Agenda

Advisory Committee on Rules of Civil Procedure

June 27, 2018

4:00 to 6:00 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

Welcome, fond farewell to departing members, and approval of minutes	Tab 1	Chief Justice Durrant and Jonathan Hafen, Chair
Rules 4, 11, 55, and 63. Review of comments.	Tab 2	Nancy Sylvester
Rules 101 and 105. Review of comments.	Tab 3	Nancy Sylvester
Rule 73. Attorney Fees. Review of comments.	Tab 4	Nancy Sylvester
Rule 24: Resolving differences with URCrP 12 and URAP 25A.	Tab 5	Leslie Slaugh, Michael Petrogeorge, Nancy Sylvester
Rule 26: Assignment of subcommittee. Deadline for report is September meeting	Tab 6	Jonathan Hafen, Nancy Sylvester
Order to show cause rule: Introduction and assignment of subcommittee. Deadline for report is September meeting.	Tab 7	Brent Johnson, Jonathan Hafen
Other business		Jonathan Hafen

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

Meeting Schedule:

September 26, 2018

October 24, 2018

November 28, 2018

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Meeting Minutes May 23, 2018

PRESENT: Chair Jonathan Hafen, Judge Kate Toomey, Susan Vogel, Katy Strand (Recording Secretary), Judge Andrew Stone, Heather Sneddon, Judge Laura Scott, Judge Kent Holmberg, Leslie Slaugh, Michael Petrogeorge, Judge James Blanch, Dawn Hautamaki, Lauren DiFrancesco, Jim Hunnicutt, Judge Amber Mettler, Judge Clay Stucki

EXCUSED: Rod Andreason, Barbara Townsend, Trystan Smith, Justin Toth, Lincoln Davies, Paul Stancil

GUESTS: Clayson Quigley, Patricia Owen

STAFF: Nancy Sylvester

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(1) WELCOME, APPROVAL OF MINUTES.

Jonathan Hafen welcomed everyone to the meeting and requested a motion on the April minutes. Judge Toomey moved to approve the minutes, Judge Andrew Stone seconded, and the motion passed unanimously.

(2) UPDATE ON RULE 5, ORDERS SERVED BY THE COURT, NEW CJA RULE 4-511, MANDATORY EMAIL ADDRESS, AND RULE 10, CONFORMING AMENDMENTS.

Mr. Hafen and Nancy Sylvester introduced Rule 5 and Ms. Sylvester proposed that the committee hold off on these rules until the programing for MyCase is done. Clayson Quigley reported that MyCase will be a portal where parties can log in and gain access to all of the documents on their case. They will receive notifications and see scheduled hearings. In phase 2, much further down the road this will include efiling. He also reported that MyCase will also be used for online dispute resolution (ODR). ODR will allow parties to discuss issues and attempt to resolve issues before filing cases. If parties are eligible for online dispute resolution, MyCase will inform them.

Mr. Quigley reported that MyCase will be available this summer, but only for small claims. It should be available for all cases by the end of the year.

Dawn Hautamaki reported that the clerks have discussed starting to gather email addresses so that they will be able to send out items to pro se litigants via email. The clerks would like this type of service to be automated.

Mr. Hafen asked what was stopping the rules from requiring email addresses from all litigants. Mr. Quigley responded that the collection of email addresses is currently a problem. Dawn Hautamaki

pointed out that often the courts do not get all the addresses, and email may be more problematic. Further, when filling out certificates of service, email does not auto-populate. Leslie Slaugh noted that once a litigant answers there should be an email under Rule 10. The email could then be put into the system. Judge Blanch stated that his clerks use email to send notice. But when a default is possible, Judge Blanch requires his clerks to also mail the notice.

Ms. Hautamaki said clerks won't email pro se litigants currently unless there is a consent to service by email on file. Mr. Slaugh said he saw no reason why service by email should not be presumptively valid. Judge Kate Toomey believed that parties must be able to opt out.

Ms. Sylvester proposed changing Rule 5(b)(3)(B) to say "emailing it to the most recent email address provided by the person pursuant to Rule 10(a)(3) or to the email address on file with the Utah State Bar." Ms. Sylvester argued that this would allow for an opt out, as they do not have to put an email address in the caption if they don't have one. Susan Vogel stated that putting an email in the caption does not let parties know that they may get served there. Mr. Slaugh argued this concern was too paternalistic; if they provide an email they should assume it will be used. Judge Blanch proposed that the form answer could include information telling them that the email will be used for service, but any changes to the forms should be decided by the forms committee.

Judge Holmberg expressed concern that parties could change email addresses and they would not be properly updated in the system. Judge Stucki proposed adding a reference to Rule 76 so that the updated address will be used.

The language in Rule 5(b)(3)(B) was changed to "emailing it to the most recent email address provided by the person pursuant to Rule 10(a)(3) or Rule 76, or to the email address on file with the Utah State Bar." The full language of the rule is as follows:

Rule 5. Service and filing of pleadings and other papers.
(a) When service is required.
(a)(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:
(a)(1)(A) a judgment;
(a)(1)(B) an order that states it must be served;
(a)(1)(C) a pleading after the original complaint;
(a)(1)(D) a paper relating to disclosure or discovery;
(a)(1)(E) a paper filed with the court other than a motion that may be heard ex parte; and
(a)(1)(F) a written notice, appearance, demand, offer of judgment, or similar paper.
(a)(2) Serving parties in default. No service is required on a party who is in default except that:
(a)(2)(A) a party in default must be served as ordered by the court;
(a)(2)(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);
(a)(2)(C) a party in default for any reason must be served with notice of any hearing to determine the amount of damages to be entered against the defaulting party;
(a)(2)(D) a party in default for any reason must be served with notice of entry of judgment under Rule 58A(d); and
(a)(2)(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.
(a)(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

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

(b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice; or

(b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

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

(b)(3) Methods of service. A paper is served under this rule by:

(b)(3)(A) except in the juvenile court, submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account;

(b)(3)(B) emailing it to the most recent email address provided by the person pursuant to Rule 10(a)(3) or Rule 76, or to the email address on file with the Utah State Bar~~, if the person has agreed to accept service by email or has an electronic filing account~~;

(b)(3)(C) mailing it to the person's last known address;

(b)(3)(D) handing it to the person;

(b)(3)(E) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(b)(3)(G) any other method agreed to in writing by the parties.

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

(b)(5) Who serves. Unless otherwise directed by the court:

(b)(5)(A) every paper required to be served must be served by the party preparing it; and

(b)(5)(B) every paper prepared by the court will be served by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

Leslie Slaugh moved to recommend the rule to the Supreme Court. Judge Toomey seconded. The motion passed unanimously.

(3) Rule 109. Automatic temporary domestic orders. New.

Ms. Sylvester reported that proposed Rule 109 was discussed by the Board of District Court Judges after the committee finalized its edits. Regarding the question of service versus notice of the Rule 109 injunction, the Board proposed that paragraph (d)(2) say the injunction is binding "on the respondent after filing of the initial petition and upon receipt of a signed copy of the injunction." The Board felt this struck a middle ground between simple notice and Rule 4 service, both of which carried concerns. The Board also proposed removing the modifier "unduly" regarding involving children in the case. Judge Stone supported these changes. Lauren DiFrancesco expressed concerns about providing a signed order in each case, as each case would not have an assigned judge at the time of filing. Judge Stone stated that it would be a standing order signed by the presiding judge and a copy would be provided in each case.

Ms. Vogel questioned the use of the term "receipt." Judge Scott stated that it requires the actual injunction to be provided, which avoids parties representing what was in the injunction, but does not require actual service, avoiding the possibility that a party could knowingly avoid service in order to violate the injunction. The rule was proposed as follows:

Rule 109. Automatic injunction in certain domestic relations cases.

(a) **Actions in which an automatic domestic injunction enters.** In an action for divorce, annulment, temporary separation, custody, parent time, support, or paternity, an injunction automatically enters when the initial petition is filed. The injunction contains the applicable provisions of this rule.

(b) **General provisions.**

(b)(1) If the action concerns the division of property then neither party may transfer, encumber, conceal, or dispose of any property of either party without the written consent of the other party or an order of the court, except in the usual course of business or to provide for the necessities of life.

(b)(2) Neither party may disturb the peace of the other party or harass, annoy, or bother the other party.

(b)(3) Neither party may commit domestic violence or abuse against the other party or a child.

(b)(4) Neither party may use the other party's name, likeness, image, or identification to obtain credit, open an account for service, or obtain a service.

(b)(5) Neither party may cancel or interfere with telephone, utility, or other services used by the other party.

(b)(6) Neither party may cancel, modify, terminate, change the beneficiary, or allow to lapse for voluntary nonpayment of premiums, any policy of health insurance, homeowner's or renter's insurance, automobile insurance, or life insurance without the written consent of the other party or pursuant to further order of the court.

(c) **Provisions regarding a minor child.** The following provisions apply when a minor child is a subject of the petition.

(c)(1) Neither party may engage in non-routine travel with the child without the written consent of the other party or an order of the court unless the following information has been provided to the other party:

(c)(1)(A) an itinerary of travel dates and destinations;

(c)(1)(B) how to contact the child or traveling party; and

(c)(1)(C) the name and telephone number of an available third person who will know the child's location.

(c)(2) Neither party may do the following in the presence or hearing of the child:

(c)(2)(A) demean or disparage the other party;

(c)(2)(B) attempt to influence a child's preference regarding custody or parent time; or

(c)(2)(C) say or do anything that would tend to diminish the love and affection of the child for the other party, or involve the child in the issues of the petition.

(c)(3) Neither party may make parent time arrangements through the child.

(c)(4) When the child is under the party's care, the party has a duty to use best efforts to prevent third parties from doing what the parties are prohibited from doing under this order or the party must remove the child from those third parties.

(d) **When the injunction is binding.** The injunction is binding

(d)(1) on the petitioner upon filing the initial petition; and

(d)(2) on the respondent after filing of the initial petition and upon receipt of a signed copy of the injunction.

(e) **When the injunction terminates.** The injunction remains in effect until the final decree is entered, the petition is dismissed, the parties otherwise agree in a writing signed by all parties, or further order of the court.

(f) **Modifying or dissolving the injunction.** A party may move to modify or dissolve the injunction.

(f)(1) Prior to a responsive pleading being filed, the court shall determine a motion to modify or dissolve the injunction as expeditiously as possible. The moving party must serve the nonmoving party at least 48 hours before a hearing.

(f)(2) After a responsive pleading is filed, a motion to modify or to dissolve the injunction is governed by Rule 7 or Rule 101, as applicable.

(g) **Separate conflicting order.** Any separate order governing the parties or their minor children will control over conflicting provisions of this injunction.

(h) **Applicability.** This rule applies to all parties other than the Office of Recovery Services.

Mr. Hunnicutt moved to recommend the rule as written above to the Supreme Court. Judge Stucki seconded. The motion passed.

(4) CIVIL RULE 58 AND APPELLATE RULE 4

Ms. Sylvester and Mr. Hafen introduced the concerns of the Supreme Court regarding Rule of Civil Procedure 58 and Appellate Rule 4. The Supreme Court was concerned that these two rules in concert created a "trap for the diligent," as Paul Burke said. This was demonstrated in the recent Court of Appeals case, *McQuarrie v. McQuarrie*, 2017 UT App 209. In *McQuarrie*, the husband appealed a district court order that awarded the wife attorney fees with the amount to be determined at a later date. The wife moved for summary disposition because, she argued, the husband did not appeal from a final order. The Court of Appeals agreed with the wife and dismissed the appeal. But there is an argument that the husband didn't have a choice but to appeal at that time since the finality of the order was not clear. Mr. Slaugh proposed reconstituting the Rule 58 subcommittee to evaluate the rules. Judge Mettler said she would work with the subcommittee to discuss the changes needed.

(5) ADJOURNMENT

The committee adjourned at 5:45 p.m. The next meeting will be held on June 27, 2018 in the Judicial Council Room of the Matheson Courthouse.

Tab 2

URCP Rules 4, 11, 55, 63

URCP004. Process. Amend. Makes amendments that conform to **S.B. 188 (2018)**. Effective May 8, 2018 pursuant to CJA Rule 11-105(5), expedited rulemaking.

URCP011. Signing of pleadings, motions, affidavits, and other papers; representations to court; sanctions. Amend. Makes amendments that conform to **S.B. 188 (2018)**. Effective May 8, 2018 pursuant to CJA Rule 11-105(5), expedited rulemaking.

URCP055. Default. Amend. Makes amendments that conform to **S.B. 188 (2018)**. Effective May 8, 2018 pursuant to CJA Rule 11-105(5) expedited rulemaking.

URCP063. Disability or disqualification of a judge. Amend. Makes amendments that conform to **S.B. 188 (2018)**. Effective May 8, 2018 pursuant to CJA Rule 11-105(5).

https://www.utcourts.gov/utc/rules-comment/2018/05/07/rules-of-civil-procedure-comment-period-closes-june-21-2018/

No comments posted.

Tab 3

URCP Rules 101 and 105

URCP0101. Motion practice before court commissioners. Amend. Makes conforming amendments pursuant to SB 25 (2018), which reduced the 90-day waiting period for a divorce to 30 days. Effective May 8, 2018 pursuant to CJA rule 11-105(5).

URCP0105. Shortening 30 day waiting period in divorce actions. Amend. Makes conforming amendments pursuant to SB 25 (2018), which reduced the 90-day waiting period for a divorce to 30 days. Effective May 8, 2018 pursuant to CJA rule 11-105(5).

https://www.utcourts.gov/utc/rules-comment/2018/04/11/rules-of-civil-procedure-comment-period-closes-may-26-2018/

Comments

Posted by Amanda

This is the greatest change yet! Countless citizens enter the courthouse requesting a divorce and once they hear about the 90 day waiting period they immediately respond with "Why do we have to wait the 90 day waiting period, if I want a divorce, I want a divorce! It isn't anyone's business! I shouldn't be forced to stay married to someone I don't want to be married to!"

Comments like those above happen consistently and absolutely on a daily basis. They then usually ask how they can waive and have to go through the process of doing so.

I understand the 90 days was an attempt to offer reconciliation time, but I would venture that less than 10% of divorces actually were ever reconciled. Instead it just seemed to aggravate people.

Nancy's response:

This is a comment in support of the legislatively-created policy.

Posted by Spencer Ball

I am in favor of making litigation easier for litigants, but this rule change shortening the time period only cheapens marriage, making it all the more meaningless of an institution.

Nancy's response:

This comment expresses disagreement with the legislatively-created policy behind the rule amendments. I recommend no change in response.

Tab 4

URCP Rule 73

URCP073. Attorney Fees. Amend. An overwhelming number of cases filed in the courts, especially debt collection cases, result in the entry of an uncontested judgment. The work required in most cases to obtain an uncontested judgment does not typically depend on the amount at issue. The amendments eliminate the schedule of fees based on the amount of damages and replace it with a single fee upon entry of an uncontested judgment and a larger fee in contested cases. Where additional work is required to collect on the judgment, the amendments provide a default amount for writs and certain motions, and eliminate the "considerable additional efforts" limitation of the prior rule. The rule remains flexible so that when attorney fees exceed the scheduled amounts, a party remains free to file an affidavit requesting appropriate fees in accordance with the rule.

https://www.utcourts.gov/utc/rules-comment/2018/04/09/rules-of-civil-procedure-comment-period-closes-may-24-2018/

Comments

Nancy's synopsis

The comments to the Rule 73 amendments fall into basically four camps: 1) Support, 2) oppose, 3) suggested amendments, and 4) requests for education. Amendment requests include clarifying the post-judgment rule language, increasing the minimum uncontested default rate ($550 versus $350), eliminating the hearing requirement for the default contested case rate, and raising the post-judgment schedule amounts (one suggestion is doubling them).

Alex L.

This amendment is a good idea. However, the scheduled fee amounts for post-judgment writs and motions need to be doubled.

Nancy's response:

This comment is supportive of the amendments but suggests a change to the post-judgment schedule. The committee should explore whether doubling the fee amounts in that schedule makes sense.

Duke EDWARDS

I prefer a fee scale so that the attorney's fees on small matters are not too high.

Nancy's response:

This comment appears to support the current schedule, not the amendments.

Graeme L. Abraham

A much-needed change. I spent about five years in collections and the attorney's fees under Rule 73 were not proportional to the amount of work. Also, the post-judgment

fees were highly unregulated. Often the clerk would sign off on whatever additional fees we included in a writ of garnishment. Hopefully, under the new rule, the clerks will have the proper training and resources necessary to recognize abuse.

I'm glad to see the lower limit raised to $350.00. Obtaining a default judgment – although easy – required a good amount of drafting (Complaint, Summons, Default Certificate, Affidavit in Support of Damages, Proposed Judgment). Receiving an award of $250.00 was almost offensive in that regard.

Nancy's response:

This comment is supportive of the amendments and also makes a suggestion regarding the clerks having the proper training and resources necessary to recognize abuse in requests for post-judgment fees. I agree that education of the clerks and judges regarding the new rule and potential problems will be helpful.

Denver Snuffer

I don't practice in this area, and therefore have no stake in the rule change. The fee limit seems extremely wrong-headed. There is almost no way for an attorney to cover the costs of practice, staff, etc. with the fees set in this new rule. And rules change slowly. If the amounts are insufficient now, how much more of a problem will this become before the rule schedule is changes again. It would be better to either not set a schedule at all, or put an upper ceiling on fees for uncontested matters.

Nancy's response:

This comment does not support the rule change. Mr. Snuffer makes a good point about the cost of doing business. It is expensive to have a law practice. It is my understanding—and the committee's—that the attorneys who tend to practice in the debt collection area typically have high volume practices. And the committee determined that the cost of doing these cases should not relate to the amount in controversy. Additionally, the rule's presumptive amounts are intended to be automatic but the rule still leaves room for an attorney to file a supporting affidavit if the attorney feels that a higher attorney award is warranted. I recommend no change in response to this comment.

Jonathan Kirk

$75 to file a garnishment does not adequately take into account the additional time required to verify employment, receive and review answers to interrogatories over several weeks or months, receive and process garnishment payments, and draft, efile, and mail satisfaction of judgments. (And very often employers and debtors call with questions.) The default amounts seem too low, especially for solo practitioners who don't have the luxury of secretaries, clerks, etc.

Nancy's response:

Like Alex L.'s comment, this comment suggests a change to the post-judgment schedule. The committee should explore whether increasing the fee amounts in that schedule makes sense. This comment also raises some of the same concerns as Mr. Snuffer's. As I mentioned above, the rule still leaves room for an attorney to file a supporting affidavit if the attorney feels that a higher attorney award is warranted.

Bryce Pettey

Just a non-substantive nit, but an important one, I think: In Proposed Subsection (f)(3) of Rule 73, it would seem the language in Proposed Subsection (f)(3)(B) that comes after "Utah Code § 35A-4-314," beginning with "a party may request as part of its application," should apply to Proposed Subsection (f)(3)(A) as well. As written, though, that language – and probably the chart that follows, too – seems to apply only to Proposed Subsection (f)(3)(B). I'm not sure what your manual dictates is the proper way to correct and clarify this. There should probably be a colon after "Utah Code § 35A-4-314" at the end of Proposed Subsection (f)(3)(B), rather than a comma, and then the language beginning with "a party may request as part of its application" put on the next line. It would then be clear that all of that provision, and the chart, as well, will apply both to Proposed Subsection (f)(3)(B) and to Proposed Subsection (f)(3)(A).

Nancy's response:

Charles Stormont addressed this comment and suggested a hard return at line 49. I agree and have made the amendment.

Rebekah Rich

I am favor of this rule change for the following reasons:

1) It has been 20+ years since the Default Judgment fee was increased and it is long OVERDUE.

2) The amount of work in order to obtain a Default Judgment has increased immensely over the past several years.

Most courts now require:

- Default Certificate
- Proposed Default Judgment
- Memorandum of Costs
- Military Service Affidavit
- Affidavit in Support of Default Judgment
- Judgment Information Statement

- Affidavit of Collection Costs

This fee increase will help to more closely align the fee schedule with the amount of work required. The sliding scale didn't make much sense. A higher principal balance doesn't necessarily mean there is more work required.

3) I appreciate the fact that the committee is recognizing the additional time spent post-judgment in order to collect a judgment

It's not going to make everyone happy but overall, I think it is a fair and much needed change.

Nancy's response:

This comment is supportive of the amendments.

Bradley Nykamp

I favor the current schedule (or some sort of tiered schedule) for the following reasons:

1. Small debts should not be strapped with another $100 in fees.

2. Larger debts most of the time do take more work to review, etc. For example, if a case has two notes or causes, it does takes more time and larger cases should carry a bigger burden.

3. In many cases, the amount of work done does depend on the amount in controversy.

4. Based on the reasoning in the Advisory Committee Notes, the fee schedule to file a complaint should be eliminated. Why are have three tiers of filing fees (i.e. claim for damages up to $2,000 is $75, greater than $2,000 up to $10,000 is $185 and over $10,000 is $360)? Most collection cases with the court require the same amount of work. To me it does seem more reasonable that smaller cases carry less fees and costs; it seems more equitable to those that owe the debts. If you owe more, you should bear more of the responsibility. Even the court's tiered schedule to file cases acknowledges that.

It is true the current minimum fee of $250.00 does not cover the costs of cases anymore. Regulations on attorneys and the demand to meet them and train staff continue to grow. However, those that do collection work can recover that loss by the larger cases where the fee is increased according to the schedule.

As to the post judgment scale, the fees are MUCH too low. It is not just the preparation of the paperwork for filing it is all the work that needs to be done to verify amounts, documents, communicate with the client, to file the paperwork, follow-up with Garnishee's, reports to clients, manage the file post judgment etc.

Nancy's response:

Mr. Nykamp proposes keeping the current schedule. He also proposes raising the post-judgment fees.

Nick Babilis

A. The flat fee schedule should be $550.

$350 for a base is too low. There are no attorneys outside of the debt collection field that can or would draft and or file: 1. summons, 2. complaint, 3. affidavit of service, 4. Proposed default Judgment, 5. Proposed default certificate, 6. Affidavit of collection fees, 7. Affidavit from Plaintiff per Rule 55, 8. Military Service Affidavit, 9. Produce a Military Status report, 11. some cases Military Service Order (and you have to know which courts require one and which do not because if it is/is not filed in error you may have to re-submit multiple documents) 12. Memorandum of costs, 13. Judgment information sheet (and you have to know the select courts which want this after the judgment is granted, not before). 14. contract (with certain language highlighted or otherwise noted for Clerk's verification), 15. Certificate of mailing all the documents submitted to the court. 16. Actually mailing all the documents to the defendant. These are all currently REQUIRED. This list is always changing- for proof- there is another proposed amendment on the Rule 55 affidavit as well. The court's are requiring more and more documents to be prepared for a default judgment and this is not likely to stop.

This is not including reviewing client's notes, reviewing ledgers, reviewing contracts, fielding phone calls from defendants (they do call often even if they never file an answer or do anything with the case), fielding phone calls and emails from clients on the matter. Sending notices to the defendants, sending notices to the client, sending affidavits to be signed by the client, receiving the affidavits from the clients. It all takes time!

It takes me approximately two hours to just fill in the form documents for each case. It literally took me months of work to generate the forms, and still am modifying them almost weekly. I have over 100 hours in generating just these default judgment form documents and entering them in a computer program so that it takes less time to fill them in for each case. I have over 200 hours in modifying the computer program so that it can fill in the form documents appropriately and make sure that the court's e-filing system will accept the documents.

As debt collection attorneys I believe that generally we do not want a default judgment. I would personally prefer that defendants answer the complaint. Historically, I get paid voluntarily when I am contacted by the defendants. I much prefer voluntary payments over rigid garnishments. It appears that there is more and more technology that is going to assist defendants in filing answers and maybe this will all become irrelevant. More likely is that the proposed $350 maximum (without an affidavit and

motion) is going to become outdated very quickly and the purpose of the rule is going to be defeated, again, as attorney's file motions and affidavits in order to receive just compensation for work performed.

I know that if the rule is passed with $350.00 flat attorney fee I will have to file a motion and affidavit for higher fees because I cannot work as many hours as it takes at that rate. The post-judgment augmentation helps that number, but it still doesn't allow appropriate compensation.

B. Attorney's time is not just the documents but also compliance to other state and federal requirements.

There are statutes, generally federal, with which we have to comply, which dictate that we attorneys have also to review the client's notes on each case, thoroughly; we have to send proper notices, we have to ensure that any vendors (process servers, locators, etc.) are also complaint with federal statutes. An attorney can be and is held personally liable for errors at any time even before starting the litigation process. There are also other notices with which we have to comply as "debt collection" attorneys.

C. Utah should be more congruent to nearby states with attorney's fees.

While Idaho does not have a fee schedule by statute, there is a strong tendency for judges to follow an 'unwritten rule' for a fee scale. Smaller principal balances under $350 attorney fees match the principal, $350-$600 principal $350 atty fees, $601-$1,000 principal $400 atty fees – every $500 in principal thereafter attorney fees allowed increases by $100. There is an affidavit required, but not one that breaks down time expended, just that the amount requested is congruent with what other attorney's charge, the amount in controversy, the complexity of the case, etc. Honestly, Idaho is the only other state where I have personal experience but Idaho does most closely resemble Utah in population and income levels.

With the current proposed rule, Utah would compensate a case with $2,500 at controversy at the same level that Idaho places a suit for $350.00. Idaho, however, would allow that attorney to be compensated with $700 or twice as much.

D. A Fee scale is used by the courts for filing fees with reasons, so too the fee scale should be used for default attorney fees for the same reasons.

There are other comments in this section which point out that the fee scale is used by the courts for filing fees for a reason as well, and thus should be used for these cases. Larger sums do often times require more work. There are often more issues to present to the court. There are more facts to review from the client.

E. Post judgment augmentation needs to be clarified.

The language in post judgment augmentation of attorney's fees is slightly ambiguous. The intent seems to say that the first application for a writ under Rule 64D

PER EMPLOYER shall allow attorney's fees to be augmented by $75 (if the attorney so requests). However, as it is currently proposed, it states, "including 1st application for a writ under Rule 64D". Well, a 1st application for the 2nd employer is not the 1st application for a writ under Rule 64D, it is at least the 2nd. Also, if post judgment attorney fees "shall [be] allowed" what is the basis for that allowance? Is it the clerk or judge's preference?

Proposed language: Perhaps it should be written more like, "Application for any writ under Rule 64, including 1st application for a writ under Rule 64D per unique employer in secession". This way, if a judgment debtor changes employment, and it happens regularly, the attorney is not limited due to vague terms.

Proposed language: for 4-314 "...and the clerk or the court shall allow such augmented attorney fees request without a supporting affidavit if it otherwise approves the writ or motion:"

F. The bigger picture needs to be viewed to realize the situation.

Given that attorney's fees at the time of default judgment is to allow for compensation for work to that point is key but misses the point slightly. Attorney's fees awarded in the case in chief helps An attorney who then actually collects on that judgment and who recovers money that the Plaintiff is owed does much more work. While receiving a garnishment order is relatively easy, there is a lot of work that goes into: verifying employment, creating the documents for the order (Application and proposed order), then send all the required notices and instructions, sending the interrogatories, verifying the appropriate location for service of the garnishment order, receiving the interrogatories, answering employers' questions on how to fill out the forms, answering defendant's questions on what can be done/what all the documents mean, following up with employers on why they haven't answered, monitoring employers on who and when answers are to be received, and again – relaying all the information to the client.

It all takes time. Most judges currently say that this isn't 'considerable efforts'. $75.00 doesn't compensate even for the time that it takes to create the documents, let alone anything else that needs to be done in order to get paid by an employer for a wage garnishment. The attorney's fees awarded during time of default helps make this all possible. With a slightly higher attorney's fees awarded at the time of the judgment, post judgment work is possible. All the work on the front end ultimately carries some of the weight for post-judgment work and then the attorneys are under compensated for both. Just compensation for the work done to obtain the judgment make it possible for attorney's to continue to work cases through post-judgment collection. Unjust compensation (250 especially but even 350) makes it difficult, if not impossible, to continue work on a case.

Nancy's response:

Mr. Babalis proposes the following:

1) Keep the fee schedule, and
2) Make the fee schedule congruent with neighboring states, or
3) Raise the minimum default rate to $550, and
4) Clarify the post-judgment language.

Regarding clarifying the post-judgment language, Mark Olson offered a good fix.

Charles Stormont

I second the proposed edit of Mr. Pettey. He is correct that there should be a hard return or other delineation after "35A-4-314," in subsection (f)(3)(B) to make clear that the language that follows (beginning with "a party may request...") applies to both the writs referenced in (f)(3)(A) and the motions in (f)(3)(B).

One other small edit to clarify the rule: in the first entry of the schedule in part (f)(3), it states "Application for any writ under Rule 64, including 1st application for a writ under Rule 64D." This arguably leaves some question as to whether the schedule applies to writs under Rules 64A, 64B, 64C or 64E. For consistency, I suggest that entry repeat in full the list of writs as appears in part (f)(3)(A) so that the first entry in the schedule reads: "Application for any writ under Rules 64, 64A, 64B, 64C, 64D, or 64E, including 1st application for a writ under Rule 64D."

But with those small edits, this proposed change deserves support. The prior rule provided fees under a schedule that in no way reflected the work required in the overwhelming majority of cases. These changes fix that, while also increasing the flexibility of the rule so that cases that fall outside of that mold can receive appropriate compensation. The comments suggesting the fee schedule is too low in the post-judgment context appear to overlook this new flexibility for those unusual cases where additional work is required. The new proposed rule makes fees much easier to secure in the majority of cases, eases the burden to secure additional fees in non-typical cases, and avoids excessive fees in cases where they are not merited. These are sound changes, and the Rules Committee is to be commended for its willingness to cogently address such a challenging set of issues.

Nancy's response:

This comment is in support. Mr. Stormont assisted in redrafting Rule 73. I have incorporated his suggested amendments to the post-judgment schedule in the rule.

Steve Elggren

Under proposed (f)(2), it says that "When a party seeks a judgment, (and) the responding party contests the judgment by presenting at a hearing either evidence or

argument…" then is says that an attorney may request "up to $750 for such attorney fees without a supporting affidavit."

When an answer is filed by or for a defendant, the plaintiff's attorney has to prepare and provide Rule 26 Disclosures, and if it makes a motion for summary judgment, that should be sufficient to request an increase for attorney fees without the need for an affidavit or declaration.

There is enough work done to get to that point. If the attorney needs to be "(present) at a hearing to produce evidence or argument", the amount of time will most likely far exceed the time to justify the $750 for attorney fees.

Of course, an attorney can request more by supporting affidavit, but that creates more work for the attorney and the court. It would make more sense to me at least, if a defendant files an answer and the court thereafter awards judgment to a plaintiff—even without a hearing—then the attorney fees award should then be $750 without the need to appear at a hearing.

That would save the court the time it is otherwise having to review declarations, etc. to determine whether it will award the higher attorney fees.

Nancy's response:

Mr. Elggren makes two noteworthy points: 1) without a hearing, the amount of work required to respond to a contested case will likely far exceed $750 in attorney fees, and 2) $750 should be the fee amount for a contested case without the need to appear at a hearing.

Michael R. Anderson, Esq.

I disagree with this change and strongly urge the committee NOT to implement it.

We do some collections at our firm.

When we have to work on these cases, we often have to hunt down a defendant. We have to calculate the interest (or check staff's work). These fees are too low and are inadequate.

They should be much higher or simply allow counsel to submit a fee affidavit.

We had our legitimate fees reduced on default because of the limiting rule.

Please do not implement.

Nancy's response:

This comment opposes the rule amendments and Mr. Anderson's points about the amount of work required are well-taken when debt collection is not an attorney's primary practice area. But as stated previously, the rule retains the flexibility to submit an affidavit detailing fees that go beyond the default amount.

Lacey Cherrington

This rule change is well overdue and makes sense based on the work that goes into securing and collecting on these judgments. The courts and the rules have increasingly required much more documentation be drafted and filed in order to secure default judgments.

Some questions and clarifications I have are as follows:

1. (f)(2) Why is there a need for a hearing at this point on all cases? Seems a burden on the court and unnecessary in all cases.

2. (f)(3) Under the table heading Action, I would suggest more clarification and specificity as follows:

-Application for any writ under Rule 64, including 1st application to a particular garnishee for a writ under Rule 64D.

-Any subsequent application for a writ under Rule 64D to the same garnishee, otherwise any subsequent application is considered a 1st application as stated above.

> **Nancy's response:**
>
> Like Mr. Elggren, Ms. Cherrington also wonders why there is a need for hearing. She also suggests amendments to the post-judgment table. Mark Olson expands on Ms. Cherrington's and Mr. Babalis's amendment suggestions below.

Mark Olson

I see that Nick Babalis and Lacey Cherrington already mentioned something on which I planned to comment, but I'll go ahead and share my thoughts.

In working with Charles Stormont on these amendments we recognized that when a garnishment expires with a balance due it is a relatively simple matter to prepare a subsequent garnishment to the same employer. If a judgment debtor quits his job with a balance owing, however, it can take significant time and effort to identify the new employer. Therefore, we agreed that any garnishment to a new employer should be awarded a higher attorney fee compared to subsequent garnishments to the same employer. My recollection is that the committee agreed to that approach.

However, I'm not sure we captured that intent in the wording of the proposed amendment. The schedule of post judgment collection fees contained in 73(f)(3) awards $75 for the 1st application for a writ under Rule 64D and continues to award $25 for any subsequent application for a writ to the same garnishee. Although the description of the $25 fee is consistent with a $75 fee being applied to each garnishment to a new employer, the description of the $75 fee will likely be read to apply only to the first garnishment issued, regardless of how often the judgment debtor may change jobs.

I propose that the wording of the first line in the schedule of post judgment fees be changed to "Application for any writ under Rule 64, including 1st application for a writ under Rule 64D to any particular garnishee." That would capture the original intent for that line and make it consistent with the next line which awards $25 for garnishments to subsequent garnishments to the same garnishee.

Nancy's response:

Mr. Olson's suggested amendment to the first line of the post-judgment schedule largely tracks Mr. Stormont's except that Mr. Stormont adds the other rules to the line (Rules 64, 64A, 64B, 64C, 64D, and 64E). So it appears that their suggestions both have merit.

Rich DeLoney

Great effort. However, the danger I see in passage is that the courts may develop the "mindset" that $350 is "adequate compensation" for a default judgment and that $75 is adequate for a garnishment. Those in the trenches have spoken – the proposed revision, while a step in the right direction, falls short for most lawyers.

With that said, I am in favor of passage so long as the option to file motions remains viable and that the amounts granted pursuant to such motions are not unduly or unfairly limited by the "mindset." that the fees in the proposed rule establish reasonable boundaries or even reasonable parameters for the average collection case.

Nancy's response:

This comment appears to be somewhat in support of the amendments but highlights, I think, the need for education to the bench and the judges about the amendments.

Josh D.

The proposed amendments make sense. The increase to $350 more accurately reflects the minimum attorney fee amount expended in obtaining a default judgment. Also, I appreciate that the proposed rule will continue to provide flexibility so that when attorney fees exceed the scheduled amounts, a party can file an affidavit requesting the appropriate amount. Providing a scale for post-judgment attorney fees also makes sense. I suggest eliminating "at a hearing" in both proposed rule 73f(1) and 73f(2).

Nancy's response:

This comment is supportive but like several comments above, also suggests eliminating the requirement of attending a hearing for the ability to recover the $750 contested amount.

Derek B.

There is definitely a need for an amendment, however the $350 is still inadequate, primarily for the reasons stated by Nick Babilis and others. The number of documents required and the content of said documents seem to be ever-changing and what works for one court doesn't necessarily work for another court, requiring additional work etc. Something closer to the $550.00 range seems more reasonable, otherwise our office will look to file Affidavits requesting fees that represents the work done.

Nancy's response:

This comment is supportive but like several comments above, also suggests that the minimum uncontested amount should be raised to $550.

Rule 73. Attorney fees.

(a) Time in which to claim. Attorney fees must be claimed by filing a motion for attorney fees no later than ~~14~~ 28 days after the judgment is entered, except as provided ~~unless the party claims attorney fees in accordance with the schedule~~ in paragraph (f) of this Rule, or in accordance with Utah Code § ~~Section~~ 75-3-718, and no objection to the fee has been made.

(b) Content of motion. The motion must:

(b)(1) specify the judgment and the statute, rule, contract, or other basis entitling the party to the award;

(b)(2) disclose, if the court orders, the terms of any agreement about fees for the services for which the claim is made;

(b)(3) specify factors showing the reasonableness of the fees, if applicable;

(b)(4) specify the amount of attorney fees claimed and any amount previously awarded; and

(b)(5) disclose if the attorney fees are for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

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

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

(e) Fees claimed in complaint. If a party claims attorney fees under paragraph (f), the complaint must state the basis for attorney fees~~, state the amount of attorney fees allowed by the schedule~~, cite the law or attach a copy of the contract authorizing the award, and~~, if the attorney fees are for services rendered to an assignee or a debt collector,~~ state~~a statement~~ that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

(f) ~~Schedule of f~~Fees. Attorney fees awarded under ~~the schedule~~this Rule may be augmented ~~only for considerable additional efforts in collecting or defending the judgment and only after further order of the court~~upon submission of a motion and supporting affidavit meeting the requirements of paragraphs (b) and (c) of this Rule within a reasonable time after the fees were incurred, except as provided in paragraphs (f)(1), (f)(2) and (f)(3) of this Rule, and only where the augmented fees sought exceed those already awarded.

~~Amount of Damages, Exclusive of Costs, Attorney Fees and Post-Judgment Interest, Between~~	~~and:~~	~~Attorney Fees Allowed~~

Comment [NS1]: This was a change suggested by Paul Burke in response to the Rule 58A issue.

~~0.00~~	~~1,500.00~~	~~250.00~~
~~1,500.01~~	~~2,000.00~~	~~325.00~~
~~2,000.01~~	~~2,500.00~~	~~400.00~~
~~2500.01~~	~~3,000.00~~	~~475.00~~
~~3000.01~~	~~3,500.00~~	~~550.00~~
~~3500.01~~	~~4,000.00~~	~~625.00~~
~~4,000.01~~	~~4,500.00~~	~~700.00~~
~~4,500.01~~	~~or more~~	~~775.00~~

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

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

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

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

(f)(3)(B) files a motion pursuant to Rules 64(c)(2) or 58C or pursuant to Utah Code § 35A-4-314,

a party may request as part of its application for the writ or motion that its judgment be augmented according the following schedule, and the clerk or the court shall allow such augmented attorney fees request without a supporting affidavit if it approves the writ or motion:

Action	Attorney Fees Allowed
Application for any writ under Rules 64, 64A, 64B, 64C, 64D, or 64E, including 1st application for a writ under Rule 64D.~~Application for any writ under Rule 64, including 1st application for a writ under Rule 64D~~	$75.00
Any subsequent application for a writ under Rule 64D to the same garnishee	$25.00
Any motion filed with the court under Rule 64(c)(2), Utah Code ~~Ann.~~ § 35A-4-314, or Rule 58C	$75.00

Action	Attorney Fees Allowed
Application for any writ under Rules 64, 64A, 64B, 64C, 64D, or 64E, including 1st application for a writ under Rule 64D.~~Application for any writ under Rule 64, including 1st application for a writ under Rule 64D~~	$75.00
Any subsequent motion under Rule 64(c)(2), Utah Code § ~~Ann~~ 35A-4-314, or Rule 58C filed within 6 months of the previous motion	$25.00

(f)(4) **Fees in excess of the schedule.** If a party seeks attorney fees in excess of the amounts set forth in paragraphs (f)(1), (f)(2), or (f)(3) of this Rule, the party shall comply with paragraphs (a) through (c) of this Rule.

(f)(5) **Objections.** Nothing in this paragraph shall be deemed to eliminate any right a party may have to object to any claimed attorney fees.

Advisory Committee Notes.

To substitute the current Advisory Committee Notes:

2018 Advisory Committee Notes

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

Rule 73. Attorney fees.

(a) Time in which to claim. Attorney fees must be claimed by filing a motion for attorney fees no later than 28 days after the judgment is entered, except as provided in paragraph (f) of this Rule, or in accordance with Utah Code § 75-3-718, and no objection to the fee has been made.

(b) Content of motion. The motion must:

(b)(1) specify the judgment and the statute, rule, contract, or other basis entitling the party to the award;

(b)(2) disclose, if the court orders, the terms of any agreement about fees for the services for which the claim is made;

(b)(3) specify factors showing the reasonableness of the fees, if applicable;

(b)(4) specify the amount of attorney fees claimed and any amount previously awarded; and

(b)(5) disclose if the attorney fees are for services rendered to an assignee or a debt collector, the terms of any agreement for sharing the fee and a statement that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

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

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

(e) Fees claimed in complaint. If a party claims attorney fees under paragraph (f), the complaint must state the basis for attorney fees, cite the law or attach a copy of the contract authorizing the award, and state that the attorney will not share the fee in violation of Rule of Professional Conduct 5.4.

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

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

(f)(2) **Fees upon entry of judgment after contested proceeding.** When a party seeks a judgment, the responding party contests the judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has established its right to attorney fees, the request for

judgment may include a request for attorney fees, and the clerk or the court shall allow any amount requested up to $750 for such attorney fees without a supporting affidavit.

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

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

(f)(3)(B) files a motion pursuant to Rules 64(c)(2) or 58C or pursuant to Utah Code § 35A-4-314,

a party may request as part of its application for the writ or motion that its judgment be augmented according the following schedule, and the clerk or the court shall allow such augmented attorney fees request without a supporting affidavit if it approves the writ or motion:

Action	Attorney Fees Allowed
Application for any writ under Rules 64, 64A, 64B, 64C, 64D, or 64E, including 1st application for a writ under Rule 64D.	$75.00
Any subsequent application for a writ under Rule 64D to the same garnishee	$25.00
Any motion filed with the court under Rule 64(c)(2), Utah Code § 35A-4-314, or Rule 58C	$75.00
Any subsequent motion under Rule 64(c)(2), Utah Code § 35A-4-314, or Rule 58C filed within 6 months of the previous motion	$25.00

(f)(4) **Fees in excess of the schedule.** If a party seeks attorney fees in excess of the amounts set forth in paragraphs (f)(1), (f)(2), or (f)(3) of this Rule, the party shall comply with paragraphs (a) through (c) of this Rule.

(f)(5) **Objections.** Nothing in this paragraph shall be deemed to eliminate any right a party may have to object to any claimed attorney fees.

Advisory Committee Notes.

To substitute the current Advisory Committee Notes:

2018 Advisory Committee Notes

An overwhelming number of cases filed in the courts, especially debt collection cases, result in the entry of an uncontested judgment. The work required in most cases to obtain an uncontested judgment does not typically depend on the amount at issue. As such, the prior schedule of fees based on the amount of damages has been eliminated, and instead replaced by a single fee upon entry of an uncontested judgment that is intended to approximate the work required in the typical case. A second amount is provided where the case is contested and fees are allowed, again in an effort to estimate the typical cost of litigating such cases. Where additional work is required to collect on the judgment, the revised rule

provides a default amount for writs and certain motions and eliminates the “considerable additional efforts” limitation of the prior rule. It also recognizes that defendants often change jobs, and thus provides for such default amounts to vary depending on whether a new garnishee is required to collect on the outstanding amount of the judgment. Thus, the amended rule attempts to match the scheduled amounts to the work required of attorneys, rather than tying the scheduled amounts solely to the damages claimed. But the rule remains flexible so that when attorney fees exceed the scheduled amounts, a party remains free to file an affidavit requesting appropriate fees in accordance with the rule.

Tab 5

Administrative Office of the Courts

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

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: June 22, 2018
Re: Civil Rule 24, Appellate Rule 25A, Criminal Rule 12

A subcommittee consisting of representatives from the Appellate, Criminal, and Civil Procedures Committees has been studying how to better coordinate Civil Rule 24, Appellate Rule 25A, and Criminal Rule 12 and intervention when the constitutionality of a statute or ordinance is challenged.

The subcommittee agreed on four points:

1. Regarding the service of the notice: Do not require a specific subject line in the notice, or that attachments be PDF searchable, and keep the notice general like Rule 25A.

2. For Rule 24 and Rule 12: Add the content and timing provisions of paragraphs (d)(1)(A) and (B), which address notice to the Attorney General, to the notice requirements for the local governments. This could be done by cross reference.

3. Do not add specific address or contact information into the rule for the local governments.

4. Do not address notice to the legislative branch. The Attorney General has a duty by statute to notify the legislature when there is a constitutional challenge.

450 South State Street / P.O. Box 140241 / Salt Lake City, Utah 84114-0241 / Tel: 801-578-3808 / Fax: 801-578-3843 / email: nancyjs@utcourts.gov

Rule 24. Intervention.

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

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

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

(d) Constitutionality of statutes and ordinances.

(d)(1) If a party challenges the constitutionality of a statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality shall notify the Attorney General of such fact as described in paragraphs (d)(1)(A), (d)(1)(B), and (d)(1)(C). The court shall permit the state to be heard upon timely application.

(d)(1)(A) **Form and Content**. The notice shall (i) be in writing, (ii) be titled "Notice of Constitutional Challenge Under URCP 24(d)," (iii) concisely describe the nature of the challenge, and (iv) include, as an attachment, the pleading, motion, or other paper challenging the constitutionality of the statute.

(d)(1)(B) **Timing**. The party shall serve the notice on the Attorney General on or before the date the party files the paper challenging the constitutionality of the statute.

(d)(1)(C) **Service**. The party shall serve the notice on the Attorney General by email or, if circumstances prevent service by email, by mail at the addresses below, and file proof of service with the court. ~~For service by email, the "Subject" of the email be "Rule 24(d) Notice" and the notice and attachments shall be in a searchable pdf format.~~

Email: notices@agutah.gov

Mail:

Office of the Utah Attorney General

Attn: Utah Solicitor General

350 North State Street, Suite 230

P.O. Box 142320

Salt Lake City, Utah 84114-2320

(d)(2) If a party challenges the constitutionality of a county or municipal ordinance in an action in which the district attorney, county attorney, or municipal attorney has not appeared, the party raising the question of constitutionality shall notify the district attorney, county attorney, or municipal attorney of such fact. The procedures shall be as provided in paragraphs (d)(1)(A), (d)(1)(B), and (d)(1)(C) except that service will be on the individual county or municipality. The court shall permit the county or municipality to be heard upon timely application.

(d)(3) Failure of a party to provide notice as required by this rule is not a waiver of any constitutional challenge otherwise timely asserted. If a party does not serve a

notice as required under paragraphs (d)(1) or (d)(2), the court may postpone the hearing until the party serves the notice.

Rule 25A. Challenging the constitutionality of a statute or ordinance.

(a) **Notice to the Attorney General or the district, county, or municipal attorney; penalty for failure to give notice.**

(a)(1) When a party challenges the constitutionality of a statute in an appeal or petition for review in which the Attorney General has not appeared, every party must serve its principal brief and any subsequent brief on the Attorney General on or before the date the brief is filed.

(a)(2) When a party challenges the constitutionality of a county or municipal ordinance in an appeal or petition for review in which the responsible county or municipal attorney has not appeared, every party must serve its principal brief and any subsequent brief on the district, county, or municipal attorney on or before the date the brief is filed ,and file proof of service with the court.

(a)(3) If an appellee or cross-appellant is the first party to challenge the constitutionality of a statute or ordinance, the appellant must serve its principal brief on the Attorney General or the district, county, or municipal attorney no more than 7 days after receiving the appellee's or the cross-appellant's brief and must serve its reply brief on or before the date it is filed.

(a)(4) Every party must serve its brief on the Attorney General by email or, if circumstances prevent service by email, by mail at the addresses below, ~~or mail at the following address~~ and ~~must~~ file proof of service with the court. ~~For service by email, the "Subject" of the email must be "Rule 25(A)(a) Service" and the brief must be in a searchable pdf format.~~

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Email:

notices@agutah.gov

Mail:

Office of the Utah Attorney General

Attn: Utah Solicitor General

350 North State Street, Suite 230

~~320 Utah State Capitol~~

P.O. Box 142320

Salt Lake City, Utah 84114-2320

(a)(5) If a party does not serve a brief as required by this rule and supplemental briefing is ordered as a result of that failure, a court may order that party to pay the costs, expenses, and attorney fees of any other party resulting from that failure.

~~(j) **Intervention by the Legislature**. Intervention by the Legislature shall be in accordance with Utah Code Section 36-12-7. Notice to the Legislature of a claim that challenges the constitutionality of a state statute, the validity of legislation, or any action of the Legislature shall be in accordance with Utah Code Section 67-5-1.~~

(b) **Notice by the Attorney General, ~~legislative general counsel,~~ or district, county, or municipal attorney; amicus brief.**

(b)(1) Within 14 days after service of the brief that presents a constitutional challenge the Attorney General or other government attorney will notify the appellate court whether it intends to file an amicus brief. The Attorney General or other government attorney may seek up to an additional 7 days' extension of time from the court. Should the Attorney General or other government attorney decline to file an amicus brief, that entity should plainly state the reasons therefor.

(b)(2) If the Attorney General or other government attorney declines to file an amicus brief, the briefing schedule is not affected.

(b)(3) If the Attorney General or other government attorney intends to file an amicus brief, that brief will come due 30 days after the notice of intent is filed. Each governmental entity may file a motion to extend that time as provided under Rule 22. On a governmental entity filing a notice of intent, the briefing schedule established under Rule 13 is vacated, and the next brief of a party will come due 30 days after the amicus brief is filed.

(c) **Call for the views of the Attorney General or district, county, or municipal attorney.** Any time a party challenges the constitutionality of a statute or ordinance,

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the appellate court may call for the views of the Attorney General or of the district, county, or municipal attorney and set a schedule for filing an amicus brief and supplemental briefs by the parties, if any.

(d) **Participation in oral argument.** If the Attorney General, ~~legislative general counsel,~~ or district, county, or municipal attorney files an amicus brief, the Attorney General, legislative general counsel, or district, county, or municipal attorney will be permitted to participate at oral argument.

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Rule 12. Motions.

(a) Motions. An application to the court for an order shall be by motion, which, unless made during a trial or hearing, shall be in writing and in accordance with this rule. A motion shall state succinctly and with particularity the grounds upon which it is made and the relief sought. A motion need not be accompanied by a memorandum unless required by the court.

(b) Request to Submit for Decision. If neither party has advised the court of the filing nor requested a hearing, when the time for filing a response to a motion and the reply has passed, either party may file a request to submit the motion for decision. If a written Request to Submit is filed it shall be a separate pleading so captioned. The Request to Submit for Decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. The notification shall contain a certificate of mailing to all parties. If no party files a written Request to Submit, or the motion has not otherwise been brought to the attention of the court, the motion will not be considered submitted for decision.

(c) Time for filing specified motions. Any defense, objection or request, including request for rulings on the admissibility of evidence, which is capable of determination without the trial of the general issue may be raised prior to trial by written motion.

(c)(1) The following shall be raised at least 7 days prior to the trial:

(c)(1)(A) defenses and objections based on defects in the indictment or information ;

(c)(1)(B) motions to suppress evidence;

(c)(1)(C) requests for discovery where allowed;

(c)(1)(D) requests for severance of charges or defendants;

(c)(1)(E) motions to dismiss on the ground of double jeopardy ; or

(c)(1)(F) motions challenging jurisdiction, unless good cause is shown why the issue could not have been raised at least 7 days prior to trial.

(c)(2) Motions for a reduction of criminal offense at sentencing pursuant to Utah Code Section 76-3-402(1) shall be in writing and filed at least 14 days prior to the date of sentencing unless the court sets the date for sentencing within ten days of the entry of conviction. Motions for a reduction of criminal offense pursuant to Utah Code Section 76-3-402(2) may be raised at any time after sentencing upon proper service of the motion on the appropriate prosecuting entity.

(d) Motions to Suppress. A motion to suppress evidence shall:

(d)(1) describe the evidence sought to be suppressed;

(d)(2) set forth the standing of the movant to make the application; and

(d)(3) specify sufficient legal and factual grounds for the motion to give the opposing party reasonable notice of the issues and to enable the court to determine what proceedings are appropriate to address them.

If an evidentiary hearing is requested, no written response to the motion by the non-moving party is required, unless the court orders otherwise. At the conclusion of the evidentiary hearing, the court may provide a reasonable time for all parties to respond to the issues of fact and law raised in the motion and at the hearing.

(e) A motion made before trial shall be determined before trial unless the court for good cause orders that the ruling be deferred for later determination. Where factual issues are involved in determining a motion, the court shall state its findings on the record.

(f) Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial or at the time set by the court shall constitute waiver thereof, but the court for cause shown may grant relief from such waiver.

(g) A verbatim record shall be made of all proceedings at the hearing on motions, including such findings of fact and conclusions of law as are made orally.

(h) If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that bail be

continued for a reasonable and specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect provisions of law relating to a statute of limitations.

(i) **Motions challenging the constitutionality of statutes and ordinances**.

(i)(1) If a party in a court of record challenges the constitutionality of a statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality shall notify the Attorney General of such fact as described in as described in paragraphs (i)(1)(A), (i)(1)(B), and (i)(1)(C). The court shall permit the state to be heard upon timely application.

(i)(1)(A) **Form and Content**. The notice shall (i) be in writing, (ii) be titled "Notice of Constitutional Challenge Under URCrP 12(i)," (iii) concisely describe the nature of the challenge, and (iv) include, as an attachment, the pleading, motion, or other paper challenging the constitutionality of the statute.

(i)(1)(B) **Timing**. The party shall serve the notice on the Attorney General on or before the date the party files the paper challenging the constitutionality of the statute.

(i)(1)(C) **Service**. The party shall serve the notice on the Attorney General by email or, if circumstances prevent service by email, by mail at the addresses below, and file proof of service with the court.

Email: notices@agutah.gov

Mail:

Office of the Utah Attorney General

Attn: Utah Solicitor General

350 North State Street, Suite 230

P.O. Box 142320

Salt Lake City, Utah 84114-2320

(i)(2) If a party challenges the constitutionality of a county or municipal ordinance in an action in which the district attorney, county attorney, or municipal attorney has

not appeared, the party raising the question of constitutionality shall notify the district attorney, county attorney, or municipal attorney of such fact. The procedures shall be as provided in paragraphs (i)(1)(A), (i)(1)(B), and (i)(1)(C) except that service will be on the individual county or municipality. The court shall permit the county or municipality to be heard upon timely application.

(i)(3) Failure of a party to provide notice as required by this rule is not a waiver of any constitutional challenge otherwise timely asserted. If a party does not serve a notice as required under paragraphs (d)(1) or (d)(2), the court may postpone the hearing until the party serves the notice.

Tab 6

Administrative Office of the Courts

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

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: May 18, 2018
Re: Rule 26 issues

Below are several Rule 26 issues that have been raised recently. A subcommittee should study these out over the summer and propose amendments to the rule.

Rule 26 has an apparent hole in it for pretrial disclosures. The required objection to the pretrial disclosures Here is some proposed language: (a)(5)Pretrial disclosures. (a)(5)(A) A party shall, without waiting for a discovery request, serve on the other parties: (a)(5)(A)(i) the name and, if not previously provided, the address and telephone number of each witness, unless solely for impeachment, separately identifying witnesses the party will call and witnesses the party may call; (a)(5)(A)(ii) the name of witnesses whose testimony is expected to be presented by transcript of a deposition and a copy of the transcript with the proposed testimony designated; and (a)(5)(A)(iii) a copy of each exhibit, including charts, summaries and demonstrative exhibits, unless solely for impeachment, separately identifying those which the party will offer and those which the party may offer. (a)(5)(B) Disclosure required by paragraph (a)(5) shall be served on the other parties at least 28 days before trial. At least 14 days before trial, a party shall serve and file counter designations of deposition testimony, objections and grounds for the objections to the use of a deposition, to witnesses, and to the admissibility of exhibits. Other than objections under Rules 402 and 403 of the Utah Rules of Evidence, objections not listed are waived unless excused by the court for good cause.	26	Judge Holmberg
1. URCP 26(a)(2) - There seems to be some confusion about how URCP 26(a)(2)(B) operates in cases with multiple defendants, specifically whether each defendant has to serve its initial disclosures within 42 days of the first defendant's answer or within 42 days of its first answer. This can be problematic when 1 defendant	26	Lauren DiFrancesco

answers and the other moves to dismiss - does the moving defendant have to serve its initial disclosures before motion to dismiss is ruled on because (1) the first answer has been filed (by the other defendant) and (2) this defendant appeared when the motion to dismiss was filed? I propose one of the following two options to clarify (with a preference for the first): **Option A** (a)(2) Timing of initial disclosures. The disclosures required by paragraph (a)(1) shall be served on the other parties: (a)(2)(A) by the plaintiff within 14 days after filing of the first answer to the complaint; and (a)(2)(B) by the defendant within 42 days after filing of ~~the~~ its first answer to the complaint or within 28 days after that defendant's appearance, whichever is later. **Option B** (a)(2) Timing of initial disclosures. The disclosures required by paragraph (a)(1) shall be served on the other parties: (a)(2)(A) by the plaintiff within 14 days after filing of the first answer to the complaint; and (a)(2)(B) by the defendant within 42 days after filing of ~~the~~ that defendant's first answer to the complaint or within 28 days after that defendant's appearance, whichever is later 2. URCP 26(a)(1)(B) - I understand there have been instances where parties are producing documents in unreasonably burdensome formats (i.e., very large PDFs) which are not how they are kept in the ordinary course of business -- as is required when documents are produced pursuant to URCP 34(c). I think this could be solved with an advisory committee note to say that any documents produced pursuant to this rule should be produced in accordance with Rule 34(c).		
I have a case where I represent the defendant and I have hired an expert on causation, an issue for which the plaintiff bears the burden of proof. I anticipated that my expert would respond to the plaintiff's disclosed causation expert's opinion. Lo and behold, plaintiff did not disclose any causation expert. I looked at the timing of disclosure rule on disclosures for experts offered by the party without the burden of proof—my situation here. I cannot find in that rule any timing for an expert offered by a party who does not bear the burden of proof on the issue—here, causation—when the party with the burden of proof has disclosed no expert on that issue. Any guidance on what my disclosure timing obligations might be? Tuesday is my deadline for election if the plaintiff had disclosed an expert but there is no expert to make an election on. My expert's opinions that causation does not exist are not finalized because we anticipated responding to what is now a non-existent expert.	26	David W. Scofield
Today in our Forms Committee meeting the Committee struggled a bit with the initial disclosures form. Rule 26(a)(1)(B) states that the party must initially disclose copies of "documents, data compilations, electronically stored information, and tangible things." Randy Dryer stated that in his experience electronically stored	26	Brent Johnson/ Forms Committee

information is not shared at this stage. And others stated that it seems unreasonable to serve copies of tangible things. The Committee suggested that maybe the rule should not require service of those things but instead the person should describe what they have and arrangements can later be made on how those things can be accessed. The Committee ultimately approved the form with it only calling for a description of those things and they suggested that maybe your committee may want to review the rule and determine what they really want. I'm just passing this on for what it's worth. The Forms Committee does not expect any type of response unless your committee wants to tell us that, absolutely, copies of those things should be provided and we should change our form accordingly.		

Tab 7

Administrative Office of the Courts

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

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: May 18, 2018
Re: Motions to compel compliance with a decree, order, or judgment

The Forms Committee has proposed a change to the procedure for enforcing court orders. The proposal is basically to get rid of orders to show cause and do everything through regular motion practice. My understanding is that this process will be especially helpful when License Paralegal Practitioners begin practicing.

450 South State Street / P.O. Box 140241 / Salt Lake City, Utah 84114-0241 / Tel: 801-578-3808 / Fax: 801-578-3843 / email: nancyjs@utcourts.gov

Rule _____ Motions to compel compliance with a decree, order, or judgment.

Intent:

Applicability:

This rule shall apply to courts of record.

Statement of the Rule:

(1) Motion. A party who seeks to enforce an order, a decree, or a judgment of a court against an opposing party shall proceed by motion under rule 7 of the Utah Rules of Civil Procedure or by motion under rule 101 of the Utah Rules of Civil Procedure if the motion will be heard by a commissioner.

(2) Affidavit. The motion must be accompanied by at least one supporting affidavit. Each supporting affidavit must be based on personal knowledge and must set forth admissible facts and not mere conclusions. At least one supporting affidavit must state the title and date of entry of the order, decree, or judgment the moving party seeks to enforce.

(3) Contents of motion. The motion must state whether the moving party is requesting that the opposing party be held in contempt and, if such a request is made, recite that the sanctions for contempt may include, but are not limited to, a fine of $1000 or less, a jail commitment of 30 days or less, or a jail commitment until the opposing party performs an act required by the court.

(4) Service. If the party is seeking sanctions, the moving party must serve the motion and all supporting affidavits in the manner prescribed for service of a summons and complaint, unless the moving party shows good cause for service to be made by mailing or delivery to the opposing party's counsel of record and the court so orders.

(5) Expedited response. The party filing the motion may request an expedited schedule for responding to the motion and for holding a hearing. The court shall grant the request if it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the process is not expedited.

(6) Hearing on the motion. If a hearing is requested, the court shall conduct a scheduling hearing to determine

(6)(A) whether an opposing party contests the allegations made by the moving party,

(6)(B) whether an evidentiary hearing is necessary,

(6)(C) the specific issues to be resolved through an evidentiary hearing, and

(6)(D) the estimated length of any such evidentiary hearing. If the opposing party does not contest the allegations made by the moving party, the court may proceed at the first appearance as the circumstances require.

(7) Evidentiary Hearing. At the evidentiary hearing on the motion, the moving party shall bear the burden of proof on all allegations that are made in support of the order.

(8) Limitations. A motion under this rule may not be used to obtain an original order or judgment. A motion under this rule may not be used to obtain a temporary restraining order or to establish temporary orders in a divorce case.