by the filing party, that party shall and~~ so
8 indicate on the worksheet ~~and shall file a single copy of the worksheet with the court.~~

9 ~~(3)(b)~~ The court shall not enter the final decree of divorce, final order of modification, or
10 final decree of paternity until the completed worksheet is filed.

11 ~~(4) The Administrative Office shall compile the data contained on the worksheet and shall~~
12 ~~annually provide a report to the Child Support Guidelines Advisory Committee regarding the~~
13 ~~compiled data.~~¹¹¹

14 **Rule 4-913. Rule 105. Divorce decree upon affidavit.**

15 **Intent:**

16 ~~To authorize the use of an affidavit of a party for the entry of a default divorce decree as~~
17 ~~permitted by ' 30-3-4.~~

18 ~~To establish the minimum requirements for the content of the affidavit and accompanying~~
19 ~~documents.~~

20 **Applicability:**

21 ~~This rule shall apply in district court.~~

22 **Statement of the Rule:**

23 ~~(1)(a)~~ A party in a divorce case may apply for a default judgment in accordance with the
24 Utah Rules of Civil Procedure if the opposing party fails to make a timely appearance after
25 service of process or other appropriate notice, waives notice, stipulates to the withdrawal of ~~he~~
26 answer, or stipulates to the entry of the decree or entry of default. An affidavit in support of the

¹¹¹ ¶4 is administrative. It appears to be a self imposed requirement. I find nothing in state or federal statutes requiring the annual report.

1 decree shall accompany the application for default. The affidavit shall contain evidence
2 sufficient to support necessary findings of fact and a final judgment by stating that:

3 ~~(A)~~(1) either petitioner or respondent was at the time of the petition

4 ~~(A)~~(A) a resident of Utah for at least three months immediately prior to the commencement of
5 the action and

6 ~~(B)~~(B) a resident of the county in which the action was filed;

7 ~~(B)~~(2) petitioner and respondent are currently married;

8 ~~(C)~~(3) the grounds for divorce provided in ' 30-3-1 that exist;

9 ~~(D)~~(4) public assistance has been provided or is being provided, or that public assistance has
10 not been and is not being provided; and

11 ~~(E)~~(5) the proposed findings of fact and decree conform to the complaint or to the stipulation,
12 whichever forms the basis for entry of the decree by default.

13 ~~(2)~~(b) If the grounds for divorce are irreconcilable differences of the marriage, the affidavit
14 shall further state the steps taken to try to resolve the differences and that despite the attempts at
15 resolution, irreconcilable differences remain.

16 ~~(3)~~(c) At a minimum the affidavit shall contain or be accompanied by the following:

17 ~~(A)~~(1) the stipulation of the non-moving party, if applicable; and

18 ~~(B)~~(2) as required by ~~CJA-4-504~~ Rule 5(d), proof of service of the proposed order on the
19 non-moving party; and

20 ~~(C)~~(3) as required by ' 78-45-7.3 and Rule ~~4-912~~ 104,

21 ~~(A)~~(A) a written statement that there are no dependent children of the marriage; or

22 ~~(B)~~(B) two copies of a completed child support worksheet; and

23 ~~(C)~~(C) a written statement that the amount of requested child support is or is not consistent
24 with the child support guidelines; and

25 ~~(D)~~(4) as required by ' 78-45-7.5,

26 ~~(A)~~(A) a statement of petitioner's current earnings;

27 ~~(B)~~(B) a statement of respondent's current earnings;

1 ~~(B)~~(C) verification of earnings such as petitioner's and respondent's tax returns, pay stubs, or
2 employer statements or records of the Department of Employment Security pursuant to the
3 Employment Security Act, Section 35-4-312 and the rules of the Department; and

4 ~~(E)~~(5) as required by ' 30-3-11.3 and Rule 4907, a certificate of completion of a parenting
5 class or a written statement that there are no dependent children of the marriage; and

6 ~~(F)~~(6) as required by ' 78-45-9, if public assistance has been or is being provided, proof of
7 service upon the Office of Recovery Services of an invitation to join; and

8 ~~(G)~~(7) as required by ' 62A-11-501 through ' 62A-11-504, universal income withholding
9 forms and affidavits.

10 ~~(4)-(A)-(d)~~(1) If the requested amount of child support is not consistent with the child support
11 guidelines, the statement regarding child support shall include facts sufficient to support a
12 finding of good cause why the amount of child support should deviate from the guidelines.

13 ~~(B)~~(2) If the application is for a divorce decree upon the failure of the respondent to answer,
14 and if verification of earnings of the respondent are not available, the petitioner may, by affidavit
15 based on the best available evidence, represent to the court the income of the respondent. The
16 affidavit shall be served on the respondent. The court may permit the verification of income by
17 this process in other cases governed by this rule upon a showing of diligent efforts to obtain
18 verification of the income of the respondent.

19 ~~(5)~~(e) The party applying for entry of the decree or counsel on behalf of the party shall file
20 with the affidavit and accompanying documents a "notice to submit" that shall identify each
21 document or statement required by this rule and note whether the document or statement is being
22 filed concurrent with the notice to submit. If the document or statement is not being filed
23 concurrently, the notice to submit shall state that the document or statement has already been
24 filed with the court or shall explain why the document or statement is not required in the
25 application of this rule to the facts of the particular case. The Administrative Office of the Courts
26 shall develop a notice to submit form that may be used.

27 ~~(6)~~(f) A complaint for divorce alleging the insanity of the respondent shall not be granted
28 under this rule, but shall proceed as provided in ' 30-3-1.

29 **Rule 6-403. Rule 106. Shortening 90-day waiting period in domestic matters.**

1 Intent:

2 ~~To establish a procedure for shortening or waiving the 90 day waiting period in domestic~~
3 ~~cases.~~

4 Applicability:

5 This rule shall apply to the district courts.

6 Statement of the Rule:

7 ~~(1) Proceedings on the merits of a divorce action shall not be heard by the district courts~~
8 ~~unless 90 days have elapsed from the time the petition was filed or unless the Court finds that~~
9 ~~there is good cause for shortening or eliminating the waiting period and enters a formal order to~~
10 ~~that effect prior to the hearing date.~~¹¹²

11 ~~(2) Application for a hearing less than 90 days from the date the petition was filed shall be~~
12 ~~made by motion and accompanied by an affidavit setting forth the factual matters constituting~~
13 ~~good cause. The affidavit shall also include the date on which the petition for divorce was filed.~~
14 ~~The motion and supporting affidavit(s) shall be served on the opposing party at least five days~~
15 ~~prior to the scheduled hearing unless the party is in default.~~¹¹³

16 ~~(3) In the event the Court finds that there is good cause for hearing in less than 90 days from~~
17 ~~the filing of the petition, the facts constituting such cause shall be included in the findings of fact~~
18 ~~and presented to the Court for signature.~~¹¹⁴

19 **Rule 6-404. Rule 107. Modification of divorce decrees.**

20 Intent:

21 ~~To establish procedures for modification of existing divorce decrees.~~

22 Applicability:

23 This rule shall apply to all district courts.

24 Statement of the Rule:

25 ~~(1) Proceedings to modify a divorce decree shall be commenced by the filing of a petition to~~
26 ~~modify in the original divorce action. Service of the petition and summons upon the opposing~~
27 ~~party shall be in accordance with the requirements of Rule 4 of the Utah Rules of Civil~~

¹¹² Governed by §30-3-18.

¹¹³ Governed by URCP 6(d).

¹¹⁴ Governed by §30-3-18.

1 Procedure. No request for a modification of an existing decree shall be raised by way of an order
2 to show cause.

3 ~~(2) The responding party shall serve the reply within twenty days after service of the~~
4 ~~petition.¹¹⁵ Either party may file a certificate of readiness for trial.¹¹⁶ Upon filing of the~~
5 ~~certificate, the matter shall be referred to the domestic relations commissioner prior to trial, or in~~
6 ~~those districts where there is not a domestic relations commissioner, placed on the trial~~
7 ~~calendar.¹¹⁷~~

8 ~~(3) No petition for modification shall be placed on a law and motion or order to show cause~~
9 ~~calendar without the consent of the commissioner or the district judge.¹¹⁸~~

10 **Rule 6-406. Rule 108. Opening sealed adoption files.**

11 **Intent:**

12 ~~To establish uniform procedures for opening sealed adoption files and providing identifying~~
13 ~~information to adoptees and/or birth parents.~~

14 **Applicability:**

15 ~~This rule shall apply to all district and juvenile courts.~~

16 **Statement of the Rule:**

17 ~~(1)(a)~~ Except as set forth in paragraph ~~(3)(c)~~, all requests to open sealed adoption files to
18 obtain identifying information of adoptee or birth parents shall be initiated by filing a ~~formal~~
19 petition with the clerk of the court in the county ~~where-in which~~ the adoption was granted. The
20 petition must set forth in detail the reasons the information is desired ~~and must be accompanied~~
21 ~~by the appropriate filing fee.~~

22 ~~(2) If a petition to open a sealed adoption file is filed, the (b)~~ The petition shall be assigned to
23 the judge who presided in the adoption case. If the judge who presided in the adoption case is not
24 available, the case shall be assigned in the normal course.

¹¹⁵ Governed by URCP 12(a)

¹¹⁶ Certificate of readiness goes beyond petitions to modify a divorce decree. URCP 41 directs that the court will provide a method of placing matters on the trial calendar upon request of the parties. The committee note to URCP 26 contains a deadline for filing a certificate of readiness for trial, but the phrase is not used in the rule itself. CJA 4-103, which is not proposed for incorporation into the URCP provides for a penalty if a certificate is not filed within 330 days of the first answer.

¹¹⁷ Governed by CJA 6-401, which is not proposed for incorporation in the URCP.

¹¹⁸ Goes without saying.

1 ~~(3)~~(c) An adoptive parent or adoptee may obtain a certified copy of the decree of adoption by
2 filing a motion and affidavit stating the purpose for the request. Neither a hearing nor notice to
3 the placement agency or the attorney who handled the private placement is required.

4 ~~(4) In cases where~~ (d) If the petitioner is seeking specific medical information to aid in the
5 preservation of the health of the petitioner, the petitioner ~~must contact~~ shall request from the
6 Bureau of Vital Statistics and the adoption agency involved in the placement (if applicable) ~~and~~
7 ~~make a request for~~ all non-identifying information regarding the birth parents and other relatives.
8 The petition must be accompanied by a letter from a licensed physician stating what the need is
9 and whether the information is necessary for the preservation of the health of the petitioner.

10 ~~(5) In cases where~~ (e) If the petitioner is requesting the information for reasons other than to
11 acquire specific medical data needed to aid in the preservation of the health of the petitioner, the
12 petitioner must register with the Voluntary Adoption Registry established by the Bureau of Vital
13 Statistics in accordance with Utah Code Ann. ' 78-30-18.

14 ~~(6) Upon receipt of the formal petition, filing fee, and supporting documents, the~~ (f) The
15 court shall set the matter for hearing. ~~The court shall~~ and give notice of the hearing ~~date and~~
16 ~~time~~ to the placement agency or the attorney who handled the private placement. The notice shall
17 advise the placement agency or the attorney of the petition and request their attendance at the
18 hearing or their written response to the petition.

19 ~~(7)~~(g) After a hearing, the court shall make ~~specific~~ findings of fact that good cause exists
20 and ~~that the adoption records shall be opened to petitioner. The findings shall~~ address ~~such issues~~
21 ~~as~~ whether the birth parents should be notified of the petition and given the opportunity to
22 respond, and, if it is not possible to contact the birth parents, why the adoptee's need to know
23 overrides the duty of confidentiality owed to the birth parents.¹¹⁹

24 ~~(8)~~(h) Upon a finding of good cause to open the adoption records, the court shall specify
25 which records or portions of records the petitioner may have access to. The court should be
26 sensitive to the fact that some of the records may not be appropriate for release to the adoptee,
27 including agency notes regarding the personal observations of the birth parents and the

¹¹⁹ Coming as it does as part of the order, it may be a little late to let the birth parents oppose the petition. The rule should be restructured to give notice to the birth parents as part of notice to the attorney/placement agency.

1 circumstances surrounding the birth, etc. The court shall carefully consider what effect the
2 release of such information would have on the parties involved and may restrict access to such
3 information in the court records as well as the records of the adoption agency.

4 ~~(9)(i)~~ The adoption records shall be opened only for the limited purpose contained in the
5 court order and once the information is disseminated to the proper party or parties the court shall
6 order the file sealed, only to be opened thereafter upon further order of the court.

7 ~~Rule 6-407. Rule 109. Adoptions.~~

8 ~~Intent:~~

9 ~~To establish a procedure for requesting or waiving an adoption investigation.~~

10 ~~Applicability:~~

11 ~~This rule shall apply to the District Courts.~~

12 ~~Statement of the Rule:~~

13 ~~(1) In adoption cases, the petitioner(s) shall, sixty days or more prior to the hearing on the~~
14 ~~adoption, unless such period is waived by the judge, file with the court a motion and order either~~
15 ~~requesting that the Division of Family Services verify the petition and conduct an investigation~~
16 ~~into the adoption or waiving the investigation.¹²⁰~~

17 ~~(2) If a motion is filed to waive the investigation, an affidavit shall be filed by the~~
18 ~~petitioner(s) setting forth A petition¹²¹ for adoption shall contain the following information~~
19 ~~pertaining to the petitioner(s):~~

20 ~~(A)(a) name;~~

21 ~~(B)(b) place of residence for the last five years;~~

22 ~~(C)(c) age;~~

23 ~~(D)(d) marital status, including all prior marriages;~~

24 ~~(E)(e) dependent children;~~

25 ~~(F)(f) information on ownership of home;~~

26 ~~(G)(g) employment within last five years;~~

¹²⁰ This investigation by DCFS is governed by §78-30-14 and appears to be distinct from the pre-placement and post-placement evaluations under §78-30-3.5. It is for the court, not the petitioner, to determine whether the investigation is needed.

¹²¹ Without a waiver of the investigation, this information, if it is needed will have to be part of the petition.

- 1 ~~(H)(h)~~ average monthly income for the past year;
- 2 ~~(I)(i)~~ where and how the child was placed with petitioners;
- 3 ~~(J)(j)~~ information on natural parents; and
- 4 ~~(K)(k)~~ other pertinent information.

5 **Rule 6-501. Attorney's fees.** ¹²²

6 **Intent:**

7 ~~To assist the probate division of the district courts in awarding reasonable attorneys fees~~
8 ~~(whether pled for in the personal representative's petition or shown as part of the personal~~
9 ~~representative's accounting).~~

10 **Applicability:**

11 ~~This rule is applicable to any proceeding concerning a decedent's estate where the probate~~
12 ~~court is asked to approve the award of attorneys fee. Rule 4-505 of this Code does not govern~~
13 ~~where this rule is applicable.~~

14 **Statement of the Rule:**

15 ~~(1) A "reasonable fee" for an attorney is a fee that is customary in the county in which the~~
16 ~~district court is located based on the following factors:~~

- 17 ~~(A) the time and labor required;~~
- 18 ~~(B) the novelty and difficulty of the questions involved;~~
- 19 ~~(C) the skill requisite to perform the legal services properly;~~
- 20 ~~(D) whether acceptance of this assignment precluded other employment by the attorney;~~
- 21 ~~(E) the amounts involved and the results obtained;~~
- 22 ~~(F) the time limitations imposed by the personal representative or the circumstances;~~
- 23 ~~(G) the experience, reputation, and ability of the lawyers performing the services; and~~
- 24 ~~(H) whether any part of the representation was done for a contingent fee.~~

25 ~~(2) The attorney for the personal representative shall file an affidavit in support of the request~~
26 ~~for fees. The affidavit need not address each of the factors set forth above provided that the court~~
27 ~~determines that the factors the affidavit does address are sufficient to establish the requested fee.~~

¹²² Integrate into 4-505.

1 ~~(3) Attorney fees include all work done by attorneys and their paralegal associates (including~~
2 ~~paralegal work done by secretaries) and do not include secretarial and staff work done by~~
3 ~~secretaries and others.~~

4 **Rule 6-502. Attorney's fees in conservatorships.**¹²³

5 **Intent:**

6 ~~To assist the probate division of the district courts in awarding reasonable attorneys fees in~~
7 ~~conservatorships (whether pled for in the conservator's petition or shown as part of the~~
8 ~~conservator's accounting).~~

9 **Applicability:**

10 ~~This rule is applicable to any proceeding involving a conservatorship estate where the~~
11 ~~probate court is asked to enter an order approving the award of attorneys fees. Rule 4-505 of this~~
12 ~~Code does not govern where this rule is applicable.~~

13 **Statement of the Rule:**

14 ~~(1) "Reasonable compensation" for an attorney is a fee that is customary in the county in~~
15 ~~which the district court is located based on the following factors:~~

16 ~~(A) the time and labor required;~~

17 ~~(B) the novelty and difficulty of the questions involved;~~

18 ~~(C) the skill requisite to perform the legal services properly;~~

19 ~~(D) whether acceptance of this assignment precluded other employment by the attorney;~~

20 ~~(E) the amounts involved and the results obtained;~~

21 ~~(F) the time limitations imposed by the conservator or the circumstances;~~

22 ~~(G) the experience, reputation, and ability of the lawyers performing the services; and~~

23 ~~(H) whether any part of the representation was done for a contingent fee.~~

24 ~~(2) The attorney for the conservator shall file an affidavit in support of the fee request. The~~
25 ~~affidavit need not address each of the factors set forth above provided that the court determines~~
26 ~~that the factors the affidavit does address are sufficient to establish the requested fee.~~

¹²³ Integrate into 4-505.

~~(3) Attorney fees include all work done by attorneys and their paralegal associates (including paralegal work done by secretaries) and do not include secretarial and staff work done by secretaries and others.~~

Rule 6-503. Rule 90. Annual report of guardian.

Intent:

~~To assist the probate division of the district court in administering annual reports filed by guardians.~~

Applicability:

~~This rule applies to the filing of annual reports by the guardians except where the guardian is the parent or ward.~~

Statement of the Rule:

~~(1)(a)~~ Individual guardians.

~~(A)(1)~~ Each individual guardian who possesses or controls the property of a ward valued at \$50,000 or more shall file with the court an annual report and an accounting and a formal petition seeking approval of the report and accounting. The petition shall identify all interested persons who are entitled to notice under the Utah Uniform Probate Code and provide all other information necessary for the court to review and rule upon the guardian's report and accounting. The guardian shall also file a copy of the petition, the report and the accounting for each interested person who is to receive notice of the petition. In those jurisdictions where it is the local practice for the guardian to prepare the notice, the guardian shall prepare the notice and file the original notice with the court. The guardian shall also file one copy of the notice for each interested person who is to receive notice of the petition, report and accounting.

~~(i) The report and accounting shall be in the following form:~~¹²⁴

THIS IS A REPORT OF _____, GUARDIAN FOR _____, A WARD. THIS REPORT HAS BEEN FILED WITH THE _____ DISTRICT COURT FOR _____ COUNTY. IF YOU HAVE AN OBJECTION TO THIS REPORT, YOU SHOULD FILE IT IN WRITING WITH THE

¹²⁴ The form should be removed from the rule and published with other forms.

1 COURT. YOU SHOULD CONSIDER SEEKING LEGAL ADVICE IF YOU HAVE ANY
2 QUESTIONS REGARDING THIS MATTER.

3 YOU WILL ALSO RECEIVE A NOTICE THAT A FORMAL HEARING WILL BE HELD
4 ON THIS REPORT. YOU HAVE THE RIGHT TO APPEAR IN COURT AT THE HEARING
5 AND TO STATE ANY OBJECTIONS YOU HAVE TO THE REPORT AT THAT TIME. IF
6 YOU FAIL TO APPEAR AT THE HEARING OR TO OBJECT TO THIS REPORT, THE
7 DISTRICT COURT WILL CONSIDER THE REPORT WITHOUT ANY FURTHER NOTICE
8 TO YOU AND WITHOUT ANY OPPORTUNITY FOR YOU TO MAKE ANY POINTS YOU
9 WISH TO MAKE.

10 1. This report covers the period of time from _____ to _____, ____ .

11 2. During this period, the guardian took the following actions on behalf of the ward:
12 _____ .

13 3. During this period, the ward's condition was as follows: (Describe ward's physical and
14 mental condition)

15 4. The ward is living at: _____ .

16 5. The following persons are living with the ward at this address:
17 _____ .

18 6. The guardian has attached to this report an accounting. The accounting shows the
19 beginning balance of property subject to the guardian's control, all receipts during this period, all
20 expenditures during this period and the balance at the end of this period.

21 7. The guardian believes this is an accurate report of the guardian's actions and the ward's
22 condition for this period.

23 ~~(A)~~(A) Upon receipt of the petition, report and accounting, the clerk of the court shall set a
24 date and time for hearing the guardian's petition and shall send a copy of the notice, the petition,
25 the report and the accounting to each interested person (including the ward) and shall send a
26 copy of the notice to the guardian and the guardian's attorney.

27 ~~(C)~~(C) The guardian or the guardian's attorney shall appear at the hearing on the guardian's
28 petition.

1 ~~(iv)~~(D) The court shall take appropriate action in the proceedings based on the court's review
2 of the petition, report, accounting, any objections that are lodged by interested persons and any
3 other relevant factors.

4 ~~(B)~~(2) Each individual guardian who possesses or controls the property of a ward valued at
5 less than \$50,000 shall prepare a report and accounting.

6 ~~(i) The report and accounting shall be in the following form:~~¹²⁵

7 THIS IS A REPORT OF _____ , GUARDIAN FOR
8 _____ , A WARD. THIS REPORT HAS BEEN FILED WITH THE
9 _____ DISTRICT COURT FOR _____ COUNTY. IF YOU HAVE
10 AN OBJECTION TO THIS REPORT, YOU SHOULD FILE IT IN WRITING WITH THE
11 COURT. YOU SHOULD CONSIDER SEEKING LEGAL ADVICE IF YOU HAVE ANY
12 QUESTIONS REGARDING THIS MATTER.

13 YOU HAVE FOURTEEN DAYS FROM THE DATE OF THIS REPORT TO FILE AN
14 OBJECTION WITH THE _____ DISTRICT COURT. IF YOU FAIL TO OBJECT TO
15 THIS REPORT, THE DISTRICT COURT WILL CONSIDER THE REPORT WITHOUT ANY
16 FURTHER NOTICE TO YOU AND WITHOUT ANY OPPORTUNITY FOR YOU TO
17 APPEAR BEFORE THE DISTRICT COURT JUDGE AND MAKE ANY POINTS YOU WISH
18 TO MAKE.

19 1. This report covers the period of time from _____ to _____, ____ .

20 2. During this period, the guardian took the following actions on behalf of the ward:
21 _____ .

22 3. During this period, the ward's condition was as follows: (Describe ward's physical and
23 mental condition)

24 4. The ward is living at: _____ .

25 5. The following persons are living with the ward at this address:
26 _____ .

¹²⁵ The form should be removed from the rule and published with other forms.

1 6. The guardian has attached to this report an accounting. The accounting shows the
2 beginning balance of property subject to the guardian's control, all receipts during this period, all
3 expenditures during this period and the balance at the end of this period.

4 7. The guardian believes this is an accurate report of the guardian's actions and the ward's
5 condition for this period.

6 ~~(#)~~(A) The guardian shall date the report on the date the guardian delivers or mails a copy of
7 the report to each interested person and the original report to the clerk of the court.

8 ~~(#)~~(B) Fourteen days after the date of the report and accounting, if no objections have been
9 filed with the clerk of the court, the court shall review the accounting and, if the report and
10 accounting are in order, the court will approve the report and accounting. The court in its
11 discretion may order a formal hearing on the report and accounting.

12 ~~(#)~~(C) If an interested person objects to the report and accounting within fourteen days or if
13 the court orders a formal hearing sua sponte, the clerk of the court shall set a date and time for
14 hearing the guardian's report and accounting and shall send a notice of the date and time for
15 hearing to each interested person (including the ward) and to the guardian and the guardian's
16 attorney.

17 ~~(#)~~(D) The guardian or the guardian's attorney shall appear at the hearing on the guardian's
18 report and accounting.

19 ~~(#)~~(E) The court shall call the guardian's report and accounting and take appropriate action
20 in the proceedings, based on the court's review of the report, accounting, and any objections that
21 are lodged by interested persons and any other relevant factors.

22 ~~(2)~~(b) Corporate guardians.

23 ~~(A)~~(1) Each corporate guardian shall prepare a report and accounting ~~in the form set forth in~~
24 ~~paragraph (1)(A)(i) above~~¹²⁶.

25 ~~(#)~~(A) The guardian shall mail or deliver a copy of the report and accounting to each
26 interested person and the original report and accounting to the clerk of the court.

27 ~~(#)~~(B) Fourteen days after the date of the report and accounting, if no objections have been
28 filed with the clerk of the court, the court shall review the accounting and, if the report and

¹²⁶ Form will not be part of the rule.

1 accounting are in order, the court will approve the report and accounting. The court in its
2 discretion may order a formal hearing on the report and accounting.

3 ~~(#)~~(C) If an interested person objects to the report and accounting within fourteen days or if
4 the court orders a formal hearing sua sponte, the clerk of the court shall set a date and time for
5 hearing the guardian's report and accounting and shall send a notice of the date and time for
6 hearing to each interested person (including the ward) and to the guardian and the guardian's
7 attorney.

8 ~~(iv)~~(D) The guardian or the guardian's attorney shall appear at the hearing on the guardian's
9 report and accounting.

10 ~~(v)~~(E) The court shall take appropriate action in the proceedings, based on the court's review
11 of the report, accounting, and any objections that are lodged by interested persons and any other
12 relevant factors.

13 ~~(3)~~(c) Summary of account. Every accounting shall include a Summary of Account ~~in the~~
14 ~~following form:~~¹²⁷

15 SUMMARY OF ACCOUNT

16 Accounting Period from _____ , ____ to _____ , _____

17 1. Assets on hand at end of Last

18 Accounting Period. Schedule 1 attached. _____

19 (Value at fair market value on
20 last day of Accounting Period.)

21 2. Receipts during accounting period

22 Include only amounts received from
23 sale of assets in excess of value

24 See Schedule 2. _____

25 3. Total assets and receipts _____

26 4. Disbursements

27 Schedule 3 _____

28 5. Losses on sales

¹²⁷ The form should be removed from the rule and published with other forms

1	Schedule 4	_____	
2	6. Total disbursements and losses on		
3	sales		_____
4	7. Total assets on hand at end of		
5	this Accounting Period		
6	(line 3 less line 6)		_____
7	(Value at fair market value on		
8	last day of Accounting Period)		
9	Total assets by type:		
10	Cash		
11	Schedule 5	_____	
12	Bonds		
13	Schedule 6	_____	
14	(Value at fair market value on		
15	last day of Accounting Period)		
16	Realty		
17	Schedule 7	_____	
18	(Value at fair market value on		
19	last day of Accounting Period)		
20	Other property		
21	Schedule 8	_____	
22	(Value at fair market value on		
23	last day of Accounting Period)		
24	8. Total assets on hand		
25	at end of this Accounting		
26	Period		_____
27	(Value at fair market value on		
28	last day of Accounting Period)		
29	(This must equal line 7)		

1 ~~(4)~~(d) Supporting schedules. In lieu of filing supporting schedules and original checks and
2 vouchers, corporate guardians may file copies of their internal reports. All other guardians shall
3 file supporting schedules and original checks or vouchers in support of all expenditures and
4 distributions. Where checks or vouchers are not available, the guardian shall file an affidavit in
5 support of the affected expenditures or distributions.

6 ~~(5)~~(e) Court orders restricting access to property. For purposes of this rule, if some or all of
7 the ward's property cannot be used by the guardian except pursuant to a court order and if no
8 court order has been entered during the accounting period allowing the guardian to use that
9 property, then the guardian does not have possession or control of that property. In addition, for
10 purposes of paragraph ~~(1)~~ of this rule (a), when determining the value of the ward's property
11 pursuant to this rule, the guardian shall not include the value of the ward's residence; however,
12 the guardian shall account for income from and expenses on the ward's residence, where
13 applicable.

14 **Rule 6-504. Rule 91. Annual accounting of conservator.**

15 **Intent:**

16 ~~To assist the probate division of the district court in administering annual accountings filed~~
17 ~~by conservators.~~

18 **Applicability:**

19 ~~This rule applies to the filing of annual accountings by conservators except where the~~
20 ~~conservator is the parent or ward.~~

21 **Statement of the Rule:**

22 ~~(1)~~(a) Individual conservators.

23 ~~(A)~~(1) Each individual conservator who administers an estate for a protected person valued at
24 \$50,000 or more shall file with the court an annual accounting and a formal petition seeking
25 approval of the accounting. The petition shall identify all interested persons who are entitled to
26 notice under the Utah Uniform Probate Code and provide all other information necessary for the
27 court to review and rule upon the conservator's accounting. The conservator shall also file a copy
28 of the petition and the accounting for each interested person who is to receive notice of the
29 petition. In those jurisdictions where it is the local practice for the conservator to prepare the

1 notice, the conservator shall prepare the notice and file the original notice with the court. The
2 conservator shall also file one copy of the notice for each interested person who is to receive
3 notice of the petition and accounting.

4 ~~(i) The accounting shall be in the following form:~~¹²⁸

5 THIS IS AN ACCOUNTING OF _____ , CONSERVATOR FOR THE
6 ESTATE OF _____ , A PROTECTED PERSON. THIS ACCOUNTING HAS
7 BEEN FILED WITH THE _____ DISTRICT COURT FOR _____ COUNTY.
8 IF YOU HAVE AN OBJECTION TO THIS ACCOUNTING, YOU SHOULD FILE IT IN
9 WRITING WITH THE COURT. YOU SHOULD CONSIDER SEEKING LEGAL ADVICE IF
10 YOU HAVE ANY QUESTIONS REGARDING THIS MATTER.

11 YOU WILL ALSO RECEIVE A NOTICE THAT A FORMAL HEARING WILL BE HELD
12 ON THIS ACCOUNTING. YOU HAVE THE RIGHT TO APPEAR IN COURT AT THE
13 HEARING AND TO STATE ANY OBJECTIONS YOU HAVE TO THE ACCOUNTING AT
14 THAT TIME. IF YOU FAIL TO APPEAR AT THE HEARING OR TO OBJECT TO THIS
15 ACCOUNTING, THE DISTRICT COURT WILL CONSIDER THE ACCOUNTING
16 WITHOUT ANY FURTHER NOTICE TO YOU AND WITHOUT ANY OPPORTUNITY FOR
17 YOU TO MAKE ANY POINTS YOU WISH TO MAKE.

- 18 1. This accounting covers the period of time from _____ to _____ , ____ .
- 19 2. The conservator's accounting for this period is attached.
- 20 3. The conservator believes this is an accurate accounting for this period.

21 ~~(ii)(A)~~ Upon receipt of the petition and accounting, the clerk of the court shall set a date and
22 time for hearing the conservator's petition and shall send a copy of the notice, the petition and the
23 accounting to each interested person (including the protected person) and shall send a copy of the
24 notice to the conservator and the conservator's attorney.

25 ~~(ii)(B)~~ The conservator or the conservator's attorney shall appear at the hearing on the
26 conservator's petition.

¹²⁸ The form should be removed from the rule and published with other forms

1 ~~(iv)~~(C) The court shall take appropriate action in the proceedings, based on the court's review
2 of the petition, accounting, any objections that are lodged by interested persons and any other
3 relevant factors.

4 ~~(B)~~(2) Each individual conservator who administers an estate for a protected person valued at
5 less than \$50,000 shall prepare an accounting.

6 ~~(i)~~ The accounting shall be in the following form:¹²⁹

7 THIS IS AN ACCOUNTING OF _____ , CONSERVATOR FOR
8 THE ESTATE OF _____ , A PROTECTED PERSON. THIS ACCOUNTING
9 HAS BEEN FILED WITH THE _____ DISTRICT COURT FOR
10 _____ COUNTY. IF YOU HAVE AN OBJECTION TO THIS ACCOUNTING,
11 YOU SHOULD FILE IT IN WRITING WITH THE COURT. YOU SHOULD CONSIDER
12 SEEKING LEGAL ADVICE IF YOU HAVE ANY QUESTIONS REGARDING THIS
13 MATTER.

14 YOU HAVE FOURTEEN DAYS FROM THE DATE OF THIS ACCOUNTING TO FILE
15 AN OBJECTION WITH THE _____ DISTRICT COURT. IF YOU FAIL TO
16 OBJECT TO THIS ACCOUNTING, THE DISTRICT COURT WILL CONSIDER THE
17 ACCOUNTING WITHOUT ANY FURTHER NOTICE TO YOU AND WITHOUT ANY
18 OPPORTUNITY FOR YOU TO APPEAR BEFORE THE DISTRICT COURT JUDGE AND
19 MAKE ANY POINTS YOU WISH TO MAKE.

20 1. This accounting covers the period of time from _____ to _____ , ____ .

21 2. The conservator's accounting for this period is attached.

22 3. The conservator believes this is an accurate accounting for this period.

23 ~~(ii)~~(B) The conservator shall date the accounting on the date the conservator delivers or mails
24 a copy of the accounting to each interested person and the original accounting to the clerk of the
25 court.

26 ~~(iii)~~(C) Fourteen days after the date of the accounting, if no objections have been filed with
27 the clerk of the court, the court shall review the accounting and, if the accounting is in order, the

¹²⁹ The form should be removed from the rule and published with other forms

1 court will approve the report and accounting. The court in its discretion may order a formal
2 hearing on the accounting.

3 ~~(iv)~~(D) If an interested person objects to the accounting within fourteen days or if the court
4 orders a formal hearing sua sponte, the clerk of the court shall set a date and time for hearing the
5 conservator's accounting and shall send a notice of the date and time for hearing to each
6 interested person (including the protected person) and to the conservator and the conservator's
7 attorney.

8 ~~(v)~~(E) The conservator or the conservator's attorney shall appear at the hearing on the
9 conservator's accounting.

10 ~~(vi)~~(F) The court shall take appropriate action in the proceedings, based on the court's review
11 of the accounting, any objections that are lodged by interested persons and any other relevant
12 factors.

13 ~~(vii)~~(G) If all of the protected person's property cannot be used by the conservator except
14 pursuant to court order and if no court order has been entered during the accounting period
15 allowing the conservator to use that property, then the conservator shall not be required to file an
16 accounting for that period. However, the conservator shall file a pleading with the court for that
17 period citing this rule and the court's order as explanation for the conservator's failure to file an
18 accounting.

19 ~~(2)~~(b) Corporate conservators.

20 ~~(A)~~(1) Each corporate conservator shall prepare an accounting ~~in the form set forth in~~
21 ~~paragraph (1)(B)(i) above.~~¹³⁰

22 ~~(B)~~(2) The conservator shall mail or deliver a copy of the accounting to each interested
23 person and the original accounting to the clerk of the court.

24 ~~(C)~~(3) Fourteen days after the date of the accounting, if no objections have been filed with
25 the clerk of the court, the court shall review the accounting and, if the accounting is in order, the
26 court will approve the accounting. The court in its discretion may order a formal hearing on the
27 accounting.

¹³⁰ The form should be removed from the rule and published with other forms.

1 ~~(D)~~(4) If an interested person objects to the accounting within fourteen days or if the court
2 orders a formal hearing sua sponte, the clerk of the court shall set a date and time for hearing the
3 conservator's accounting and shall send a notice of the date and time for hearing to each
4 interested person (including the protected person) and to the conservator and the conservator's
5 attorney.

6 ~~(E)~~(5) The conservator or the conservator's attorney shall appear at the hearing on the
7 conservator's accounting.

8 ~~(F)~~(6) The court shall call the conservator's accounting and take appropriate action in the
9 proceedings, based on the court's review of the accounting, any objections that are lodged by
10 interested persons and any other relevant factors.

11 ~~(3)~~(c) Summary of account. Every accounting shall include a Summary of Account ~~in the~~
12 following form:¹³¹

13 SUMMARY OF ACCOUNT

14 Accounting Period from _____, ____ to _____, ____

15 1. Assets on hand at end of Last

16 Accounting Period. Schedule 1 attached. _____

17 (Value at fair market value on

18 last day of Accounting Period)

19 2. Receipts during accounting period

20 Include only amounts received from

21 sale of assets in excess of value.

22 See Schedule 2 _____

23 3. Total assets and receipts _____

24 4. Disbursements

25 Schedule 3 _____

26 5. Losses on sales

27 Schedule 4 _____

28 6. Total disbursements and losses on

¹³¹ The form should be removed from the rule and published with other forms.

1 sales _____
2 7. Total assets on hand at end of
3 this Accounting Period
4 (line 3 less line 6) _____
5 (Value at fair market value on
6 last day of Accounting Period)
7 Total assets by type:
8 Cash
9 Schedule 5 _____
10 Bonds
11 Schedule 6 _____
12 (Value at fair market value on
13 last day of Accounting Period)
14 Realty
15 Schedule 7 _____
16 (Value at fair market value on
17 last day of Accounting Period)
18 Other property
19 Schedule 8 _____
20 (Value at fair market value on
21 last day of Accounting Period)
22 8. Total assets on hand
23 at end of this Accounting Period _____
24 (Value at fair market value on
25 last day of Accounting Period)
26 (This must equal line 7)

27 ~~(4)~~(d) Supporting schedules. In lieu of filing supporting schedules and original checks and
28 vouchers, corporate conservators may file copies of their internal reports. All other conservators
29 shall file supporting schedules and original checks or vouchers in support of all expenditures and

1 distributions. Where checks or vouchers are not available, the conservator shall file an affidavit
2 in support of the affected expenditures or distributions.

3 ~~(5)(e)~~ Court orders restricting access to property. For purposes of this rule, if some of the
4 protected person's property cannot be used by the conservator except pursuant to a court order
5 and if no court order has been entered during the accounting period allowing the conservator to
6 use that property, then the conservator is not required to account for that property. In addition,
7 for purposes of paragraph ~~(1) of this rule (a)~~, when determining the value of the protected
8 person's property pursuant to this rule, the conservator shall not include the value of the
9 protected person's residence; however, the conservator shall account for income from and
10 expenses on the protected person's residence, where applicable.

11 **Rule 6-505. Rule 92. Fiduciary accountings.**

12 **Intent:**

13 ~~To recognize standard accounting publications and forms as sufficient to meet the~~
14 ~~requirements of fiduciary accountings.~~

15 **Applicability:**

16 ~~This rule shall apply to an accounting filed by a fiduciary in district court.~~

17 **Statement of the Rule:**

18 ~~(1)(a)~~ A fiduciary accounting shall contain sufficient information to put interested persons
19 on notice as to all significant transactions affecting administration during the accounting period.
20 The accounting may be typewritten or prepared by automated data processing or trust accounting
21 systems. The court may require the fiduciary to keep or produce vouchers or other evidence of
22 payment.

23 ~~(2)(b)~~ An accounting substantially conforming to the Uniform Fiduciary Accounting
24 Principles and accompanying Model Account Formats published as the Fiduciary Accounting
25 Guide, 1990 Revision by ALI-ABA, as revised and republished, is acceptable as to content and
26 format for an accounting filed under the Utah Uniform Probate Code. An accounting
27 substantially conforming to the Fiduciary Accounting Guide is acceptable as to content and
28 format for an accounting filed under ' 75-5-312 provided the accounting reports, as required by
29 statute:

1 ~~(A)~~(1) the status and physical condition of the ward;

2 ~~(B)~~(2) the physical condition of the place of residence; and

3 ~~(C)~~(3) a list of others living in the household.

4 ~~(3)~~(c) An accounting substantially conforming to the Utah Uniform Probate Code forms of
5 the Estate Planning Section of the Utah State Bar, as revised and republished, is acceptable as to
6 content and format for an accounting filed under the Utah Uniform Probate Code.

7 ~~(4)~~(d) An accounting substantially conforming to Rule ~~6-503-90~~ or Rule ~~6-504-91~~ is
8 acceptable as to content and format for an accounting filed under ' 75-5-312 or ' 75-5-417,
9 respectively.

10 ~~(5)~~(e) The court may direct an accounting be prepared with such content and in such format
11 as it deems necessary.

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

13 (a) Service: When required.

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

19 (2) No service need be made on parties in default for failure to appear except as provided in
20 Rule 55(a)(2)(default proceedings). Pleadings asserting new or additional claims for relief
21 against a party in default shall be served in the manner provided for service of summons in Rule
22 4.

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

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

28 (1) Whenever under these rules service is required or permitted to be made upon a party
29 represented by an attorney, the service shall be made upon the attorney unless service upon the

1 party is ordered by the court. Service upon the attorney or upon a party shall be made by
2 delivering a copy or by mailing a copy to the last known address or, if no address is known, by
3 leaving it with the clerk of the court.

4 (A) Delivery of a copy within this rule means: Handing it to the attorney or to the party; or
5 leaving it at the person's office with a clerk or person in charge thereof; or, if there is no one in
6 charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be
7 served has no office, leaving it at the person's dwelling house or usual place of abode with some
8 person of suitable age and discretion then residing therein or, if consented to in writing by the
9 person to be served, delivering a copy by electronic or other means.

10 (B) Service by mail is complete upon mailing. If the paper served is notice of a hearing and if
11 the hearing is scheduled 5 days or less from the date of service, service shall be by delivery or
12 other method of actual notice. Service by electronic means is complete on transmission if
13 transmission is completed during normal business hours at the place receiving the service;
14 otherwise, service is complete on the next business day.

15 (2) Unless otherwise directed by the court:

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

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

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

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

1 (d) Filing. ~~Except where rules of judicial administration prohibit the filing of discovery~~
2 ~~requests and responses, all~~ All papers after the complaint required to be served upon a party shall
3 be filed with the court either before or within a reasonable time after service. The papers shall be
4 accompanied by a certificate of service showing the date and manner of service completed by the
5 person effecting service. Rule 26(i) governs filing papers related to discovery.

6 (e) Filing with the court defined. The filing of pleadings and other papers with the court as
7 required by these rules shall be made by filing them with the clerk of the court, except that the
8 judge may accept the papers, note thereon the filing date and forthwith transmit them to the
9 office of the clerk.

10 **Rule 6. Time**

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

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

27 (c) Unaffected by expiration of term. The period of time provided for the doing of any act or
28 the taking of any proceeding is not affected or limited by the continued existence or expiration of
29 a term of court. The continued existence or expiration of a term of court in no way affects the

1 power of a court to do any act or take any proceeding in any civil action which has been pending
2 before it.

3 (d) For motions - Affidavits. A written motion, other than one which may be heard ex parte,
4 and notice of the hearing thereof shall be served not later than 5 days before the time specified
5 for the hearing, unless a different period is fixed by these rules, ~~by CJA 4-501~~, or by order of the
6 court. Such an order may for cause shown be made on ex parte application. When a motion is
7 supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise
8 provided in Rule 59(c), opposing affidavits may be served not later than 1 day before the
9 hearing, unless the court permits them to be served at some other time.

10 (e) Additional time after service by mail. Whenever a party has the right or is required to do
11 some act or take some proceedings within a prescribed period after the service of a notice or
12 other paper upon him and the notice or paper is served upon him by mail, 3 days shall be added
13 to the end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and
14 legal holidays shall be included in the computation of any 3-day period under this subsection,
15 except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the
16 period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

17 **Rule 7. Pleadings allowed; form of motions.**

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

24 (b) Motions, orders and other papers.

25 (1) Motions. An application to the court for an order shall be by motion which, unless made
26 during a hearing or trial, shall be made ~~in writing, shall state with particularity the grounds~~
27 ~~therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if~~
28 ~~the motion is stated in a written notice of the hearing of the motion in accordance with Rule 72.~~

1 (2) Orders. An order includes every direction of the court including a minute order made and
2 entered in writing and not included in a judgment. An order for the payment of money may be
3 enforced ~~by execution~~ in the same manner as if it were a judgment. Except as otherwise
4 ~~specifically~~ provided by these rules, any order made without notice to the adverse party may be
5 vacated or modified with or without notice by the judge who made it, ~~or may be vacated or~~
6 ~~modified on notice.~~

7 (3) Hearings on motions or orders to show cause. ~~When on the day fixed for the hearing of a~~
8 ~~motion or an order to show cause, If~~ the judge before whom ~~such a~~ motion or order to show
9 cause is to be heard is unable to hear the parties, the matter shall stand continued until the further
10 order of the court, or it may be transferred by the court ~~or judge~~ to some other judge ~~of the court~~
11 for such hearing. Orders to show cause may be continued upon a showing of good cause with the
12 approval of the court. Other hearings may be continued by stipulation of the parties filed at least
13 15 days before the hearing or with the approval of the court upon a showing of good cause. The
14 court may continue a hearing upon such terms as may be just, including payment of costs caused
15 by the continuance.

16 ~~(4) Application of rules to motions, orders, and other papers. The rules applicable to captions,~~
17 ~~signings, and other matters of form of pleadings apply to all motions, orders, and other papers~~
18 ~~provided for by these rules.~~¹³²

19 (c) Demurrers, pleas, etc., abolished. Demurrers, pleas, and exceptions for insufficiency of a
20 pleading shall not be used.

21 **Rule 9. Pleading special matters.**

22 (a) (1) Capacity. It is not necessary to aver the capacity of a party to sue or be sued or the
23 authority of a party to sue or be sued in a representative capacity or the legal existence of an
24 organized association of persons that is made a party. When a party desires to raise an issue as to
25 the legal existence of any party or the capacity of any party to sue or be sued or the authority of a
26 party to sue or be sued in a representative capacity, he shall do so by specific negative averment,
27 which shall include such supporting particulars as are peculiarly within the pleader's knowledge,

¹³² Adequately governed by URCP 10.

1 and on such issue the party relying on such capacity, authority, or legal existence, shall establish
2 the same on the trial.

3 (2) Designation of unknown defendant. When a party does not know the name of an adverse
4 party, he may state that fact in the pleadings, and thereupon such adverse party may be
5 designated in any pleading or proceeding by any name; provided, that when the true name of
6 such adverse party is ascertained, the pleading or proceeding must be amended accordingly.

7 (3) Actions to quiet title; description of interest of unknown parties. In an action to quiet title
8 wherein any of the parties are designated in the caption as "unknown," the pleadings may
9 describe such unknown persons as "all other persons unknown, claiming any right, title, estate or
10 interest in, or lien upon the real property described in the pleading adverse to the complainant's
11 ownership, or clouding his title thereto."

12 (b) Fraud, mistake, condition of the mind. In all averments of fraud or mistake, the
13 circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent,
14 knowledge, and other condition of mind of a person may be averred generally.

15 (c) Conditions precedent. In pleading the performance or occurrence of conditions precedent,
16 it is sufficient to aver generally that all conditions precedent have been performed or have
17 occurred. A denial of performance or occurrence shall be made specifically and with
18 particularity, and when so made the party pleading the performance or occurrence shall on the
19 trial establish the facts showing such performance or occurrence.

20 (d) Official document or act. In pleading an official document or act it is sufficient to aver
21 that the document was issued or the act done in compliance with law.

22 (e) Judgment. In pleading a judgment or decision of a domestic or foreign court, judicial or
23 quasi-judicial tribunal, or of a board or officer, it is sufficient to aver the judgment or decision
24 without setting forth matter showing jurisdiction to render it. A denial of jurisdiction shall be
25 made specifically and with particularity and when so made the party pleading the judgment or
26 decision shall establish on the trial all controverted jurisdictional facts.

27 (f) Time and place. For the purpose of testing the sufficiency of a pleading, averments of
28 time and place are material and shall be considered like all other averments of material matter.

1 (g) Special damage. When items of special damage are claimed, they shall be specifically
2 stated.

3 (h) Statute of limitations. In pleading the statute of limitations it is not necessary to state the
4 facts showing the defense but it may be alleged generally that the cause of action is barred by the
5 provisions of the statute relied on, referring to or describing such statute specifically and
6 definitely by section number, subsection designation, if any, or otherwise designating the
7 provision relied upon sufficiently clearly to identify it. If such allegation is controverted, the
8 party pleading the statute must establish, on the trial, the facts showing that the cause of action is
9 so barred.

10 (i) Private statutes; ordinances. In pleading a private statute of this state, or an ordinance of
11 any political subdivision thereof, or a right derived from such statute or ordinance, it is sufficient
12 to refer to such statute or ordinance by its title and the day of its passage or by its section number
13 or other designation in any official publication of the statutes or ordinances. The court shall
14 thereupon take judicial notice thereof.

15 (j) Libel and slander.

16 (1) Pleading defamatory matter. It is not necessary in an action for libel or slander to set forth
17 any intrinsic facts showing the application to the plaintiff of the defamatory matter out of which
18 the action arose; but it is sufficient to state generally that the same was published or spoken
19 concerning the plaintiff. If such allegation is controverted, the party alleging such defamatory
20 matter must establish, on the trial, that it was so published or spoken.

21 (2) Pleading defense. In his answer to an action for libel or slander, the defendant may allege
22 both the truth of the matter charged as defamatory and any mitigating circumstances to reduce
23 the amount of damages, and, whether he proves the justification or not, he may give in evidence
24 the mitigating circumstances.

25 (k) If a complaint seeks judgment on a written obligation to pay money and a judgment has
26 previously been rendered upon the same written obligation, plaintiff shall describe the judgment
27 in detail in the complaint or attach a copy of the judgment.¹³³

28 **Rule 42. Consolidation; separate trials.**

¹³³ From CJA 4-504(8).

1 (a) Consolidation. When actions involving a common question of law or fact are pending
2 before the court, it may order a joint hearing or trial of any or all the matters in issue in the
3 actions; it may order all the actions consolidated; and it may make such orders concerning
4 proceedings therein as may tend to avoid unnecessary costs or delay.

5 (1) A motion to consolidate cases shall be heard by the judge assigned to the first case filed.
6 Notice of a motion to consolidate cases shall be given to all parties in each case. The order
7 denying or granting the motion shall be filed in each case.

8 (2) If a motion to consolidate is granted, the case number of the first case filed shall be used
9 for all subsequent papers filed. If a motion to consolidate is granted, the case shall be heard by
10 the judge assigned to the first case filed, except that for good cause the presiding judge may
11 assign the case to another judge.¹³⁴

12 (b) Separate trials. The court in furtherance of convenience or to avoid prejudice may order a
13 separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate
14 issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues.

15 **Rule 51. Instructions to jury; objections.**

16 (a) Preliminary instructions. After the jury is sworn and before opening statements, the court
17 may instruct the jury concerning the jurors' duties and conduct, the order of proceedings, the
18 elements and burden of proof for the cause of action, and the definition of terms. The court may
19 instruct the jury concerning any matter stipulated to by the parties and agreed to by the court and
20 any matter the court in its discretion believes will assist the jurors in comprehending the case.
21 Preliminary instructions shall be in writing and a copy provided to each juror. At the final
22 pretrial conference or at such other time as the court directs, a party may file a written request
23 that the court instruct the jury on the law as set forth in the request. The court shall inform the
24 parties of its action upon a requested instruction prior to instructing the jury, and it shall furnish
25 the parties with a copy of its proposed instructions, unless the parties waive this requirement.

26 (b) Interim written instructions. During the course of the trial, the court may instruct the jury
27 on the law if the instruction will assist the jurors in comprehending the case. Prior to giving the

¹³⁴ From CJA 4-107.

1 written instruction, the court shall advise the parties of its intent to do so and of the content of the
2 instruction. A party may request an interim written instruction.

3 (c) Final instructions. ~~At the close of the evidence or at such earlier time as the court~~
4 ~~reasonably directs, any party may file written requests that the court instruct the jury on the law~~
5 ~~as set forth in said requests.~~ Parties shall file requested jury instructions at the time and in the
6 format directed by the court. If a party relies on controlling or persuasive precedent to support or
7 object to a requested instruction, the party shall file a copy of the precedent. The court shall
8 inform counsel of its proposed action upon the requests prior to instructing the jury; and it shall
9 furnish counsel with a copy of its proposed instructions, unless the parties waive this
10 requirement. Final instructions shall be in writing and at least one copy provided to the jury. The
11 court shall provide a copy to any juror who requests one and may, in its discretion, provide a
12 copy to all jurors.

13 (d) Objections to instructions. Objections to written instructions shall be made before the
14 instructions are given to the jury. Objections to oral instructions may be made after they are
15 given to the jury, but before the jury retires to consider its verdict. The court shall provide an
16 opportunity to make objections outside the hearing of the jury. Unless a party objects to an
17 instruction or the failure to give an instruction, the instruction may not be assigned as error
18 except to avoid a manifest injustice. In objecting to the giving of an instruction, a party shall
19 identify the matter to which the objection is made and the grounds for the objection.

20 (e) Arguments. Arguments for the respective parties shall be made after the court has given
21 the jury its final instructions. The court shall not comment on the evidence in the case, and if the
22 court states any of the evidence, it must instruct the jurors that they are the exclusive judges of
23 all questions of fact.

24



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Civil Procedures Committee
From: Tim Shea *TS*
Date: October 15, 2002
Re: Statement of the nature of the case as part of proposed discovery plan

Judge Timothy Hanson of the Third District Court has observed that it is difficult to know whether a proposed discovery plan is reasonable because there is little information about the case contained in the proposed plan. Without pulling and reviewing the case file, which is time consuming, the judge can't evaluate whether the plan is reasonable under the circumstances. Judge Hanson proposes an amendment to Rule 26 to require a brief statement of the case as one of the elements in the discovery plan submitted to the court.

Due to it's length, I've excerpted only the relevant portion of Rule 26.

(f) Discovery and scheduling conference.

....

(2) The plan shall include:

(A) a brief statement of the claims and defenses sufficient to permit the court to determine the reasonableness of the plan;

~~(A)~~(B) what changes should be made in the timing, form, or requirement for disclosures under subdivision (a), including a statement as to when disclosures under subdivision (a)(1) were made or will be made;

~~(B)~~(C) the subjects on which discovery may be needed, when discovery should be completed, whether discovery should be conducted in phases and whether discovery should be limited to particular issues;

~~(C)~~(D) what changes should be made in the limitations on discovery imposed under these rules, and what other limitations should be imposed; and

~~(D)~~(E) any other orders that should be entered by the court.

....



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

To: Civil Rules Committee
From: Tim Shea *TS*
Date: October 15, 2002
Re: Soldiers' & Sailors' Relief Act; Affidavit for default judgment

For many years the Soldiers' & Sailors' Relief Act (excerpted below) has required of an application for a default judgment that plaintiff file an affidavit showing the defendant is not in military service. The clerks of court advise me that such an affidavit is seldom part of the application, probably because people are unaware of the Federal statute. Neither the FRCP nor the URCP contains this requirement. The issue for the Committee is whether URCP 55 should contain or refer to the affidavit and other procedural requirements found in the Federal statute.

TITLE 50. WAR AND NATIONAL DEFENSE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

§ 520. Default judgments; affidavits; bonds; attorneys for persons in service

(1) In any action or proceeding commenced in any court, if there shall be a default of any appearance by the defendant, the plaintiff, before entering judgment shall file in the court an affidavit setting forth facts showing that the defendant is not in military service. If unable to file such affidavit plaintiff shall in lieu thereof file an affidavit setting forth either that the defendant is in the military service or that plaintiff is not able to determine whether or not defendant is in such service. If an affidavit is not filed showing that the defendant is not in the military service, no judgment shall be entered without first securing an order of court directing such entry, and no such order shall be made if the defendant is in such service until after the court shall have appointed an attorney to represent defendant and protect his interest, and the court shall on application make such appointment. Unless it appears that the defendant is not in such service the court may require, as a condition before judgment is entered, that the plaintiff file a bond approved by the court conditioned to indemnify the defendant, if in military service, against any loss or damage that he may suffer by reason of any judgment should the judgment be thereafter set aside in whole or in part. And the court may make such other and further order or enter such judgment as in its opinion may be necessary to protect the rights of the defendant under this Act. Whenever, under the laws applicable with respect to any court, facts may be evidenced, established, or proved by an unsworn statement, declaration, verification, or certificate, in writing, subscribed and certified or declared to be true under penalty of perjury, the filing of such an unsworn statement, declaration, verification, or certificate shall satisfy the requirement of this subdivision that facts be established by affidavit.

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

(2) Any person who shall make or use an affidavit required under this section, or a statement, declaration, verification, or certificate certified or declared to be true under penalty of perjury permitted under subdivision (1), knowing it to be false, shall be guilty of a misdemeanor and shall be punishable by imprisonment not to exceed one year or by fine not to exceed \$ 1,000, or both.

(3) In any action or proceeding in which a person in military service is a party if such party does not personally appear therein or is not represented by an authorized attorney, the court may appoint an attorney to represent him; and in such case a like bond may be required and an order made to protect the rights of such person. But no attorney appointed under this Act to protect a person in military service shall have power to waive any right of the person for whom he is appointed or bind him by his acts.

(4) If any judgment shall be rendered in any action or proceeding governed by this section against any person in military service during the period of such service or within thirty days thereafter, and it appears that such person was prejudiced by reason of his military service in making his defense thereto, such judgment may, upon application, made by such person or his legal representative, not later than ninety days after the termination of such service, be opened by the court rendering the same and such defendant or his legal representative let in to defend; provided it is made to appear that the defendant has a meritorious or legal defense to the action or some part thereof. Vacating, setting aside, or reversing any judgment because of any of the provisions of this Act shall not impair any right or title acquired by any bona fide purchaser for value under such judgment.