Agenda
Advisory Committee on Rules of Civil Procedure

November 20, 2013
4: 00 to 6:00 p.m.

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

Approval of minutes	Tab 1	Jonathan Hafen
E-filing amendments: Rule 5. Service and filing of pleadings and other papers. Rule 10. Form of pleadings and other papers. Rule 43. Evidence. Rule 74. Withdrawal of counsel. Rule 75. Limited appearance. Rule 6. Time. (Originally published for comment May 30, 2008.)	Tab 2	Debra Moore Tim Shea
Rule making principles.	Tab 3	Jonathan Hafen
Rule 37. Discovery and disclosure motions; Sanctions. Rule 56. Summary judgment. Rule 58A. Entry of judgment; abstract of judgment. Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.	Tab 4	Tim Shea

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

Meeting Schedule: Matheson Courthouse, Judicial Council Room, 4:00 to 6:00 unless otherwise stated.

January 22, 2014
February 26, 2014
March 26, 2014
April 23, 2014
May 28, 2014
September 24, 2014
October 22, 2014
November 19, 2014

Tab 1

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

OCTOBER 23, 2013

PRESENT: Jonathan Hafen, Chair, W. Cullen Battle, Scott S. Bell, Hon. James T. Blanch, Frank Carney, Prof. Lincoln Davies, Hon. Evelyn J. Furse, Terrie T. McIntosh, Hon. Todd M. Shaughnessy, Leslie W. Slaugh

TELEPHONE: Hon. Lyle R. Anderson, Lori Woffinden

STAFF: Timothy M. Shea, Nathan Whittaker

EXCUSED: Sammi V. Anderson, Hon. John L. Baxter, Steven Marsden, David H. Moore, Hon. Derek Pullan, David W. Scofield, Trystan B. Smith, Hon. Kate Toomey, Barbara L. Townsend

I. APPROVAL OF MINUTES

Mr. Hafen opened the meeting and entertained comments from the committee concerning the September 18, 2013 minutes. Mr. Shea noted that some typographical errors had been brought to his attention. It was moved and seconded to approve the minutes as amended to fix the typographical errors. The motion carried unanimously on voice vote.

II. REPORT ON PRESENTATION OF PROPOSED REVISIONS TO THE SUPREME COURT

Mr. Hafen and Mr. Shea next reported to the committee on their October 9, 2013 meeting with Utah Supreme Court. The purpose of this meeting was to present the committee's proposed revisions to Rules 58A and 64D as per UJCA 11-105(a). Rule 64D was approved and adopted by the supreme court as presented. The supreme court amended the committee's proposal on Rule 58A by restoring the final sentence in subdivision (d) and adding to the beginning of that sentence the clause "Except as provided in Rule of Appellate Procedure 4(g)." The supreme court then adopted the revision as amended. At the meeting, the supreme court expressed its appreciation of the committee's work and

encouraged the committee to remain active and vigilant in ensuring that needed revisions to the rules are promptly addressed.

III. RULEMAKING PRINCIPLES

Mr. Hafen next led a discussion on the principles that should guide the committee in drafting and revising the rules. Mr. Shea prepared a document entitled "Seven Pillars of Rulemaking" that had been distributed to committee members in the meeting materials. Mr. Hafen asked for comments and suggestions on the document.

With respect to the principle of certainty, Judge Furse questioned whether "provide directions to an outcome" was the correct wording, as it sounded too close to "outcome determinative." Mr. Slaugh added that the intent of the rules was not always to provide directions to an outcome, as some rules explicitly call on the trial court to exercise discretion. Mr. Shea responded that his intended meaning was that the rules should create a roadmap for the litigation process. Mr. Hafen suggested amending the explanation of certainty to "the rules should provide a predictable process."

Judge Blanch suggested adding the principle of consistency. This principle would recognize the value of having the Utah rules correspond to the federal rules unless there is a good reason to deviate from those rules, as it allows state courts and practitioners to cite federal case law as persuasive precedent. He added that we should bear in mind when drafting our rules that there is a danger in improving upon "imperfect" language that is identical to the language of federal rules—it throws the applicability of federal case law into question. Additionally, as so much of our wording comes from the federal rules, tweaking the language just to "clarify" may actually increase confusion, as it raises the question of whether the change was meant to be to substance or just to style. Mr. Hafen noted on the theme of consistency that the committee should strive to make the rules internally consistent.

Members raised questions about the difference between the principles of clarity and simplicity. Mr. Shea responded that clarity emphasizes using plain language and avoiding legalese, while simplicity emphasizes avoiding convoluted procedures. Judge Furse suggested that there should be a principle stating that the rules should accurately and comprehensively describe the litigation process. If there are unwritten rules or procedures, the committee should at-

tempt to document them so that *pro se* litigants or practitioners who are inexperienced in practicing before the state district courts can know what to expect.

Regarding the principle of priority, Mr. Hafen noted that saying "requests from the legislature and supreme court will take priority over all tiers" would create an exception to the three-tiered system and lead to confusion. Rather, he suggested amending the statement to read "requests from the legislature and supreme court will be given the highest priority."

Regarding the principle of input, Mr. Hafen recommended that we include the statement, "The committee should thoroughly review comments and suggestions."

IV. PRIORITY OF PENDING ISSUES

Mr. Hafen proceeded to focus on the issue of priority. He noted that one of the items he wanted the committee to consider was the priority that each proposal should be given. There are currently over 25 proposals awaiting the committee's consideration and action, and some of them were more important for the committee to consider than others. He recommended using colors to indicate priority. A proposal that is designated "red" would be one that the committee believes should be taken care of at the next meeting if possible. A proposal designated "yellow" would be one that the committee believes is important and would like to take care of as soon as possible, but it is not so urgent as to push other matters off the agenda for the next meeting. Finally, a proposal designated "green" is something that is not urgent and will be considered when the committee has time or when a related proposal comes before the committee.

Members asked whether proposals would be ranked within the categories—that is, if there are multiple issues that are designated as "red," whether the committee would determine the order in which those issues would be considered. Mr. Hafen suggested that it would likely be adequate if the committee designated a priority color to a proposal and then let Mr. Shea prioritize within those categories when he put together the meeting agenda. Mr. Hafen also stated that he wanted to avoid spending excessive amounts of the committee's time on planning future meetings, as it would detract from the substantive business of the committee.

The committee then considered the list of proposals awaiting committee action. The committee assigned them priority as follows:

- Review all rules for consistency regarding "filing" and "serving" documents (not submit, deliver, etc.) ..... GREEN
- Style amendments..... GREEN
- *Arbrogast v. River Crossings*, 2010 UT 40 Supreme Court suggestion that the Standards of Civility be incorporated in the URCP .....RED
- E-filing. Rule 5. Delete requirement that party has to have agreed to service by email. Paragraph (d) filing/service in light of change to "filing" in other rules .....RED
- E-filing. Rule 5. Certificates of service for e-filed documents .....RED
- E-filing. Rule 6. Time. Review all rules for conformity with 7/14/21/28 days service .....RED
- E-filing. Rule 10. No script signature; Margins.....RED
- E-filing. Witness affidavits. E-file copy. Keep original.....RED
- E-filing. Replace judge's signature block with "end of order."....RED
- E-filing. Rule 74/75. Permit NOLA and W/D of counsel on the record in open court if approved by the judge. Lawyer-for-the-day programs, such as debt collection calendar and OSC domestic calendar .....RED
- Rule 7. Finality of orders. Combine memo into motion. Move special SJ provisions to Rule 56. Move special discover provisions to Rule 37 .....RED
- Rule 7. Serve motion to renew judgment by personal service .....YELLOW
- Rule 15. Attach a proposed pleading to a motion to amend a pleading .....YELLOW
- Rule 26. File all dispositive motions or certificate of readiness for trial within 28 days after close of expert discovery. Include in notice form .....YELLOW
- Update 26.1(b) to match 26(a)(2).....YELLOW

- Rule 26.1. Amend so that all dates trigger from the first answer, rather than triggering from each step along the way.....YELLOW
- Rule 26.3 Disclosures in employment actions..... GREEN
- Rule 26.4. Special rules for disclosure and discovery in probate cases. Rule 81. Applicability of rules in general ..... GREEN
- Rule 45. Require notice of third party subpoena duces tecum to include the subpoena .....RED
- Rule 4. Require copy of summons to be filed with proof of summons.....RED
- Delete or amend Rule 12(j) .....YELLOW
- Delete or amend Rule 13(e), update Rules 13, 14 and 15.....YELLOW
- Post-trial motions. 50, 52, 59, 60.....YELLOW
- Rule 54. Statement of post judgment interest rate in final judgment..... GREEN
- Rule 63. Response and request to submit for decision are not proper on a motion to disqualify. Incorporate federal grounds for recusal into URCP. 28 U.S.C. § 455. Disqualification of justice, judge, or magistrate judge .....YELLOW
- Rule 101. Motion practice before court commissioners. Rule 109. Automatic temporary domestic orders ..... GREEN
- Rule 106. Modification of final domestic relations order..... GREEN

The committee agreed that Representative Ken Ivory's proposal regarding Rule 68 would be stricken from the list. The committee had a meeting with him about the proposal in April 2012 and there has been no further word from him since that time; it appears he is no longer pursuing the proposal.

The committee recommended handling style amendments and checking for consistency regarding "filing" and "serving" documents as individual rules were considered for substantive purposes.

The committee agreed to consider all of the e-filing proposals at the next meeting as well as the Utah Supreme Court's suggestion in *Arbrogast*.

Mr. Carney asked whether the committee had a mechanism for responding to a proposal for revision. Mr. Shea responded that his usual practice is to con-

firm receipt of the proposal and inform the petitioner that he will inform them when it is on the agenda. When the proposal is put on the agenda, he invites the petitioner to present the proposal before the committee.

Several members emphasized the need to review the family law rules. Judge Blanch noted that Rule 108 currently limits a party seeking an evidentiary hearing before a judge in an objection to commissioner's recommendation from offering evidence that was not considered by the commissioner below. However, as commissioners do not take evidence, this seems to be internally inconsistent. Judge Shaughnessy also noted that the way the rule is drafted currently suggests that a party is entitled to *de novo* consideration of every issue decided by the commissioner.

Commissioner Blomquist is currently working with members of the family law section of the Utah State Bar to revise Rule 101 and to create a rule establishing automatic temporary orders. Mr. Slaugh and Mr. Whittaker have also been working on a set of revisions to the family law rules. The committee recommended that Mr. Slaugh and Mr. Whittaker expand their review of the rules to consider the issues identified with Rule 108. When Mr. Slaugh and Mr. Whittaker have finalized their proposal, the committee recommended that Mr. Hafen write a letter to Commissioner Blomquist and her group submitting the proposal for their consideration and input.

V. RULE 58B

Discussion. The committee proceeded to consider the proposed revision to Rule 58B. At the previous meeting, the committee had approved a motion to amend the wording of this revision and resubmit the revision for public comment. Since the previous meeting, Judge Shaughnessy and Mr. Whittaker had identified possible concerns that the committee may want to consider before submitting the proposed revision for public comment.

Judge Shaughnessy expressed his concern that because of language about filing a partial satisfaction of judgment, the revised rule could be read to require a judgment creditor to file a partial satisfaction each time the debtor made a payment against the judgment. Mr. Shea pointed out that the language in the revision only required a creditor to file a satisfaction after *full* satisfaction of the judgment. Partial satisfactions would be permitted but not required. Judge Shaughnessy was satisfied with that explanation and withdrew his concern.

Mr. Whittaker referred to language in Rule 58B that provides for filing a satisfaction of judgment for one of multiple judgment debtors, and suggested that the committee may want to consider a provision requiring a creditor to file a satisfaction upon any one of multiple debtors making a full payment of their obligation on the judgment. Several members of the committee commented that such a circumstance would be rare, as debtors who have joint and several liability on a judgment could not satisfy their part of the judgment without satisfying the whole judgment, and that judgments that allocated the judgment according to the Liability Reform Act tend to be drafted so that there is a separate judgment against each debtor, rather than each debtor being responsible for a certain percentage of one judgment. Mr. Whittaker was satisfied with that explanation and withdrew his concern.

Mr. Slaugh noted that the rules dealing with writs of garnishment and execution and on seizure of property already require the creditor to state the amount remaining on the judgment upon filing an application with the Court. The statement in that application fulfills the same function as a partial satisfaction. Mr. Slaugh suggested that subdivision (c) was redundant, but that the language did not hurt anything and could be left where it was.

Committee Action. As both concerns were withdrawn, Mr. Hafen asked for any other proposed changes to the proposed revision before submitting it for public comment. As no changes were proposed, the proposed revision of Rule 58B as contained in the meeting materials was thereby approved for submission to the Administrative Office of Courts for publication and distribution pursuant to UCJA 11-103(2)-(3).

VI. RULE 7

At the September meeting, a motion was approved to prepare a draft for review that incorporates the proposal to combine the motion and memorandum, the proposals for submission of orders, the proposal for the request to submit, and other proposals for Rule 7 previously identified. Mr. Shea, who was tasked with preparing this draft, presented it to the committee. A copy of this draft was included in the meeting materials.

In the proposed draft, the current Rule 7 would be divided into 7 and 7A. The proposed Rule 7 would define the pleadings allowed to be filed in a civil case as the current Rule 7(a) does; it would incorporate the updated language of the

federal version of Rule 7(a). The proposed Rule 7A would deal with motion practice, and would include:

- A general definition of a motion and references to other rules that provide special requirements for particular motions (subdivision (a));
- requirements for the title, length, format, and content of motions, including a requirement that a motion be combined with its supporting memorandum in the same document (subdivision (b));
- requirements for the title, length, format, and content of response and reply memoranda, including a prohibition on making a motion in a response or reply memoranda (subdivisions (c)–(d) & (j));
- a provision for responding to an objection filed in a reply memorandum (subdivision (e));
- a requirement that a party seeking a decision on a motion file a request to submit for decision and provisions outlining the format of that document (subdivision (f));
- provisions outlining the parties' right to a hearing on a motion and the procedures for requesting a hearing (subdivision (g));
- a provision for citing supplemental significant authority (subdivision (h));
- provisions regarding the form and requirements of orders and proposed orders, as well as the procedure for circulating proposed orders (subdivisions (*i*) & (m));
- requirements for *ex parte* motions, including motions for overlength motions and memoranda (subdivisions (k)–(l)); and
- a prohibition on using orders to show cause for anything other than to address violations of existing orders (subdivision (n)).

A. Proposed Rule 7A(i): Orders and the Question of Finality

Discussion. The committee proceeded to consider Subdivision (*i*) of proposed Rule 7A, which addresses orders. The draft includes a provision that states: "The order is a final judgment that can be appealed if it satisfies Rule 54(b) and Rule 58A(c)." Mr. Shea said that this language is intended to abrogate the

holdings of *Central Utah Water Conservancy District v. King*, 2013 UT 13, 297 P.3d 619*, Giusti v. Sterling Wentworth Corp.*, 2009 UT 2, 201 P.3d 966, and *Code v. Utah Dept. of Health*, 2007 UT 43, 162 P.3d 1097. These cases hold that Rule 7(f)(2) requires that a separate order be prepared by the prevailing party unless the district court gives explicit direction that no additional order is required.

Mr. Shea remarked that the provision requiring the prevailing party to prepare a proposed order "unless otherwise directed by the court" was not intended to have anything to do with finality, but rather to establish the presumption that an order memorializing a judge's ruling from the bench would be drafted by the prevailing party, and to preserve a judge's discretion to direct another party to prepare the order.

Members expressed their concerns that the committee may be overstepping its bounds in "overruling" an established precedent of the Utah Supreme Court. Mr. Hafen pointed out that the supreme court has the final say in whether to adopt the revision, so the committee would just be suggesting that the supreme court "overrule" itself. Moreover, as the supreme court asked the committee in *Central Utah Water* to "review rule 7(f)(2) and address the possibility of endlessly hanging appeals," 2013 UT 13 at ¶ 27, it would not be inappropriate to bring them that suggestion. Mr. Shea recommended that the committee present the supreme court with a proposal and seek the justices' input before sending out the rule for public comment.

Mr. Slaugh noted that the draft still contains the language relied upon by the supreme court in *Central Utah Water*: "Unless otherwise directed by the court, within 14 days after the court's decision the prevailing party shall serve upon the other parties a proposed order in conformity with the court's decision." 2013 UT 13 at ¶¶ 9-10. A provision stating that "the order is a final judgment" if it satisfies other rules would not be effective if the memorandum decision authored by the judge is not an order under the rules.

Judge Shaughnessy agreed and pointed out that the reference to the court's action as a "decision" strongly suggests that it would not be an order under the rules. He noted that under the current rule, he could prepare a document with the title "Final Order Granting Summary Judgment," but unless he includes the "magic words" at the end of the document —"this is the final order of the court and no further order is required"—it would not be final or an order, irre-

spective of the title. The problem with the current requirement of the "magic words" is that it exalts form over substance, and creates different requirements for an order produced by a judge and one produced by a party.

Judge Shaughnessy further explained that the problem of finality does not only apply to appealable orders, but also to interlocutory orders—under Rule 7(f)(2), a judge-issued order on discovery not containing the "magic words" would not be an "order" under the rule until a separate order was prepared by a party. That raises the question of whether the party could be sanctioned for failure to comply with a decision that has not been memorialized in an order.

Judge Anderson pointed out that now that proposed orders are filed in an editable format by e-filing, it becomes even more ambiguous as to whether an order was prepared by the prevailing party or by the judge. He posed a hypothetical situation where a party submits a proposed order to a judge via e-filing, and the judge edits it before issuing the order. At what point does the document change from the party's proposed order under Rule 7(f)(2) into a decision written by the judge? Is a document bearing the caption of a party but whose content is entirely written by the judge an order or a decision? Does the fact that the party's caption appears at the beginning of the document negate the need to include the "magic words" that no further order is required?

Mr. Davies asked how often the finality problem actually affects litigants. Mr. Shea replied that it has affected several cases since 2007, including a case in which the court of appeals rejected Judge Anderson's order of dismissal as non-final, even though Judge Anderson used a form approved by the administrative office of courts.

Mr. Slaugh noted that while the current rule is somewhat absurd in that a written order that purports to be a "final order" in its title would not be a final order for purposes of appeal, it also removes the uncertainty of a party having to determine whether an order starts the time for filing an appeal. While the document described by Judge Shaugnessy is clearly intended to be a final order, there are also examples where the intention of finality is less clear. For example, consider a memorandum decision granting a motion to dismiss under Rule 12(b)(6) that does not explicitly order that the case is dismissed, but rather just states that "the motion is granted." Did the judge intend for the memorandum decision to be a final order? The case law prior to *Code* and *Giusti* was unclear on that issue.

Judge Blanch observed that the document referred to by Judge Shaughnessy would not be a final, appealable order in federal court either. Rather, the court clerk would file a judgment as a separate document under Rule 58 of the Federal Rules of Civil Procedure. The filing of that document would trigger the time for filing an appeal. While the volume of cases handled in state courts make it impractical for Utah to adopt that system, the "magic words" perform a similar function, as they give the parties an unambiguous indication that the time to appeal is running. Also, judges are figuring out that they have to put in the "magic words," which leads to fewer hanging appeals.

Judge Blanch further noted that without the rule, there is an ambiguity as to whether something like a verbal ruling from the bench would start the time for appeal. It would be better to have a rule that leads to endlessly hanging appeals than one that cut off an unsuspecting party's appellate rights due to an ambiguity.

Mr. Cullen asked what the potential problems would be with requiring a district court to unambiguously certify that an order is final and appealable for purposes of starting the time to file an appeal. Mr. Shea replied that it would be an extra step in the process and would increase the likelihood of endlessly hanging appeals.

Mr. Whittaker noted that Rule 58(c) of the Federal Rules of Civil Procedure deals with the problem of endlessly hanging appeals by providing that if an order that disposes of all pending claims has been issued, but the court clerk neglects to enter a judgment in a separate document, that order is deemed a judgment for purposes of appeal after 150 days have elapsed from the issuance of the order.

Judge Shaughnessy expressed his preference that there be a final judgment in every case that was entered as a separate document that had the title of "judgment" on the caption. However, Judge Blanch cautioned that in many cases there are multiple judgments entered in the case even though they do not dispose of all pending issues. For example, in a family law case, a party can be awarded attorney fees under the fee-sharing statute to allow that party "to prosecute tor defend the action." That is routinely called a judgment, even though it is entered during the pendency of the case. Rule 7(f)(1) provides that these interlocutory orders to be "enforced in the same manner as if it were a judgment." Therefore, if the committee were to enact Judge Shaugnessy's sug-

gestion, either the rules would have to prohibit using the term "judgment" to refer to an interlocutory order for the payment of money, or to come up with a different term for an order disposing of all issues in a case.

Several members then suggested if the separate document and entry of judgment requirements in Rule 58 of the Federal Rules of Civil Procedure were altered to specify that the judgment would be prepared by the prevailing party, that may provide a good basis for implementing Judge Shaugnessy's suggestion. Also, the provision in Subdivision (c) of the rule would solve the problem of endlessly hanging appeals. Mr. Slaugh and Mr. Carney noted that Utah's Rule 58A(a)–(c) contained provisions that were outdated and did not reflect the practice of the courts, so it would be a good opportunity to review and update these provisions as well.

Committee Action. It was the sense of the committee that it would be helpful to have a draft of Rule 58A incorporating the language of Federal Rule 58(a)–(c) with references to the clerk changed as appropriate for further discussion of the issue. The issue was informally tabled to allow the draft to be prepared and circulated at a future meeting.

B. Other Comments

Mr. Hafen asked for comments regarding the other provisions of the proposed draft of Rule 7 and 7A.

Judge Furse recalled Mr. Marsden's comment in an earlier meeting that he felt following the local federal rule combining the motion and memorandum resulted in a somewhat clunky document. Judge Furse blamed this clunkiness on the local rules referring to the motion and memorandum as two documents combined into one. The federal rules define a written motion in such a way as to exclude a statement of facts or argument from being part of a motion, so the local federal rules must refer to a motion and memorandum as separate things. However, the Utah rules could avoid this clunkiness by defining a motion as including the sections traditionally in a memorandum.

Mr. Slaugh expressed his concern that the requirements for the title of a motion may be too strict, as it appears not to allow for inclusion of words like "amended," "*ex parte*," etc. He also noted that the draft changes the page limit for motions and initial memoranda from ten pages of argument to ten pages total. While some members suggested changing this back to ten pages of ar-

gument, others argued that it would be better to just increase the page limit for the entire motion, as the current rule encourages smuggling argument in the other sections of the motion or memorandum.

Judge Blanch expressed his approval of the provisions regarding objections to evidentiary issues in lieu of filing a motion to strike. However, as there is existing case law that explicitly refers to the requirement of a motion to strike, it needs to be made explicit either in the text or the committee notes that the rule is replacing the requirement of a motion to strike with this procedure.

Mr. Davies asked whether it was necessary to divide 7 and 7A into two rules. Dividing the rules creates a very short Rule 7, changes the references to rules from those in prior case law, making them harder to research, and potentially keeps 7A from being noticed as it was out of regular numerical order. Mr. Hafen agreed and asked for unanimous consent to put the two rules back together for the next draft. There was no objection.

VII. ADJOURNMENT

The meeting adjourned at 5:59 p.m. The next meeting will be held on November 20, 2013 at 4:00 p.m. at the Administrative Office of the Courts.

Tab 2

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

(a) **Service: When required.**

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

(a)(2) No service need be made on parties in default except that:

(a)(2)(A) a party in default ~~shall~~ must be served as ordered by the court;

(a)(2)(B) a party in default for any reason other than for failure to appear ~~shall~~ must be served with all pleadings and papers;

(a)(2)(C) a party in default for any reason ~~shall~~ must be served with notice of any hearing necessary to determine the amount of damages to be entered against the defaulting party;

(a)(2)(D) a party in default for any reason ~~shall~~ must be served with notice of entry of judgment under Rule 58A(d); and

(a)(2)(E) pleadings asserting new or additional claims for relief against a party in default for any reason ~~shall~~ must be served in the manner provided for service of summons in Rule 4.

(a)(3) In an action begun by seizure of property, in which no person is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance ~~shall~~ must be made upon the person having custody or possession of the property at the time of its seizure.

(b) **Service: How made.**

(b)(1) If a party is represented by an attorney, service ~~shall~~ must be made upon the attorney unless service upon the party is ordered by the court. If an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice, service ~~shall~~ must be made upon the attorney and the party.

(b)(1)(A) If a hearing is scheduled ~~5~~ 7 days or less from the date of service, the party ~~shall~~ must use the method most likely to give prompt actual notice of the hearing. Otherwise, a party ~~shall~~ must serve a paper under this rule:

(b)(1)(A)(i) upon any person with an electronic filing account who is a party or attorney in the case by submitting the paper for electronic filing;

(b)(1)(A)(ii) by sending it by email to the person's last known email address ~~if that person has agreed to accept service by email~~;

(b)(1)(A)(iii) by faxing it to the person's last known fax number ~~if that person has agreed to accept service by fax~~;

(b)(1)(A)(iv) by mailing it to the person's last known address;

(b)(1)(A)(v) by handing it to the person;

(b)(1)(A)(vi) by leaving it at the person's office with a person in charge or leaving it in a receptacle intended for receiving deliveries or in a conspicuous place; or

(b)(1)(A)(vii) by leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

(b)(1)(B) Service by mail, email or fax is complete upon sending. Service ~~by electronic means~~ is not effective if the party making service learns that the attempted service did not reach the person to be served.

(b)(2) Unless otherwise directed by the court:

(b)(2)(A) an order signed by the court and required by its terms to be served or a judgment signed by the court ~~shall~~ must be served by the party preparing it;

(b)(2)(B) every other pleading or paper required by this rule to be served ~~shall~~ must be served by the party preparing it; and

(b)(2)(C) an order or judgment prepared by the court ~~shall~~ must be served by the court.

(c) **Service: Numerous defendants.** In any action in which there is an unusually large number of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting

an avoidance or affirmative defense contained therein ~~shall be~~ is deemed ~~to be~~ denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes notice of it to the parties. A copy of every such order ~~shall~~ must be served upon the parties in such manner and form as the court directs.

(d) **Filing.** If a paper after the complaint is electronically filed, the paper will be served simultaneously with filing upon any person with an electronic filing account who is a party or attorney in the case. ~~All~~ Otherwise, all papers after the complaint required to be served upon a party ~~shall~~ must be ~~filed with the court either~~ served before ~~or within a reasonable time after service~~ filing.

(e) **Filing with the court defined.** A party may file with the clerk of court using any means of delivery permitted by the court. The court may require parties to file electronically with an electronic filing account. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge. The filing date ~~shall~~ must be noted on the paper.

(f) **Certificate of service.** Every pleading, order or paper required by this rule to be served, including electronically filed papers, ~~shall~~ must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served.

(g) **Service by the court.** The court may serve papers by email on a party to the email address provided by the party or on an attorney to the email address on file with the Utah State Bar.

Advisory Committee Notes

Rule 10. Form of pleadings and other papers.

(a) **Caption; names of parties; other necessary information.**

(a)(1) All pleadings and other papers filed with the court ~~shall~~ must contain a caption setting forth the name of the court, the title of the action, the file number, the name of the pleading or other paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is assigned. A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-party claim, ~~shall~~ must include in the caption the discovery tier for the case as determined under Rule 26.

(a)(2) In the complaint, the title of the action ~~shall~~ must include the names of all the parties, but other pleadings and papers need only state the name of the first party on each side with an indication that there are other parties. A party whose name is not known ~~shall~~ must be designated by any name and the words "whose true name is unknown." In an action in rem, unknown parties ~~shall~~ must be designated as "all unknown persons who claim any interest in the subject matter of the action."

(a)(3) Every pleading and other paper filed with the court ~~shall~~ must state in the top left hand corner of the first page the name, address, email address, telephone number and bar number of the attorney or party filing the paper, and, if filed by an attorney, the party for whom it is filed.

(a)(4) A party filing a claim for relief, whether by original claim, counterclaim, cross-claim or third-party claim, ~~shall~~ must also file a completed cover sheet substantially similar in form and content to the cover sheet approved by the Judicial Council. The clerk may destroy the coversheet after recording the information it contains.

(b) **Paragraphs; separate statements.** All statements of claim or defense ~~shall~~ must be made in numbered paragraphs. Each paragraph ~~shall~~ must be limited as far as practicable to a single set of circumstances; and a paragraph may be adopted by reference in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials ~~shall~~ must be stated in a separate

count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) **Adoption by reference; exhibits.** Statements in a paper may be adopted by reference in a different part of the same or another paper. An exhibit to a paper is a part thereof for all purposes.

(d) **Paper format.** A proposed document ready for signature by a court official must have a top margin of not less than 2 inches on the first page and must otherwise follow the format for all other pleadings and papers. All other pleadings and ~~other~~ papers, other than exhibits and court-approved forms, ~~shall~~ must be 8½ inches wide x 11 inches long, on white background, with ~~a top margin of not less than 2 inches, a right and left margin of~~ not less than 1 inch ~~and a bottom~~ margins ~~of not less than one-half inch, with text or images only on one side~~. All text or images ~~shall~~ must be clearly legible, ~~shall~~ must be double spaced, except for matters customarily single spaced, must be on one side only and ~~shall~~ must not be smaller than 12-point size.

(e) **Signature line.** The name of the person signing ~~shall~~ must be typed or printed under that person's signature. If a paper is electronically ~~signed~~ filed, the paper ~~shall~~ must contain the typed or printed name of the signer ~~with or~~ without a graphic signature. If a proposed document ready for signature by a court official is electronically filed, the order must not include the official's signature line and must end with: "signature at top of first page."

(f) **Non-conforming papers.** The clerk of the court ~~shall~~ must examine all pleadings and other papers filed with the court. If they are not prepared in conformity with paragraphs (a) – (e), the clerk ~~shall~~ must accept the filing but may require counsel to substitute properly prepared papers for nonconforming papers. The clerk or the court may waive the requirements of this rule for parties appearing pro se. For good cause shown, the court may relieve any party of any requirement of this rule.

(g) **Replacing lost pleadings or papers.** If an original pleading or paper filed in any action or proceeding is lost, the court may, upon motion, with or without notice, authorize a copy thereof to be filed and used in lieu of the original.

(h) **No improper content.** The court may strike and disregard all or any part of a pleading or other paper that contains redundant, immaterial, impertinent or scandalous matter.

(i) **Electronic papers.**

(i)(1) Any reference in these rules to a writing, recording or image includes the electronic version thereof.

(i)(2) A paper electronically signed and filed is the original.

(i)(3) An electronic copy of a paper, recording or image may be filed as though it were the original. Proof of the original, if necessary, is governed by the Utah Rules of Evidence.

(i)(4) An electronic copy of a paper ~~shall~~ must conform to the format of the original.

(i)(5) An electronically filed paper may contain links to other papers filed simultaneously or already on file with the court and to electronically published authority.

Advisory Committee Notes

Rule 43. Evidence.

(a) **Form.** In all trials, the testimony of witnesses shall be taken ~~orally~~ in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. All evidence ~~shall be admitted which~~ that is admissible under the Utah Rules of Evidence or other rules adopted by the Supreme Court shall be admitted.

(b) **Evidence on motions.** ~~When~~ If a motion is based on facts ~~not appearing of~~ outside the record, the court may hear the matter on affidavits, ~~presented by the respective parties, but the court may direct that the matter be heard wholly or partly on oral~~ declarations, testimony or depositions. If an affidavit is electronically filed, the party or the party's attorney shall keep the original until the proceedings are concluded. If the original is filed, the clerk of the court shall scan it and return it to the party or the party's attorney, who shall keep it until the proceedings are concluded.

Rule 74. Withdrawal of counsel.

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

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

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

(b)(2) if permitted by the judge, by orally announcing the withdrawal on the record in a proceeding in which all parties are present or represented.

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

(c) **Notice to Appear or Appoint Counsel.** If an attorney withdraws other than under subdivision (b), dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall serve a Notice to Appear or Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed with the court. No further proceedings shall be held in the case until 20 days after filing the Notice to Appear or Appoint Counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.

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

Rule 75. Limited appearance.

(a) **Purposes.** An attorney acting pursuant to an agreement with a party for limited representation that complies with the Utah Rules of Professional Conduct may enter an appearance limited to one or more of the following purposes:

(a)(1) filing a pleading or other paper;

(a)(2) acting as counsel for a specific motion;

(a)(3) acting as counsel for a specific discovery procedure;

(a)(4) acting as counsel for a specific hearing, including a trial, pretrial conference, or an alternative dispute resolution proceeding; or

(a)(5) any other purpose with leave of the court.

(b) **Notice.** Before commencement of the limited appearance the attorney shall file a Notice of Limited Appearance signed by the attorney and the party or, if permitted by the judge, orally announce the limited appearance on the record in a proceeding in which all parties are present or represented. The Notice shall specifically describe the purpose and scope of the appearance and state that the party remains responsible for all matters not specifically described in the Notice. The clerk shall enter on the docket the attorney's name and a brief statement of the limited appearance. The Notice of Limited Appearance and all actions taken pursuant to it are subject to Rule 11.

(c) **Motion to clarify.** Any party may move to clarify the description of the purpose and scope of the limited appearance.

(d) **Party remains responsible.** A party on whose behalf an attorney enters a limited appearance remains responsible for all matters not specifically described in the Notice.

Rule 6. Time.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a)(3) Unless the court orders otherwise, if the clerk's office is inaccessible:

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

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

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

(a)(4)(A) for electronic filing, at midnight; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a)(6)(L) any day designated by the Governor or Legislature as a state holiday.

(b) **Extending time.**

(b)(1) When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(b)(1)(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(b)(1)(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(b)(2) A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(c), (d), and (f), and 60(b).

(c) **Additional time after service by mail.** When a party may or must act within a specified time after service and service is made by mail, 3 days are added after the period would otherwise expire under paragraph (a).

List of Deadline Changes in Conjunction with New Rule 6.

Rule	Change	To
3(a)	10	14
4(c)(2)	13	14
4(f)(1)	20	21
5(b)(1)(B)	5	7
7(c)(1)	5	7
7(c)(1)	10	14
7(f)	15	21
7(f)	5	7
12(a)	20	21
12(a)(1)	10	14
12(a)(2)	10	14
12(e)	10	14
12(f)	20	21
14(a)	10	14
15(a)	20	21
15(a)	10	14
17(c)(2)	20	21
17(c)(3)	20	21
27(a)(2)	20	21
31(a)(4)	7	14
38(b)	10	14
38(c)	10	14
50(b)	10	14
50(c)(2)	10	14
52(b)	10	14
53(d)(1)	20	21
53(e)(2)	10	14
54(d)(2)	5	14
54(d)(2)	7	14
56(a)	20	21

Rule	Change	To
59(b)	10	14
59(c)	10	14
59(c)	20	21
59(d)	10	14
59(e)	10	14
60(b)	3 months	90
62(a)	10	14
63(b)(1)(B)	20	21
63(b)(1)(B)(iii)	20	21
64(d)(3)(C)	10	14
64(d)(3)(D)(ii)	10	14
64(e)(2)	10	14
64(f)(1)	5	7
64A(i)(5)	10	14
64D(g)	7	14
64D(h)	10	14
64D(i)	20	21
64(D)(l)(3)	7	14
64E(d)(1)	10	14
65A(b)(2)	10	14
65C(g)(3)	20	21
65C(i)	Delete “plus time...”	
65C(m)(1)	5	7
66(f)	10	14
68(c)(3)	10	14
68(c)(4)	10	14
69C(f)	20	21
69C(f)	7	14
69C(i)(2)	5	7
69C(i)(2)	15	21

Rule	Change	To
74(c)	20	21
101(b)	Delete “calendar”	
101(c)	5	7

Tab 3

Principles of Rulemaking

(1) Certainty

The rules should provide a predictable process.

(2) Clarity

The rules should be written using plain language principles, adopting the federal style amendments when appropriate.

(3) Comprehensiveness

The rules should include all procedures to avoid unwritten rules.

(4) Consistency

The rules should be internally consistent. There is value to state rules that conform to the federal rules. Lawyers practicing in both courts benefit from a uniform procedure. The state courts can rely on a large body of federal caselaw. The state rules should establish procedures different from the federal rule only when there is a sound reason for doing so.

(5) Improvement

An amendment should solve an identifiable problem.

(6) Input

Before the 45-day comment period, the committee will try to obtain comments and suggestions from lawyers and judges who might be particularly affected by an amendment. The committee will consider all comments.

(7) Priority

The committee will assign a priority level to each request to amend the rules. Requests from the legislature and supreme court will take priority over other priorities. Within a priority level, the committee will consider the requests in the order in which they are made, unless combining requests will better address the matter.

(8) Simplicity

The process established by the rule should reach its outcome as simply as possible while allowing every party an equitable opportunity to investigate and present its case. Exceptions and options should be limited and clearly stated.

(9) Stability

The rules should not be amended unless there is a need.

Tab 4

Rule 37. Discovery and disclosure motions; Sanctions.

(a) **Motion for order compelling disclosure or discovery; motion for protective order.**

(a)(1) A party may move to compel disclosure or discovery and for appropriate sanctions if another party:

(a)(1)(A) fails to disclose, fails to respond to a discovery request, or makes an evasive or incomplete disclosure or response to a request for discovery;

(a)(1)(B) fails to disclose, fails to respond to a discovery request, fails to supplement a disclosure or response or makes a supplemental disclosure or response without an adequate explanation of why the additional or correct information was not previously provided;

(a)(1)(C) objects to a discovery request ;

(a)(1)(D) impedes, delays, or frustrates the fair examination of a witness; or

(a)(1)(E) otherwise fails to make full and complete disclosure or discovery.

(a)(2) A party or the person from whom disclosure is required or discovery is sought may move for an order of protection.

(a)(3) A motion may be made to the court in which the action is pending, or, on matters relating to a deposition or a document subpoena, to the court in the district where the deposition is being taken or where the subpoena was served. A motion for an order to a nonparty witness shall be made to the court in the district where the deposition is being taken or where the subpoena was served.

~~(a)(3) The moving party must attach a copy of the request for discovery, the disclosure, or the response at issue. The moving party must also attach a certification that the moving party has in good faith conferred or attempted to confer with the other affected parties in an effort to secure the disclosure or discovery without court action and that the discovery being sought is proportional under Rule 26(b)(2).~~

~~(b) **Motion for protective order.**~~

~~(b)(1) A party or the person from whom disclosure is required or discovery is sought may move for an order of protection. The moving party shall attach to the~~

~~motion a copy of the request for discovery or the response at issue. The moving party shall also attach a certification that the moving party has in good faith conferred or attempted to confer with other affected parties to resolve the dispute without court action.~~

~~(b)(2) If the motion raises issues of proportionality under Rule 26(b)(2), the party seeking the discovery has the burden of demonstrating that the information being sought is proportional.~~

(b) **Expedited procedures for discovery motions.** A motion under Rule 26 for extraordinary discovery or a motion under Rule 45 to quash a subpoena must follow the procedures of this paragraph. A motion under this rule for a protective order or for an order compelling disclosure or discovery—but not a motion for sanctions—must follow the procedures of this paragraph.

(b)(1) **Motion length and content.** The motion must be no more than four pages, not including permitted attachments, and must include in the following order:

(b)(1)(A) the relief sought and the grounds for the relief sought stated succinctly and with particularity;

(b)(1)(B) a certification that the requesting party has in good faith conferred or attempted to confer with the other affected parties in an effort to resolve the dispute without court action;

(b)(1)(C) a statement regarding proportionality under Rule 26(b)(2); and

(b)(1)(D) if the motion is a motion for extraordinary discovery, a statement certifying that the party has reviewed and approved a discovery budget.

(b)(2) **Response length and content.** No more than 7 days after the moving party has filed the motion, the non-moving party may file a response. The response must be no more than four pages, not including permitted attachments, and must [address the issues raised in the motion] include in the following order:

(b)(2)(A) a succinct statement regarding the relief sought and the grounds for the relief sought; and

(b)(2)(B) a statement regarding proportionality under Rule 26(b)(2).

(b)(3) **Attachments.** Unless required by law the moving party and responding party must attach only a copy of the request for discovery, the disclosure, or the response at issue and a proposed order.

(b)(4) **Decision.** Upon filing of the response or expiration of the time to do so, either party may and the moving party must file a Request to Submit for Decision under Rule 7(d). The court will promptly decide the motion. The court may decide the motion on the pleadings and papers unless the court schedules a hearing. The hearing may be by telephone conference or other electronic communication. The court may order additional briefing and establish a briefing schedule.

(c) **Orders.** The court may make orders regarding disclosure or discovery or to protect a party or person from discovery being conducted in bad faith or from annoyance, embarrassment, oppression, or undue burden or expense, or to achieve proportionality under Rule 26(b)(2), including one or more of the following:

(c)(1) that the discovery not be had;

(c)(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c)(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(c)(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(c)(5) that discovery be conducted with no one present except persons designated by the court;

(c)(6) that a deposition after being sealed be opened only by order of the court;

(c)(7) that a trade secret or other confidential information not be disclosed or be disclosed only in a designated way;

(c)(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

(c)(9) that a question about a statement or opinion of fact or the application of law to fact not be answered until after designated discovery has been completed or until a pretrial conference or other later time; or

(c)(10) that the costs, expenses and attorney fees of discovery be allocated among the parties as justice requires.

(c)(11) If a protective order terminates a deposition, it ~~shall~~ may be resumed only upon the order of the court in which the action is pending.

(d) **Expenses and sanctions for motions.** If the motion to compel or for a protective order is granted or denied, or if a party provides disclosure or discovery or withdraws a disclosure or discovery request after a motion is filed, the court may order the party, witness or attorney to pay the reasonable expenses and attorney fees incurred on account of the motion if the court finds that the party, witness, or attorney did not act in good faith or asserted a position that was not substantially justified. A motion to compel or for a protective order does not suspend or toll the time to complete standard discovery.

(e) **Failure to comply with order.**

(e)(1) Sanctions by court in district where deposition is taken. Failure to follow an order of the court in the district in which the deposition is being taken or where the document subpoena was served is contempt of that court.

(e)(2) Sanctions by court in which action is pending. Unless the court finds that the failure was substantially justified, the court in which the action is pending may impose appropriate sanctions for the failure to follow its orders, including the following:

(e)(2)(A) deem the matter or any other designated facts to be established in accordance with the claim or defense of the party obtaining the order;

(e)(2)(B) prohibit the disobedient party from supporting or opposing designated claims or defenses or from introducing designated matters into evidence;

(e)(2)(C) stay further proceedings until the order is obeyed;

(e)(2)(D) dismiss all or part of the action, strike all or part of the pleadings, or render judgment by default on all or part of the action;

(e)(2)(E) order the party or the attorney to pay the reasonable expenses, including attorney fees, caused by the failure;

(e)(2)(F) treat the failure to obey an order, other than an order to submit to a physical or mental examination, as contempt of court; and

(e)(2)(G) instruct the jury regarding an adverse inference.

(f) **Expenses on failure to admit.** If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court ~~shall~~ must make the order unless it finds that:

(f)(1) the request was held objectionable pursuant to Rule 36(a);

(f)(2) the admission sought was of no substantial importance;

(f)(3) there were reasonable grounds to believe that the party failing to admit might prevail on the matter;

(f)(4) that the request is not proportional under Rule 26(b)(2); or

(f)(5) there were other good reasons for the failure to admit.

(g) **Failure of party to attend at own deposition.** The court on motion may take any action authorized by paragraph (e)(2) if a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to appear before the officer taking the deposition, after proper service of the notice. The failure to act described in this paragraph may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order under paragraph (b).

(h) **Failure to disclose.** If a party fails to disclose a witness, document or other material, or to amend a prior response to discovery as required by Rule 26(d), that party ~~shall~~ may not ~~be permitted to~~ use the witness, document or other material at any hearing unless the failure to disclose is harmless or the party shows good cause for the failure to disclose. In addition to or in lieu of this sanction, the court on motion may take any action authorized by paragraph (e)(2).

(i) **Failure to preserve evidence.** Nothing in this rule limits the inherent power of the court to take any action authorized by paragraph (e)(2) if a party destroys, conceals,

alters, tampers with or fails to preserve a document, tangible item, electronic data or other evidence in violation of a duty. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Advisory Committee Notes

[Add to existing notes]

Paragraph (c) adopts the expedited procedures for discovery motions formerly approved by the Judicial Council. The expedited procedures are intended to be complete, without the need to refer to Rule 7, unless the judge directs that Rule 7 applies.

Rule 56. Summary judgment.

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

(a)(1) Instead of a statement of the facts under Rule 7(c)(2), a motion for summary judgment must contain a statement of material facts claimed not to be genuinely disputed. Each fact must be separately stated in numbered paragraphs and supported by citing to materials in the record under paragraph (c)(1) of this rule.

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

(a)(3) The motion and the memorandum opposing the motion may contain a concise statement of facts and allegations for the limited purpose of providing background and context for the case, dispute, and motion. The statement of facts or allegations may cite supporting evidence.

(a)(4) Each fact set forth in the motion or in the memorandum opposing the motion that is not disputed is deemed admitted for the purposes of the motion.

(b) **Time to file a motion.** A party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) **Procedures.**

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

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

(c)(1)(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

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

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

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

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

(d)(1) defer considering the motion or deny it;

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

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

(e) **Failing to properly support or address a fact.** If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

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

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

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

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

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

(f)(1) grant summary judgment for a nonmovant;

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

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

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

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

Advisor Committee Notes

The object of the 2014 amendment is to adopt the style amendments of Federal Rule of Civil Procedure 56 without changing the substantive Utah law. The 2014 amendment also moves to this rule the special briefing requirements of motions for summary judgment formerly found in Rule 7.

Nothing in these changes should be interpreted as changing the line of Utah cases that the party with the burden of proof on an issue must meet its initial burden to present materials in the record establishing that no genuine issue of material fact exists and that the party with the burden of proof is entitled to judgment as a matter of law. Only then must the party without the burden of proof demonstrate that there is a genuine dispute as to a material fact. Orvis v. Johnson, 2008 UT 2, Harline v. Barker, 912 P.2d 433 (Utah 1996), K & T, Inc. v. Koroulis, 888 P.2d 623, (Utah 1994)—contrary to the holding in Celotex Corp. v. Catrett, 477 U.S. 317, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

Rule 56. Summary judgment.

(a) **For claimant.** A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of ~~20~~ 21 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move for summary judgment upon all or any part thereof.

(b) **For defending party.** A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move for summary judgment as to all or any part thereof.

(c) **Motion and proceedings ~~thereon~~.** ~~The motion, memoranda and affidavits shall be in accordance with Rule 7.~~ The judgment sought shall be rendered if ~~the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that~~ there is no genuine issue as to any material fact and ~~that~~ the moving party is entitled to a judgment as a matter of law. An interlocutory summary judgment~~, interlocutory in character,~~ may be rendered on the issue of liability ~~alone~~ although there is a genuine issue as to the amount of damages. The motion and memoranda must follow Rule 7 as supplemented below.

(c)(1) Instead of a statement of the facts under Rule 7(c)(2), a motion for summary judgment must contain a statement of material facts claimed not to be genuinely disputed. Each fact must be separately stated in numbered paragraphs and supported by citing to relevant materials, such as affidavits, declarations, stipulations, admissions, discovery or other materials.

(c)(2) Instead of a statement of the facts under Rule 7(d)(2), an opposing party must include in its initial memorandum a verbatim restatement of each of the moving party's facts that is disputed with an explanation of the grounds for the dispute supported by citing to relevant materials, such as affidavits, declarations, stipulations, admissions, discovery or other materials. The opposing party's initial memorandum may contain a separate statement of additional facts in dispute, which must be separately stated in numbered paragraphs and similarly supported.

(c)(3) The motion and memorandum opposing the motion may contain a concise statement of facts and allegations for the limited purpose of providing background and context for the case, dispute, and motion. The statement of facts or allegations may cite supporting evidence.

(c)(4) Each fact set forth in the motion or memorandum opposing the motion that is not disputed is deemed admitted for the purposes of the motion.

(d) **Case not fully adjudicated on motion.** If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) **Form of affidavits; further testimony; defense required.** Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the pleadings, but the response, by affidavits or as otherwise provided in this rule, must set forthspecific facts showing that there is a genuine issue for trial. Summary judgment, if appropriate, shall be entered against a party failing to file such a response.

(f) **When affidavits are unavailable.** Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts

essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

(g) **Affidavits made in bad faith.** If any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party presenting them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt.

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

(a) **Separate document.** Every judgment and amended judgment must be set out in a separate document, but, unless a separate document is requested by a party, a separate document is not required for an order disposing of a motion:

(a)(1) for judgment under Rule 50(b);

(a)(2) to amend or make additional findings under Rule 52(b);

(a)(3) for a new trial, or to alter or amend the judgment, under Rule 59;

(a)(4) for relief under Rule 60; or

(a)(5) for attorney's fees under Rule 73.

~~(a) **Judgment upon the verdict of a jury.**~~ (b) **Without the court's direction.** Unless the court otherwise directs and subject to Rule 54(b), the prevailing party, without awaiting the court's direction, must promptly prepare the judgment when:

(b)(1) the jury returns a general verdict;

(b)(2) the court awards only costs or a sum certain; or

(b)(3) the court denies all relief.

~~the~~ The clerk ~~shall~~ must promptly sign and ~~file~~ record the judgment ~~upon the verdict of a jury~~ in the register of actions.

(c) **Court's approval required.** If ~~there is~~ the court grants relief not described in paragraph (b) or if the jury returns a special verdict or a general verdict ~~accompanied by~~ with answers to ~~interrogatories returned by a jury~~ questions, the court ~~shall direct the appropriate~~ must promptly approve the form of the judgment, which the clerk ~~shall~~ must promptly ~~sign and file~~ record in the register of actions.

~~(b) **Judgment in other cases.**~~ (d) **Judge's signature; judgment filed with the clerk.** Except as provided in paragraphs ~~(a)~~ (b) and ~~(f)~~(h) and Rule 55(b)(1), all judgments ~~shall~~ must be signed by the judge and filed with the clerk.

~~(c)~~ (e) **When judgment entered; recording.**

(e)(1) If a separate document is not required, ~~A~~ a judgment is complete and ~~shall be deemed~~ is entered for all purposes, except the creation of a lien on real property, when it is signed and ~~filed as provided in paragraphs (a) or (b)~~ recorded in the

register of actions. ~~The clerk shall immediately record the judgment in the register of actions and the register of judgments.~~

(e)(2) If a separate document is required, a judgment is complete and is entered for all purposes, except the creation of a lien on real property, when it is recorded in the register of actions and the earlier of these events occurs:

(e)(a)(A) the judgment is set out in a separate document; or

(e)(2)(B) 150 days have run from the clerk recording the judgment in the register of actions.

~~(d)~~ (f) **Notice of judgment.** The party preparing the judgment ~~shall~~ must promptly serve a copy of the signed judgment on the other parties in the manner provided in Rule 5 and promptly file proof of service with the court. Except as provided in Rule of Appellate Procedure 4(g), the time for filing a notice of appeal is not affected by this requirement.

~~(e)~~ (g) **Judgment after death of a party.** If a party dies after a verdict or decision upon any issue of fact and before judgment, judgment may ~~nevertheless~~ be entered.

~~(f)~~ (h) **Judgment by confession.** If a judgment by confession is authorized by statute, the party seeking the judgment must file with the clerk a statement, verified by the defendant, to the following effect:

~~(f)(1)~~ (h)(1) If the judgment is for money due or to become due, it ~~shall~~ must concisely state the claim and that the specified sum is due or to become due.

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

~~(f)(3)~~ (h)(3) It must authorize the entry of judgment for the specified sum.

The clerk ~~shall~~ must sign ~~and file~~ the judgment for the specified sum, with costs of entry, if any, and record it in the register of actions ~~and the register of judgments~~.

~~(g)~~ (i) **Abstract of judgment.** The clerk may abstract a judgment by a signed writing under seal of the court that:

~~(g)(1)~~ (i)(1) identifies the court, the case name, the case number, the judge or clerk that signed the judgment, the date the judgment was signed, and the date the judgment was recorded in the registry of actions and the registry of judgments;

~~(g)(2)~~ (1)(2) states whether the time for appeal has passed and whether an appeal has been filed;

~~(g)(3)~~ (i)(3) states whether the judgment has been stayed and when the stay will expire; and

~~(g)(4)~~ (i)(4) if the language of the judgment is known to the clerk, quotes verbatim the operative language of the judgment or attaches a copy of the judgment.

Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.

(a) **Pleadings.** ~~There shall be~~ Only these pleadings are allowed:

(a)(1) a complaint;~~and~~

(a)(2) an answer to a complaint;

(a)(3) ~~a reply to a counterclaim~~ an answer to a counterclaim designated as a counterclaim;

(a)(4) an answer to a cross claim, if the answer contains a cross claim;

(a)(5) a third party complaint, if a person who was not an original party is summoned under ~~the provisions of~~ Rule 14;~~and~~

(a)(6) ~~a third party~~ an answer to a third party complaint;~~, if a third party complaint is served~~ and

(a)(7) a reply to an answer if permitted by the court.~~No other pleading shall be allowed, except that the court may order a reply to an answer or a third party answer.~~

(b)~~(1)~~ **Motions.** An application to the court for an order ~~shall~~ must be by motion which, ~~unless made during a hearing or trial or in proceedings before a court commissioner, shall be made in accordance with this rule. A motion shall be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought~~ except for the following, must be made in accordance with this rule.

(b)(1) A motion made during a hearing or trial may be made orally.

(b)(2) A motion made in proceedings before a court commissioner must follow the procedures of Rule 101.

(b)(3) A motion under Rule 26 for extraordinary discovery must follow the procedures of Rule 37(b).

(b)(4) A motion under Rule 37 for a protective order or for an order compelling disclosure or discovery—but not a motion for sanctions—must follow the procedures of Rule 37(b).

(b)(5) A motion under Rule 45 to quash a subpoena must follow the procedures of Rule 37(b).

(b)(6) A motion for summary judgment must follow the procedures of this rule, supplemented by the requirements of Rule 56.

(c) **Form, name and content of motion.** The rules governing captions and other matters of form in pleadings apply to motions and other papers. The moving party must title the motion with substantially the words: "Motion to [short phrase describing the relief sought]." The motion must be 15 pages or less, not counting documents cited in the motion. An approved over-length motion must contain a table of contents and a table of authorities with page references. The motion must contain under appropriate headings and in the following order:

(c)(1) a concise statement of the relief sought and the grounds for the relief sought;

(c)(2) a concise statement of the facts as claimed by the party necessary for a decision;

(c)(3) an argument citing authority for the relief requested; and

(c)(4) relevant portions of documents cited in the motion, such as affidavits or discovery materials or opinions, statutes or rules.

(d) **Name and content of memorandum opposing the motion.** Within 14 days after the motion is filed, a party opposing the motion must file a memorandum in opposition. The party opposing the motion must title the memorandum with substantially the words: "Memorandum opposing the motion to [short phrase describing the relief sought]." The memorandum must be 15 pages or less, not counting objections to evidence and documents cited in the memorandum. An approved over-length memorandum must contain a table of contents and a table of authorities with page references. The memorandum must contain under appropriate headings and in the following order:

(d)(1) a concise statement of the grounds for opposing the relief sought;

(d)(2) a concise statement of the facts as claimed by the party necessary for a decision;

(d)(3) an argument citing authority opposing the relief requested;

(d)(4) objections to evidence in the motion, citing authority for the objection; and

(d)(5) relevant portions of documents cited in the memorandum, such as affidavits or discovery materials or opinions, statutes or rules.

(e) **Name and content of reply memorandum.** Within 7 days after the memorandum opposing the motion is filed, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion. The memorandum must be titled "Memorandum replying to the memorandum opposing the motion to [short phrase describing the relief sought]." The memorandum must be 5 pages or less, not counting objections to evidence, response to objections, and documents cited in the memorandum. The memorandum must contain under appropriate headings and in the following order:

(e)(1) a concise statement of the new matter raised in the memorandum opposing the motion;

(e)(2) an argument citing authority rebutting the new matter raised in the memorandum opposing the motion;

(e)(3) objections to evidence in the memorandum opposing the motion, citing authority for the objection; and

(e)(4) response to objections made in the memorandum opposing the motion, citing authority for the response;

(e)(5) relevant portions of documents cited in the memorandum, such as affidavits or discovery materials or opinions, statutes or rules.

(f) **Response to objections made in the reply memorandum.** If the reply memorandum includes an objection to evidence, the non-moving party may file a response to the objection no later than 7 days after the reply memorandum is filed.

~~(b)(2) **Limit on order to show cause.** An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show cause to believe a party has violated a court order.~~

~~(c) **Memoranda.**~~

~~(c)(1)~~ **~~Memoranda required, exceptions, filing times.~~** ~~All motions, except uncontested or ex parte motions, shall be accompanied by a supporting memorandum. Within ten days after service of the motion and supporting memorandum, a party opposing the motion shall file a memorandum in opposition. Within five days after service of the memorandum in opposition, the moving party may file a reply memorandum, which shall be limited to rebuttal of matters raised in the memorandum in opposition. No other memoranda will be considered without leave of court. A party may attach a proposed order to its initial memorandum.~~

~~(c)(2)~~ **~~Length.~~** ~~Initial memoranda shall not exceed 10 pages of argument without leave of the court. Reply memoranda shall not exceed 5 pages of argument without leave of the court. The court may permit a party to file an over-length memorandum upon ex parte application and a showing of good cause.~~

~~(c)(3)~~ **~~Content.~~**

~~(c)(3)(A) A memorandum supporting a motion for summary judgment shall contain a statement of material facts as to which the moving party contends no genuine issue exists. Each fact shall be separately stated and numbered and supported by citation to relevant materials, such as affidavits or discovery materials. Each fact set forth in the moving party's memorandum is deemed admitted for the purpose of summary judgment unless controverted by the responding party.~~

~~(c)(3)(B) A memorandum opposing a motion for summary judgment shall contain a verbatim restatement of each of the moving party's facts that is controverted, and may contain a separate statement of additional facts in dispute. For each of the moving party's facts that is controverted, the opposing party shall provide an explanation of the grounds for any dispute, supported by citation to relevant materials, such as affidavits or discovery materials. For any additional facts set forth in the opposing memorandum, each fact shall be separately stated and numbered and supported by citation to supporting materials, such as affidavits or discovery materials.~~

~~(c)(3)(C) A memorandum with more than 10 pages of argument shall contain a table of contents and a table of authorities with page references.~~

~~(c)(3)(D) A party may attach as exhibits to a memorandum relevant portions of documents cited in the memorandum, such as affidavits or discovery materials.~~

~~(d)~~ (g) **Request to submit for decision.** When briefing is complete or the time for briefing has expired, either party may and the moving party must file a "Request to Submit for Decision." The request to submit for decision ~~shall~~ must state the date on which the motion was ~~served~~ filed, the date the opposing memorandum, if any, was ~~served~~ filed, the date the reply memorandum, if any, was ~~served~~ filed, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision.

~~(e)~~ (h) **Hearings.** The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing ~~shall~~ must be separately identified in the caption of the document containing the request. The court ~~shall~~ must grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(i) **Citation of supplemental authority.** A party may file notice of citations to significant authority that comes to the party's attention after the party's memorandum has been filed or after oral argument but before decision. The notice must state, without argument, the reason for the citations and the page of the memorandum or the point argued orally to which the citations apply. Any other party may file a response promptly. The response must be similarly limited.

~~(f)~~ (j) **Orders.**

~~(f)(1) An order includes every direction of the court, including a minute order entered in writing, not included in a judgment. An order for the payment of money may be enforced in the same manner as if it were a judgment. Except as otherwise provided by these rules, any order made without notice to the adverse party may be~~

~~vacated or modified by the judge who made it with or without notice. Orders shall state whether they are entered upon trial, stipulation, motion or the court's initiative.~~

~~(f)(2) Unless the court approves the proposed order submitted with an initial memorandum, or unless otherwise directed by the court, the prevailing party shall, within fifteen days after the court's decision, serve upon the other parties a proposed order in conformity with the court's decision. Objections to the proposed order shall be filed within five days after service. The party preparing the order shall file the proposed order upon being served with an objection or upon expiration of the time to object.~~

~~(f)(3) Unless otherwise directed by the court, all orders shall be prepared as separate documents and shall not incorporate any matter by reference.~~

(j)(1) **Signed, written decision is an order.** A written decision of the court signed by a judge however denominated—including "order," "ruling," "memorandum decision," "opinion," or "minute entry"—is an order. An order must state whether it is entered upon trial, stipulation, motion or the court's initiative. Unless otherwise directed by the court, an order must be prepared as a separate document and must not incorporate any matter by reference.

(j)(2) **Appealable orders.** The order is a final judgment that can be appealed if it satisfies Rule 54(b) and Rule 58A.

(j)(3) **Order to pay money.** An order for the payment of money can be enforced in the same manner as if it were a judgment.

(j)(4) **Ex parte orders.** Except as otherwise provided by these rules, an order made without notice to the other parties can be vacated or modified by the judge who made it with or without notice.

(j)(5) **Preparing and serving a proposed order.** Within 14 days after the court's decision the prevailing party must prepare a proposed order conforming to the decision and serve the proposed order on the other parties for review and approval as to form. The court may direct that a party other than the prevailing party prepare and serve the proposed order. The court may prepare and serve the order. If the

prevailing party or party assigned to prepare the order fails to serve a proposed order within 14 days, any party may prepare and serve a proposed order.

(j)(6) **Approval as to form.** A party's approval as to the form of a proposed order certifies that the proposed order accurately reflects the court's direction. Approval as to form does not waive any objections.

(j)(7) **Objecting to a proposed order.** A party may object to the form of the proposed order by filing an objection within 7 days after the order is served.

(j)(8) **Filing proposed order.** The party preparing a proposed order must file it:

(j)(8)(A) after the order has been approved as to form by all parties; (The party preparing the proposed order must indicate whether the approval was received in person, by telephone, by signature, by email or by other means.)

(j)(8)(B) after the time to file an objection to the form of the order has expired; (The party preparing the proposed order must also file a certificate of service of the proposed order conforming to Rule 5.) or

(j)(8)(B) within two days after a party has filed an objection to the form of the order. (The party preparing the proposed order may also file a response to the objection.)

(j)(9) **Proposed orders prohibited; exceptions.** A party must not file a proposed order concurrently with a motion or memorandum or with a request to submit for decision, except a proposed order must be filed with the following motions:

(j)(9)(A) an ex parte motion;

(j)(9)(B) a stipulated or unopposed motion; and

(j)(9)(C) a discovery motion with expedited procedures under Rule 37(b).

(k) **Motion in opposing memorandum or reply memorandum prohibited.** A party must not make a motion in a memorandum opposing a motion or in a reply memorandum. A party who objects to evidence in another party's motion or memorandum must not file a motion to strike that evidence. The proper procedure is to include in the subsequent memorandum an objection to the evidence.

(l) **Over-length motion or memorandum.** The court may permit a party to file an over-length motion or memorandum upon ex parte motion and a showing of good cause.

(m) **Limited statement of facts and authority.** No statement of facts and legal authorities beyond the concise statement of the relief sought and the grounds for the relief sought required in paragraph (c) is required for the following motions:

(m)(1) motion to allow an over-length motion or memorandum;

(m)(2) motion to extend the time to perform an act, if the motion is filed before the time to perform the act has expired;

(m)(3) motion to continue a hearing;

(m)(4) motion to appoint a guardian ad litem;

(m)(5) motion to substitute parties;

(m)(6) motion to refer the action to or withdraw it from the court's ADR program;

(m)(7) motion for a settlement conference; and

(m)(8) motion to approve a stipulation of the parties.

(n) **Limit on order to show cause.** An application to the court for an order to show cause must be filed only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show cause to believe a party has violated a court order.

Advisory Committee Notes

[Add to existing notes]

The purpose of the 2014 amendments is to:

(1) combine a motion and its supporting memorandum in one document, as in the federal court;

(2) eliminate motions to strike evidence relied upon to support or oppose a motion;

(3) substantially reduce proposed orders;

(4) bring regularity to motion practice; and

(5) return the analysis of whether an appeal from an order is proper to the traditional analysis under Rule 54 and Rule 58A, notwithstanding the holdings in:

Central Utah Water Conservancy District v. King, 2013 UT 13;

Giusti v. Sterling Wentworth Corp., 2009 UT 2; and

Code v. Utah Dept of Health, 2007 UT 43, and.