Agenda

Advisory Committee on Rules of Civil Procedure

March 27, 2019

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 and approval of minutes.	Tab 1	Rod Andreason, Chair Pro Tem
Probate Rules: New URCP26.4 (CJA 6-506, CJA 4-1001, Form Mediation Order)	Tab 2	Judge Laura Scott, Nancy Sylvester, Allison Barger, David Parkinson, Kathie Brown Roberts
Rule 73. Review of comments.	Tab 3	Nancy Sylvester
Licensed Paralegal Practitioners and the Civil Rules: Rules 4, 5, 10, 11, 26 (reserved for subcommittee), 53, 56, 58B (coordinate with other amendments), 65A, 73, 74, 75, and 76. Look at other rules where "counsel" appears and determine if there is a need for change.	Tab 4	Nancy Sylvester
Rule 26. General provisions governing disclosure and discovery (multiple requests for rule amendments): Continue prior discussion at line 119.	Tab 5	Rod Andreason (subcommittee chair), Tim Pack, Trystan Smith, Leslie Slaugh
New Rule 7A. Motion for order to show cause.	Tab 6	Lauren DiFrancesco (subcommittee chair), Jim Hunnicutt, Judge Holmberg, Susan Vogel
Other business: Committee notes schedule; rule amendment schedule through May.	Tab 7	Rod Andreason, Nancy Sylvester

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

2019 Meeting Schedule:

April 24, 2019

May 22, 2019

June 26, 2019

September 25, 2019

October 16, 2019

November 20, 2019

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Meeting Minutes – February 27, 2019

Committee members & staff	Present	Excused	Appeared by Phone
Jonathan Hafen	X		
Rod N. Andreason	X		
Judge James T. Blanch		X	
Lincoln Davies		X	
Lauren DiFrancesco	X		
Dawn Hautamaki	X		
Judge Kent Holmberg		X	
James Hunnicutt	X		
Larissa Lee	X		
Trevor Lee	X		
Judge Amber M. Mettler	X		
Timothy Pack	X		
Bryan Pattison			X
Michael Petrogeorge		X	
Judge Laura Scott	X		
Leslie W. Slaugh	X		
Trystan B. Smith		X	
Heather M. Sneddon	X		
Paul Stancil	X		
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Katy Strand, Recording Secretary	X		
Nancy Sylvester, Staff	X		

(1) WELCOME AND APPROVAL OF MINUTES.

Jonathan Hafen welcomed the committee and reported on the meeting with the Court to discuss the advisory committee note project. The Court asked that the committee come back in a few weeks with additional note amendments. The goal will be to cut down the notes to only relevant recent context. The website with the rules will also have a link to the older rules and provide a historical

perspective. There will also be a tutorial video regarding the rules for new lawyers and unrepresented parties. Nancy Sylvester reported they would also like the website to include a discussion of what the rule of the committee notes should be, namely that they are not law. Mr. Hafen proposed that the committee notes be discussed in the June meeting. Judge Andrew Stone questioned if there was any discussion of a rule prohibiting citing to committee notes, Mr. Hafen reported that they did not do so at this time.

Mr. Hafen asked for approval of the minutes. James Hunnicutt moved to approve the corrected minutes. Paul Stancil seconded. The motion passed unanimously.

(2) FOLLOW UP ON RULE 24: REPORT FROM THE ATTORNEY GENERAL'S OFFICE ON "TIMELY."

Ms. Sylvester reported she had sent the Rule 24 to the Attorney General's office for input regarding "timely." They submitted proposed language. The remaining edits were to bring the rule in line with the federal rules.

Leslie Slaugh mentioned that line 38 says a "party must serve a notice on or before the date" but on line 72 it appears the court can ask the party to serve it later. He believed that line 38 should not include the word must, as there is no penalty for not doing so. He noted that the word "should" is not often used in the rule, but it would apply here. Susan Vogel responded that in other places we use "shall." Judge Clay Stucki agreed that "should" is a better word, but is not bothered by the must, as the later portion of the rule is discussing the remedy. Heather Sneddon would prefer it remain must for the same reasons as Judge Stucki. Ms. Sylvester reported that "should" is often used, so if "should" is meant, it should be used. Mr. Hunnicutt reported that the conflict has always been in the rule. Mr. Hafen questioned if the change would send the message that the Court does not care as much as they used to. Larissa Lee noted that the rule requires the parties to send the notice to the correct email for all possible state agencies, except the attorney general. Ms. Sylvester responded that the email for the attorney general is a part of the rule. Mr. Slaugh proposed moving this portion to under (d)(2) for clarity. Mr. Slaugh moved to send the amendments, as shown below, out for comment. Judge Stucki seconded the motion. The motion passed unanimously.

Rule 24. Intervention.

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

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

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

(b) Permissive intervention.

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

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

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

(2) By a Government Officer or Agency. On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

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

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

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

(d) Constitutionality of Utah statutes and ordinances.

(d)(1) **Challenges to Utah statutes.** If a party challenges the constitutionality of a Utah statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality must notify the Attorney General of such fact as described in paragraphs (d)(1)(A), (d)(1)(B), and (d)(1)(C).

(d)(1)(A) **Form and Content**. The notice must (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 must 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 must 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

(d)(1)(D) **Attorney General's response to notice.**

(d)(1)(D)(i) Within 14 days after the deadline for the parties to file all papers in response to the constitutional challenge, the Attorney General must file a notice of intent to respond unless the Attorney General determines that a response is unnecessary. The Attorney General may seek up to an additional 7 days' extension of time to file a notice of intent to respond.

(d)(1)(D)(ii) If the Attorney General files a notice of intent to respond within the time permitted by this rule, the court will allow the Attorney General to file a response to the constitutional challenge and participate at oral argument when it is heard.

(d)(1)(D)(iii) Unless the parties stipulate to or the court grants additional time, the Attorney General's response to the constitutional challenge will be filed within 14 days after filing the notice of intent to respond.

(d)(1)(D)(iv) The Attorney General's right to respond to a constitutional challenge under Rule 25A of the Utah Rules of Appellate Procedure is unaffected by the Attorney General's decision not to respond under this rule.

(d)(2) **Challenges to county or municipal ordinances**. 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 must notify the district attorney, county attorney, or municipal attorney of such fact. The procedures for the party challenging the constitutionality of a county or municipal ordinance will be consistent with paragraphs (d)(1)(A), (d)(1)(B), and (d)(1)(C), except that service must be on the individual county or municipality. The procedures for the district attorney's, county attorney's, or municipal attorney's response will be consistent with paragraph (d)(1)(D). It is the party's responsibility to find and use the correct email address for the relevant district attorney, county attorney, or municipal attorney, or if circumstances prevent service by email, it is the party's responsibility to find and use the correct mailing address.

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

(3) RULE 4. STANDARDS FOR ELECTRONIC ACCEPTANCE OF SERVICE.

Justin Toth reported that the changes his subcommittee proposed to Rule 4 are under paragraph (d)(3), acceptance of service. The subcommittee's proposal addresses the content of the acceptance and includes a separate duty to avoid deception. The acceptance must prove on its face that it complies with the e-signature statutes. Mr. Hafen proposed removing the reference to the federal e-sign act. Judge Stucki asked if the Utah act could be summarized in the rule. Mr. Toth said he believed this would eliminate some of the protections and did not recommend it. The subcommittee thought the burden should be shifted to the process server to comply. Ms. Vogel was concerned that unrepresented parties would not know what these acts covered. Judge Stone asked if we could add "if acceptance is obtained electronically." Ms. Vogel agreed this would solve the problem. Judge Stucki said he thought that the reference to Title 76 chapter 8 was too broad, and proposed adding sections 512 and 513 to avoid confusion.

Judge Stone noted that litigants should be able to see the contents of what they are accepting before being asked to accept since this process is supposed to be voluntary. He thought that the groups involved in electronic service may not be understanding the importance of the difference between service and acceptance of service. Lauren DiFrancesco argued that the rule doesn't actually require knowledge of the contents. Mr. Slaugh pointed out that the rule requires that you accept the documents as service, not just that you accept the documents. Mr. Toth asked how the committee would reconcile the refusal to accept with the duty to avoid expenses. Judge Stone expressed concern that electronic service is being used to avoid asking the court to allow alternative service. Mr. Slaugh argued that it could be appropriate to provide notice that the other party may get costs by refusing to accept service. Judge Mettler proposed adding that the party must have received the summons and complaint prior to accepting service. Judge Stone added that these must be readable copies.

Ms. Sneddon moved to send the rule below out for comment. Judge Scott seconded. The motion passed unanimously.

Rule 4. Process.

(a) Signing of summons. The summons must be signed and issued by the plaintiff or the plaintiff's attorney. Separate summonses may be signed and issued.

(b) Time of service. Unless the summons and complaint are accepted, a copy of the summons and complaint in an action commenced under Rule 3(a)(1) must be served no later than 120 days

after the complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint are not timely served, the action against the unserved defendant may be dismissed without prejudice on motion of any party or on the court's own initiative.

(c) Contents of summons.

(c)(1) The summons must:

(c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(c)(1)(B) be directed to the defendant;

(c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number;

(c)(1)(D) state the time within which the defendant is required to answer the complaint in writing;

(c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default will be entered against the defendant; and

(c)(1)(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons must also:

(c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(c)(3) If service is by publication, the summons must also briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

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

(d)(1) Personal service. The summons and complaint may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the summons and complaint, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

(d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by leaving them at the individual's dwelling house or usual place of abode with a person of suitable age and discretion who resides there, or by delivering them to an agent authorized by appointment or by law to receive process;

(d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to the minor and also to the minor's father, mother, or guardian or, if none can be found within the state, then to any person having the care and control of the minor, or with whom the minor resides, or by whom the minor is employed;

(d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, by delivering a copy of the summons and complaint to the individual and to the guardian or conservator of the individual if one has been appointed; the individual's legal representative if one has been appointed, and, in the absence of a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or control of the individual;

(d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and complaint to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual;

(d)(1)(E) Upon a corporation not otherwise provided for in this rule, a limited liability company, a partnership, or an unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or other agent authorized by appointment or law to receive process and by also mailing a copy of the summons and complaint to the defendant, if the agent is one authorized by statute to receive process and the statute so requires. If no officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, a place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of the place of business;

(d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the recorder;

(d)(1)(G) Upon a county, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the county clerk;

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the superintendent or administrator of the board;

(d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the president or secretary of its board;

(d)(1)(J) Upon the state of Utah or its department or agency by delivering a copy of the summons and complaint to the attorney general and any other person or agency required by statute to be served; and

(d)(1)(K) Upon a public board, commission or body by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to any member of its governing board, or to its executive employee or secretary.

(d)(2) Service by mail or commercial courier service.

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(d)(2)(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(d)(3) Acceptance of service.

(d)(3)(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary expenses of serving the summons and complaint.

(d)(3)(B) Acceptance of service by party. Unless the person to be served is a minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, a party may accept service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint.

(d)(3)(B)(i) Content of proof of electronic acceptance. If acceptance is obtained electronically, the proof of acceptance must demonstrate on its face that the acceptance of service complies with the Utah Electronic Transactions Act. The proof of acceptance must demonstrate that the party received readable copies of the summons and complaint prior to signing the acceptance of service.

(d)(3)(B)(ii) Duty to avoid deception. A request to accept service must comply with Utah Code Sections 76-8-512 and 76-8-513 and must not state or imply that the request to accept service originates with a judicial officer or court.

(d)(3)(C) Acceptance of service by attorney for party. An attorney may accept service of a summons and complaint on behalf of the attorney's client by signing a document that acknowledges receipt of the summons and complaint.

(d)(3)(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

(d)(4) Service in a foreign country. Service in a foreign country must be made as follows:

(d)(4)(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(d)(4)(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(d)(4)(B)(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(d)(4)(B)(ii) as directed by the foreign authority in response to a letter of request issued by the court; or

(d)(4)(B)(iii) unless prohibited by the law of the foreign country, by delivering a copy of the summons and complaint to the individual personally or by any form of mail requiring a signed receipt, addressed and dispatched by the clerk of the court to the party to be served; or

(d)(4)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(5) Other service.

(d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

(d)(5)(B) If the motion is granted, the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action. The court's order must specify the content of the process to be served and the event upon which service is complete. Unless service is by publication, a copy of the court's order must be served with the process specified by the court.

(d)(5)(C) If the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.

(e) Proof of service.

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

(e)(2) Proof of service in a foreign country must be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court.

(e)(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(4) RULE 26. GENERAL PROVISIONS GOVERNING DISCLOSURE AND DISCOVERY (MULTIPLE REQUESTS FOR RULE AMENDMENTS): CONTINUE PRIOR DISCUSSION AT PARAGRAPH (a)(4)(A)

Rod Andreason noted that the committee was discussing what Rule 26 should say about expert disclosures. The committee was attempting to make this rule narrow enough to allow for the disclosures to be specific to the case, but also broad enough that all items reasonably relied upon were included. Paul Stancil argued it was odd to ask for what was going to be relied upon. Ms. DiFrancesco pointed out that the expert would not yet have relied upon anything.

Judge Scott asked if the rule was intending to limit these disclosures to only those things used for the specific case. Judge Stone agreed that this was the purpose. He said he wondered about the proprietary tools that may not be specific to the case. In such situations the other party should be able to see them, and they must be disclosed since they are not public documents. Judge Stucki questioned where you draw the line; there could be unfair surprise by relying upon an article that is not specific to the case, but might be outside a normal expert's knowledge. Judge Stone argued that most science relies upon knowledge any expert should have. If the information is not available in the literature, it must be disclosed. The Utah standard for experts is a generous standard, and so the disclosures are needed. Mr. Slaugh argued that the report must disclose further documents. Judge Stucki responded that the rule cannot avoid all arguments and judgment calls.

Ms. DiFrancesco proposed moving lines 21 and 22 to paragraph (a)(6) to clarify that the all experts are subject to Rule 34.

Mr. Hafen questioned the language on non-retained experts, which appears to narrow the discovery on this topic. Mr. Andreason answered that the discovery from non-retained experts should be limited to a deposition. Judge Mettler questioned if the fact witness who was also a non-retained

expert could be deposed twice. Mr. Andreason answered that the rule was intended to allow an expert deposition. Mr. Sneddon proposed adding that no further expert discovery was allowed, aside from the 4 hour deposition.

Mr. Hunnicutt questioned if this would require any subpoenas of files to occur before fact discovery closed. Mr. Andreason agreed that such a subpoena would be fact discovery. Ms. DiFrancesco asked what additional discovery was possible. Mr. Andreason answered that the rule addressed any discovery beyond the deposition. Mr. Pack noted that the rule does not allow for the subpoena of a retained expert either. Mr. Hunnicutt pointed out that the added line just makes non-retained experts the same as retained experts. Ms. DiFrancesco was troubled by the fact that the parties could not get the file of a non-retained expert, as that may not be practical to get in fact discovery. Mr. Pack proposed adding a reference to Rule 45 regarding subpoenas. Ms. DiFrancesco and Mr. Toth proposed that retained experts files should also be able to be subpoenaed. Mr. Toth believed that the subpoena for the deposition already allowed the requirement for the file to be produced. Trevor Lee questioned if the language limiting the additional discovery was necessary. Mr. Toth proposed adding that the expert could be subpoenaed under Rule 45 to a deposition, as well as for documents. Mr. Pack proposed adding this to retained experts as well. Ms. Sneddon questioned if the language needed to be more specific to allow for document subpoenas. Mr. Andreason proposed eliminating the no further discovery language so that rule 45 is not excluded. Ms. Sneddon asked if this meant that the same line should be removed from the section on retained experts. Others responded that this restriction was for timing, and should remain.

Ms. Slaugh questioned if the deadlines on lines 71 and 81 should be changed from receipt to service, as most deadlines are not based upon receipt.

Mr. Andreason reported that the remaining changes related to changes to deadlines. Mr. Hunnicutt questioned why some of the deadlines were not extended. Mr. Pack stated that there were some decisions for which one should not need that time to decide. Mr. Hunnicutt believed that the multiple timelines were problematic for solo practitioners as they may not have help keeping track of all deadlines. Mr. Slaugh proposed making the rules all 14 days instead of 7.

Mr. Toth asked if there was no election for a report or deposition, what the deadline would be for an expert's designation. In particular, this may be difficult if the expert was on a different topic, not a rebuttal expert. Mr. Slaugh argued that the deadline would remain 14 days after the election deadline. Mr. Toth agreed. Mr. Pack stated this was 28 days after fact discovery ended. The remaining committee members thought that this issue was clear. No amendments were made.

Ms. DiFrancesco asked, if the party bearing the burden of proof wanted to have a rebuttal expert, but did not disclose an original expert, would that rebuttal expert be barred? Mr. Toth believed that the rule was intended to avoid this. Judge Stone had ruled on similar case that the expert cannot be called in the case in chief, but only on rebuttal. Mr. Hafen pointed out that not all judges rule that way. Mr. Slaugh stated that the judges should make this determination, as some situations would require different rulings. Mr. Hafen questioned if this issue was already addressed. Mr. Pack believed that there should be language clarifying this. Mr. Slaugh believed a rebuttal expert could

clearly only be for rebuttal, however others believed this was not so clear. Mr. Slaugh then proposed that under rebuttal experts there be added language stating that an expert disclosed only as a rebuttal expert cannot be used in the case in chief.

The remainder of this rule was tabled.

(5) RULE 58B AND RULE OF JUVENILE PROCEDURE 58.

Mr. Hafen reported upon questions raised by the justices about the need to clarify the language of Rule 58B. Based upon the questions the language was changed as below:

Rule 58B. Satisfaction of judgment.

(a) Satisfaction by acknowledgment.

(a)(1) Within 28 days after full satisfaction of the judgment, the judgment creditor or the judgment creditor's attorney must file an acknowledgment of satisfaction in the court in which the judgment was entered. If the judgment creditor is not the original judgment creditor, the judgment creditor or judgment creditor's attorney must also file proof of ownership. If the satisfaction is for part of the judgment or for fewer than all of the judgment debtors, it must state the amount paid or name the debtors who are released.

(a)(2) Pursuant to Rule 58 of the Utah Rules of Juvenile Procedure, the juvenile court will file an abstract of judgment in the district court upon entering an unpaid restitution order as a civil judgment. If the judgment falls under Rule 58 of the Utah Rules of Juvenile Procedure, the judgment creditor must file an acknowledgment of satisfaction in both the district court and the juvenile court within 28 days after full satisfaction of the judgment.

(b) Satisfaction by order of court. The court in which the judgment was first entered may, upon motion and satisfactory proof, enter an order declaring the judgment satisfied.

(c) Effect of satisfaction. Satisfaction of a judgment, whether by acknowledgement or order, discharges the judgment, and the judgment ceases to be a lien as to the debtors named and to the extent of the amount paid. A writ of execution or a writ of garnishment issued after partial satisfaction must include the partial satisfaction and must direct the officer to collect only the balance of the judgment, or to collect only from the judgment debtors remaining liable.

(d) Filing certificate of satisfaction in other counties. After satisfaction of a judgment, whether by acknowledgement or order, has been entered in the court in which the judgment was

first entered, a certificate by the clerk showing the satisfaction may be filed with the clerk of the district court in any other county where the judgment has been entered.

The committee discussed the terms "abstract of judgment" and "abstracted." Judge Stone reported that parties used to have to file an abstract in other courts, making an abstract of judgment a term of art. It also mattered for credit reporting, and therefor the word "abstract" is an important term that should be used. Mr. Slaugh reported that abstract is used as a verb in other rules, and should be acceptable here. Mr. Hunnicutt questioned if Juvenile Rule 58 should include the language "in all respects." He proposed that this question be sent to the Court with the rule. Judge Mettler and Ms. Sylvester said they believed that the abstract of judgment would be sent almost immediately to the district court, so the question may not matter. Ms. DiFrancesco moved to adopt the rule as proposed. Judge Stone seconded. The motion passed unanimously.

(6) ADJOURNMENT.

The remaining matters were deferred and the committee adjourned at 5:49 pm. The next meeting will be held March 27, 2019 at 4:00 pm.

Tab 2

Administrative Office of the Courts

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

Hon. Mary T. Noonan
Interim State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: March 22, 2019
Re: Probate Rules

The Probate Subcommittee[1] has been meeting for purposes of recommending changes to how contested probate cases are litigated. The subcommittee's recommendations include the following:

- Making Third District's probate calendar a 2-year assignment, rather than a 6 month rotation;
- Adopting new Rule 26.4 of the Utah Rules of Civil Procedure. Provisions governing disclosure and discovery in contested proceedings under Title 75 of the Utah Code;
- Adopting new Rule 6-506 of the Utah Code of Judicial Administration. Procedure for contested matters filed in the probate court (dealing with mediation of probate disputes in the Third District);
- Adopting new form Order Regarding Mediation and Preliminary Matters; and
- Adopting new Rule 4-1001. Informal trial of probate disputes.

One of the primary catalysts for the subcommittee's formation was exploring making the Third District probate mediation pilot project permanent. That has now been accomplished as of February. The package of rules and form order will support that effort.

The Civil Rules Committee is tasked with reviewing Rule 26.4. This package of recommendations will then go on to the Policy and Planning Committee for its review of the Code of Judicial Administration rules.

[1] The subcommittee consists of probate attorneys Allison Barger, Charles Bennett, David Parkinson, and Kathie Brown Roberts and Judge Scott and me.

Rule 26.4. Provisions governing disclosure and discovery in contested proceedings under Title 75 of the Utah Code.

(a) **Scope.** This rule applies to all contested actions arising under Title 75 of the Utah Code.

(b) **Definition.** A probate dispute is a contested action arising under Title 75 of the Utah Code.

(c) **Designation of parties, objections, initial disclosures, and discovery.**

(c)(1) **Designation of Parties**. For purposes of Rule 26, the plaintiff in probate proceedings is presumed to be the earliest petitioner in the matter, and the defendant is presumed to be any party filing an objection. Once a probate dispute arises, and based on the facts and circumstances of the case, the court may designate an interested person as plaintiff, defendant, or non-party for purposes of discovery. Only an interested person who has appeared through counsel or otherwise will be treated as a party for purposes of discovery.

(c)(2) **Objections**.

(c)(2)(A) Any oral objection must be made in open court.

(c)(2)(B) Any oral objection must be reduced to writing, must set forth the grounds for the objection and any supporting authority, and must be filed with the court and mailed to the parties named in the petition and any interested persons as provided in Utah Code § 75-1-201(24) within 7 days of the date of the hearing unless the written objection has been previously filed with the court.

(c)(2)(C) If the petitioner and objecting party agree to an extension of time to file the written objection, notice of the stipulated date must be filed with the court.

(c)(2)(D) In the event no written objection is timely filed, the court will act on the original petition upon the petitioner's filing of a request to submit pursuant to Rule 7 of the Utah Rules of Civil Procedure.

(c)(3) **Initial disclosures in guardianship and conservatorship matters.**

(c)(3)(A) In addition to the disclosures required by Rule 26(a), and unless included in the petition or redundant to the Rule 26(a) disclosures, the following documents, only as applicable to the type of the probate dispute, must be served by the party in possession or control of the documents within 14 days after a written objection has been filed. This paragraph supersedes Rule 26(a)(2).

(c)(3)(B)(i) any document purporting to nominate a guardian or conservator, including a will, trust, power of attorney, or advanced healthcare directive, copies of which must be served upon all interested persons; and

(c)(3)(B)(ii) a list of less restrictive alternatives to guardianship or conservatorship that the petitioner has explored and ways in which a guardianship or conservatorship of the respondent may be limited.

(c)(3)(C) The initial disclosure documents must be served on the parties named in the probate petition and the objection and anyone who has requested notice under Title 75 of the Utah Code:

(c)(3)(D) If there is a dispute regarding the validity of an original document, the proponent of the original document must make it available for inspection by the contesting party within 14 days of the date of referral to mediation unless the parties agree to a different date.

(c)(3)(E) The court may modify the content and timing of the disclosures required in this rule or in Rule 26(a) for any reason justifying departure from these rules. ~~The court may modify the content and timing of the disclosures if the court orders mediation or for any other reasons justifying departure from this rule.~~

~~(c)(3)(F) Upon motion or its own initiative the court may order that any of the information identified in Rule 26(a) and any other information or documents be disclosed.~~

(c)(4) **Initial disclosures in all other probate matters.**

(c)(4)(A) In addition to the disclosures required by Rule 26(a), and unless included in the petition or redundant to the Rule 26(a) disclosures, the following documents, only as applicable to the type of the probate dispute, must be served by the party in possession or control of the documents within 14 days after a written objection has been filed: any other document purporting to nominate a representative after death, including wills, trusts, and any amendments to those documents, copies of which must be served upon all interested persons. This paragraph supersedes Rule 26(a)(2).

(c)(4)(C) The initial disclosure documents must be served on the parties named in the probate petition and the objection and anyone who has requested notice under Title 75 of the Utah Code.

(c)(4)(D) If there is a dispute regarding the validity of an original document, the proponent of the original document must make it available for inspection by the contesting party within 14 days of the date of referral to mediation unless the parties agree to a different date.

(c)(4)(E) The court may modify the content and timing of the disclosures required in this rule or in Rule 26(a) for any reason justifying departure from these rules.~~The court may modify the content and timing of the disclosures if the court orders mediation or for any other reasons justifying departure from this rule.~~

~~(c)(4)(F) Upon motion or its own initiative the court may order that any of the information identified in Rule 26(a) and any other information or documents be disclosed.~~

(c)(5) **Discovery once a probate dispute arises**. Except as provided in this rule or as otherwise ordered by the court, once a probate dispute arises, discovery will proceed pursuant to the Rules of Civil Procedure, including the other provisions of Rule 26.

(d) **Pretrial disclosures, objections.** No later than 14 days prior to an evidentiary hearing or trial, the parties must serve the disclosures required by Rule 26(a)(5)(A).

Rule 6-506. Procedure for contested matters filed in the probate court.

Intent:

To establish procedures for contested matters filed in the probate court.

Applicability:

This rule applies to matters filed under Title 75, Utah Uniform Probate Code when an objection is made orally or in writing upon the record (a "probate dispute").

Statement of the Rule:

(1) **General Provisions.** When there is a probate dispute:

(1)(A) Rule 4-510.05 of the Utah Code of Judicial Administration and Rule 101 of the Utah Rules of Court-Annexed Alternative Dispute Resolution apply.

(1)(B) Upon the filing of a written objection with the court in accordance with Rule 26.4(c)(2) of the Utah Rules of Civil Procedure, all probate disputes will be automatically referred by the court to the Alternative Dispute Resolution (ADR) Program under Rule 4-510.05 of the Utah Code of Judicial Administration.

(1)(C) After an objection has been filed, the court will schedule the matter for a pre-mediation conference for purposes of the following:

(1)(C)(i) determining all interested persons who should receive notice of mediation,

(1)(C)(ii) determining whether any interested person should be excused from mediation,

(1)(C)(iii) determining the issues for mediation,

(1)(C)(iv) setting deadlines,

(1)(C)(v) modifying initial disclosures if necessary and addressing discovery,

(1)(C)(vi) determining how mediation costs will be paid; and

(1)(C)(vii) entering a mediation order.

(1)(D) The court will send notification of the pre-mediation conference to petitioner, respondent, and all interested persons identified in the petition at the hearing and any objection as of the date of the notification. The notification will include a statement that

(1)(D)(i) the interested persons have a right to be present and participate in the mediation, the interested persons have a right to consult with or hire their own counsel, and the interests of the interested persons cannot be negotiated unless the interested persons specifically waive that right in writing; and

(1)(D)(ii) unless excused by the court, an interested person who fails to participate after receiving notification of the mediation may be deemed to have waived their right to object to the resolution of the issues being mediated.

(2) **Procedure**

(2)(A) **Objections.** A party who files a timely written objection pursuant to Rule of Civil Procedure 26.4 is required to participate in court-ordered mediation unless the court upon motion waives mediation.

(2)(B) **Involvement of Interested Persons.**

(2)(B)(i) Any notice required under this rule must be given in accordance with Rule 5 of the Utah Rules of Civil Procedure.

(2)(B)(ii) Once mediation is scheduled, the petitioner must provide notice of the following to all interested persons:

(2)(B)(ii)(a)The time, date, and location of the scheduled mediation;

(2)(B)(ii)(b)The issues to be mediated as provided in the pre-mediation scheduling conference order;

(2)(B)(ii)(c) A statement that the interested persons have a right to be present and participate in the mediation, that the interested persons have a right to consult with or hire their own counsel, and that the interests of the interested persons cannot be negotiated unless the interested persons specifically waive that right in writing; and

(2)(B)(ii)(d) a statement that, unless excused by the court, an interested person who fails to participate after receiving notification of the mediation may be deemed to have waived their right to object to the resolution of the issues being mediated.

(2)(B)(iii) Additional issues may be resolved at mediation as agreed upon by the mediating parties and the mediator.

(2)(B)(iv) Once the mediation has taken place, the petitioner must notify all interested persons in writing of the mediation's outcome, including any proposed settlement of additional issues.

(2)(B)(iv)(a) An excused person has the right to object to the settlement of any additional issue under (2)(B)(iii) within 7 days of receiving written notice of the settlement.

(2)(B)(iv)(b) Any objection to the settlement of additional issues must be reduced to a writing, set forth the grounds for the objection and any supporting authority, and be filed with the court and mailed to the parties named in the petition and any interested persons as provided in Utah Code § 75-1-201(24).

(2)(B)(iv)(c) Upon the filing of an objection to the settlement of additional issues, the case will proceed pursuant to paragraphs (2)(C) through (2)(I).

(2)(C) **Deadline for mediation completion.**

(2)(C)(i) Mediation must be completed within 60 days from the date of referral.

(2)(C)(ii) If the parties agree to a different date, the parties must file notice of the new date with the court.

(2)(D) **Mediation Fees.**

(2)(D)(i) If a Personal Representative, Trustee, Guardian, or Conservator with liquid assets is a party, the estate or trust will pay the mediator's fees.

(2)(D)(ii) Otherwise, the disputing parties will share the cost of the mediation and may later be reimbursed from the estate or trust if the estate or trust has liquid assets.

(2)(D)(iii) A party may petition the court for a waiver of all or part of the mediation fees if the party cannot afford mediator fees or for other good cause.

(2)(D)(iv) If the court grants a waiver of mediation fees, the party must contact the ADR Director who will appoint a pro bono mediator.

(2)(E) **Initial disclosures.** Within 14 days after a written objection has been filed, the parties must comply with the initial disclosure requirements of Rule 26.4 of the Rules of Civil Procedure.

(2)(F) **Discovery once a probate dispute arises.** Except as provided in Rule 26.4 of the Rules of Civil Procedure or as otherwise ordered by the court, once a probate dispute arises, discovery will proceed pursuant to the Rules of Civil Procedure, including the other provisions of Rule 26.

(2)(G) **Completion of mediation.** Upon completion of mediation, the parties will notify the Court of the mediation's resolution pursuant to Rule 101 of the Utah Rules of Court-Annexed Alternative Dispute Resolution.

(2)(H) **Written settlement agreement.** If mediation results in a written settlement agreement, upon a motion from any party, the court may enter orders consistent with its terms. The filing of an objection under paragraph (2)(B)(iv)(a) does not preclude the court from entering orders consistent with the resolved issues.

(2)(I) **Remaining issues.** If issues remain to be resolved after the conclusion of mediation, the parties must request a pretrial conference with the assigned judge to confirm the deadlines for initial disclosures, fact discovery, expert disclosures, expert discovery, readiness for trial, and the availability of an informal trial under Rule 4-1001.

Rule 4-1001. Informal trial of probate disputes.

Intent:

To allow interested persons and the judge to agree to a trial of select probate disputes in an informal manner. Rule 26.4 of the Utah Rules of Civil Procedure defines “interested persons” and “probate dispute.”

Applicability:

This rule applies to the district court.

Statement of the Rule:

(a) Upon waiver and stipulated motion of all interested persons and approval by the court, the court will conduct an informal trial of a probate dispute(s) during which the Utah Rules of Evidence will not apply. The waiver and motion must be made verbally on the record or in a signed writing. To qualify for an informal trial, the court must find that the interested parties have made a valid waiver of their right to a regular trial.

(b) If the court grants the motion, the informal trial will proceed as follows:

(b)(1) The party who bears the burden of proof on an issue speaks to the court under oath about the probate dispute, including his or her preferred resolution of the dispute. The party is not questioned by counsel or the other parties but may be questioned by the court.

(b)(2) That party may present any document or other evidence. The court will determine what weight to give any documents or other evidence. The court may order the record to be supplemented.

(b)(3) Counsel for that party may identify any other areas of inquiry, and the court may make the inquiry.

(b)(4) The process is repeated for the other interested parties.

(b)(5) If there is an expert, the expert’s report is entered into evidence as the court’s exhibit. The expert may be questioned by counsel, parties or the court upon request.

(b)(6) Each interested party is offered:

(b)(6)(i) the opportunity to respond to the statements, documents or other evidence of the other parties; and

(b)(6)(ii) the opportunity to make legal arguments.

(b)(7) The court will enter an order which has the same force and effect as if entered after a traditional trial. If the order is a final order, it may be appealed on any grounds that do not rely upon the Utah Rules of Evidence in accordance with Rules 4 and 5 of the Utah Rules of Appellate Procedure as applicable.

IN THE _____ JUDICIAL DISTRICT COURT OF _____ COUNTY STATE OF UTAH	
IN THE MATTER OF: ☐ **THE ESTATE OF** _____. ☐ **THE _____ TRUST.**	**ORDER REGARDING MEDIATION AND PRELIMINARY MATTERS** **Case number** _____ **Judge** _____

The Court hereby enters the following Order Regarding Mediation and Preliminary Matters to govern the referral of this matter to mediation.

Objection:

☐ _____ shall file a written objection with the Court and provide a copy to each of the other parties on or before _____.

Mediation:

1. A mediation packet has been provided or made available to each of the parties.
2. The following parties to this action are the "mediating parties:"

_____

_____

_____

The court has excused the following interested persons from participating in the mediation:

_____

_____

_____

3. The mediating parties shall agree on a mediator, conduct the mediation, and report the results of the mediation to the Court no later than _____.

4. The cost of the mediation shall be:

☐ Paid by the estate or trust, subject to allocation among the mediating parties as determined by the Court.

☐ Split equally between the mediating parties.

☐ Other:

Issues for Mediation

5. The issues to be resolved at mediation shall include the following:

_____

_____

6. Additional issues may be resolved at mediation as agreed upon by the mediating parties and the mediator.

7. An excused person has the right to object to the settlement of any additional issue within 7 days of receiving written notice of the settlement. Any objection to the the settlement of additional issues must be reduced to a writing, set forth the grounds for the objection and any supporting authority, and be filed with the court and mailed to the parties named in the petition and any interested persons as provided in Utah Code § 75-1-201(24).

Disclosures:

8. To the extent the following documents are in the possession of a mediating party, that mediating party is ordered to provide such documents to each mediating party and to each other interested person who requests the documents, on or before _____:

☐ copy of the most recent will of the decedent and any relevant prior wills or amendments to the will;

☐ inventory of the estate of the decedent (required by § 75-3-705 within 3 months of appointment of personal representative), in substantially the form attached, as of_____;

☐ accounting of the estate, disclosing estate assets, liabilities, receipts, and disbursements, including the amount of the personal representative's compensation, in substantially the form attached, from _____ to _____;

☐ copy of the most recent trust document and any relevant prior trust docouments or amendments to the trust;

☐ inventory of trust assets, in substantially the form attached, as of _____;

☐ report of the trustee (required by Utah Code Section 75-7-811(3)) disclosing trust assets, liabilities, receipts, and disbursements from _____ to _____, including the amount of the trustee's compensation, in substantially the form attached; and

☐ other documents:

_____.

Failure to Participate in Mediation

Unless excused by the court, an interested person who fails to participate after receiving notification of the mediation may be deemed to have waived their right to object to the resolution of the issues being mediated.

DATED this __ day of _____ 20__.

THIS ORDER IS HEREBY ENTERED BY THE COURT
And is Effective on the Date the Court Stamp
is Affixed to the First Page of This Order

Tab 3

URCP Rule 73

URCP073. Attorney Fees. Amend. In response to *McQuarrie v. McQuarrie*, 2017 UT App 209, and *Chaparro v. Torero*, 2018 UT App 181, clarifies that all requests for attorney fees are governed by Rule 73, no matter when they are raised.

https://www.utcourts.gov/utc/rules-comment/2018/12/20/rules-of-civil-procedure-comment-period-closes-february-3-2019/

Comments

Chad Rasmussen

This past week we have had some issues/concerns with the court in attempting to get post-judgment augmentation pursuant to subsection f(3). It seems that there is uncertainty as to what is required to be filed when "augmenting" under this subsection. When reading Rule 54(e) while also trying to apply f(3), it is unclear whether an actual "amended judgment" needs to be served and filed if an "augmentation" is sought. It appears that the aspect of f(3) that streamlines the process of augmenting a judgment for attorney's fees would be completely frustrated or virtually eliminated if parties are also required to submit and serve an augmented judgment. For example, if seeking an additional $25 augmentation, the time and resources spent to create, file, and serve an augmented judgment for that $25 would be virtually wasted.

As such, it seems that subsection f(3) (or alternatively Rule 54(e), but simply amending f(3) would be easier since Rule 73 is being amended herein) should expressly exclude any requirement of filing and serving an augmented judgment when seeking, and ultimately obtaining, augmentation of the judgment for attorney's fees under that subsection. I think the intent of subsection f(3) was to allow for requesting and simply receiving the requested augmentation only if the motion/application is granted by the court, and if the court does not grant it (regardless of the reason, and especially if the reason might be to not allow the fee augmentation), then the augmentation does not happen, but that per the plain reading of this subsection that the requested augmentation of the fees happens, despite not complying with subsections (a) through (c) (i.e., filing and serving a motion, etc.) immediately upon properly requesting the augmentation AND the granting of the motion/application. Additionally, it also seems the whole purpose of subsection f was to obviate the need to file a separate motion, and if a separate motion is obviated, it seems that filing (and serving) an amended judgment should also be obviated, but since it is unclear, it is appropriate to amend to make it clear.

Although the proposed amendment is of a different part of Rule 73, I think it prudent that subsection f(3) also be amended to address the issues/concerns set forth above.

Nancy's response:

Mr. Rasmussen makes a good point about "augmenting" versus "amending" judgments. This is something the committee has wrestled with before. I think he's right that this process was intended to be more simplified. The committee should discuss his suggestion and decide whether to reopen the rule for amendment.

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 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, judgment, 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) within a reasonable time after the fees were incurred, except as provided in paragraphs (f)(1), (f)(2) and (f)(3), and only where the augmented fees sought exceed those already awarded.

(f)(1) **Fees upon entry of uncontested judgment.** When a party seeks a judgment, the responding party does not contest entry of judgment by presenting at a hearing either evidence or argument, and the party seeking the judgment has complied with paragraph (e) of this rule, the request for judgment may include a request for attorney fees, and the clerk or the court shall 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,

the party may request as part of its application for a writ or its motion that the party's judgment be augmented according to the following schedule, and the clerk or the court shall 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, or 64E, and first application for a writ under Rule 64D to any particular garnishee;	$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), 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

New 2019 Committee Note

Rule 73 has been amended in response to *McQuarrie v. McQuarrie*, 2017 UT App 209, and *Chaparro v. Torero*, 2018 UT App 181, to clarify that it applies to all motions for attorney fees, not just post-judgment motions.

Tab 4

Supreme Court of Utah

450 South State Street
PO Box 140210
Salt Lake City, Utah 84114-0210

Appellate Clerk's Office
Telephone: (801) 578-3900
Email: supremecourt@utcourts.gov

Catherine J. Dupont
Appellate Court Administrator

Nicole I. Gray
Clerk of Court

November 26, 2018

Jonathan O. Hafen
Chair, Advisory Committee on Utah Rules of Civil Procedure
PARR BROWN GEE & LOVELESS
101 SOUTH 200 EAST SUITE 700
SALT LAKE CITY UTAH 84111

Dear Jonathan:

The rules regulating the practice for Licensed Paralegal Practitioners take effect November 1, 2018. We anticipate having Licensed Paralegal Practitioners practicing by fall of 2019. In anticipation of this new type of legal professional, we are asking our Advisory committees to review rules that may need to be amended to respond to the new legal professional. The LPP Steering Committee identified Rules of Civil Procedure that should be reviewed by your committee. The rules were identified because the rule includes the word "attorney", and the rule relates to one of the three areas of practice for Licensed Paralegal Practitioners: 1) temporary separation, divorce, parentage, cohabitant abuse, civil stalking, and custody and support; 2) forcible entry and detainer and unlawful detainer; and 3) debt collection matters. Your committee may identify other rules that should be amended.

The Court requests that your committee review the Rules of Civil Procedure and propose amendments to the rules that you think are appropriate to incorporate LPPs into the three practice areas and within the limited scope of practice authorized in Rule 14-802. As a starting point, the rules that were identified by the LPP Steering Committee are:

Rule 4	Process
Rule 5	Service and Filling of Pleadings and other papers
Rule 10	Form of Pleading and other paper
Rule 11	Signing of Pleadings, Motions and Affidavits and other papers
Rule 53	Masters
Rule 56	Summary Judgement
Rule 58B	Satisfaction of Judgement

Rule 65A	Injunctions
Rule 74	Withdrawal of Counsel
Rule 75	Limited Appearance (should an LPP always file this document to provide notice to the parties and the court that a LPP is involved in the case for limited legal representation?)
Rule 76	Notice of Contact Information change

We also request that you evaluate Rule 26 regarding required disclosures for debt collection and landlord tenant cases for which an LPP may represent a party. Rule 14-802 does not permit an LPP to conduct discovery. The Court is concerned that if appropriate documentation in debt collection or landlord tenant cases is not filed by the Plaintiff, the LPP will not be able to compel the disclosure of those documents through a discovery request. One solution suggested by the LPP Steering Committee is to amend Rule 26 to specifically require the disclosure of documents in debt collection and landlord tenant cases. The LPP Steering Committee suggested determining which documents are most commonly required and including those documents in Rule 26. We ask that your committee consider this issue.

Sincerely,

Matthew B. Durrant
Chief Justice

Copy: Nancy Sylvester, Staff

Rule 4. Process.

(a) Signing of summons. The summons must be signed and issued by the plaintiff or the plaintiff's attorney or licensed paralegal practitioner. Separate summonses may be signed and issued.

(b) Time of service. Unless the summons and complaint are accepted, a copy of the summons and complaint in an action commenced under Rule 3(a)(1) must be served no later than 120 days after the complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint are not timely served, the action against the unserved defendant may be dismissed without prejudice on motion of any party or on the court's own initiative.

(c) Contents of summons.

(c)(1) The summons must:

(c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(c)(1)(B) be directed to the defendant;

(c)(1)(C) state the name, address and telephone number of the plaintiff's attorney or licensed paralegal pracitioner, if any, and otherwise the plaintiff's address and telephone number;

(c)(1)(D) state the time within which the defendant is required to answer the complaint in writing;

(c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default will be entered against the defendant; and

(c)(1)(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons must also:

(c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(c)(3) If service is by publication, the summons must also briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

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

(d)(1) Personal service. The summons and complaint may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney or licensed paralegal practitioner. If the person to be served refuses to accept a copy of the summons and complaint, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

(d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by leaving them at the individual's dwelling house or usual place of abode with a person of suitable

age and discretion who resides there, or by delivering them to an agent authorized by appointment or by law to receive process;

(d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to the minor and also to the minor's father, mother, or guardian or, if none can be found within the state, then to any person having the care and control of the minor, or with whom the minor resides, or by whom the minor is employed;

(d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, by delivering a copy of the summons and complaint to the individual and to the guardian or conservator of the individual if one has been appointed; the individual's legal representative if one has been appointed, and, in the absence of a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or control of the individual;

(d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and complaint to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual;

(d)(1)(E) Upon a corporation not otherwise provided for in this rule, a limited liability company, a partnership, or an unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or other agent authorized by appointment or law to receive process and by also mailing a copy of the summons and complaint to the defendant, if the agent is one authorized by statute to receive process and the statute so requires. If no officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, a place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of the place of business;

(d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the recorder;

(d)(1)(G) Upon a county, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the county clerk;

(d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the superintendent or administrator of the board;

(d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the president or secretary of its board;

(d)(1)(J) Upon the state of Utah or its department or agency by delivering a copy of the summons and complaint to the attorney general and any other person or agency required by statute to be served; and

(d)(1)(K) Upon a public board, commission or body by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to any member of its governing board, or to its executive employee or secretary.

(d)(2) Service by mail or commercial courier service.

(d)(2)(A) The summons and complaint may be served upon an individual other than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or judicial district of the United States provided the defendant signs a document indicating receipt.

(d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent authorized by appointment or by law to receive service of process signs a document indicating receipt.

(d)(2)(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(d)(3) Acceptance of service.

(d)(3)(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary expenses of serving the summons and complaint.

(d)(3)(B) Acceptance of service by party. Unless the person to be served is a minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, a party may accept service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint.

(d)(3)(C) Acceptance of service by attorney <u>or licensed paralegal practitioner</u> for party. An attorney <u>or licensed paralegal practitioner</u> may accept service of a summons and complaint on behalf of the attorney's <u>or licensed paralegal practitioner's</u> client by signing a document that acknowledges receipt of the summons and complaint.

(d)(3)(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

(d)(4) Service in a foreign country. Service in a foreign country must be made as follows:

(d)(4)(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(d)(4)(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(d)(4)(B)(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(d)(4)(B)(ii) as directed by the foreign authority in response to a letter of request issued by the court; or

(d)(4)(B)(iii) unless prohibited by the law of the foreign country, by delivering a copy of the summons and complaint to the individual personally or by any form of mail requiring a signed receipt, addressed and dispatched by the clerk of the court to the party to be served; or

(d)(4)(C) by other means not prohibited by international agreement as may be directed by the court.

(d)(5) Other service.

(d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

(d)(5)(B) If the motion is granted, the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action. The court's order must specify the content of the process to be served and the event upon which service is complete. Unless service is by publication, a copy of the court's order must be served with the process specified by the court.

(d)(5)(C) If the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.

(e) Proof of service.

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

(e)(2) Proof of service in a foreign country must be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court.

(e)(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(e)(4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

Advisory Committee Notes

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 or licensed paralegal practitioner, a paper served under this rule must be served upon the attorney or licensed paralegal practitioner unless the court orders service upon the party. Service must be made upon the attorney or licensed paralegal practitioner and the party if

(b)(1)(A) an attorney or licensed paralegal practitioner 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 or paralegal practitioner.

(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 email address provided by the person 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.

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 must contain a caption setting forth the name of the court, the title of the action, the file number, if known, 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, 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 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 must be designated by any name and the words "whose true name is unknown." In an action in rem, unknown parties 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 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, licensed paralegal practitioner, or party filing the paper, and, if filed by an attorney or paralegal practitioner, 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, 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 must be made in numbered paragraphs. Each paragraph 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 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. All pleadings and other papers, other than exhibits and court-approved forms, must be 8½ inches wide x 11 inches long, on white background, with a top margin of not less than 1½ inches and a right, left and bottom margin of not less than 1 inch . All text or images must be clearly legible, must be double spaced, except for matters customarily single spaced, must be on one side only and must not be smaller than 12-point size.

(e) Signature line. The name of the person signing must be typed or printed under that person's 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, at the end of the document, indicate that the signature appears at the top of the first page.

(f) Non-conforming papers. The clerk of the court may examine the pleadings and other papers filed with the court. If they are not prepared in conformity with paragraphs (a) - (e), the clerk 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 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 11. Signing of pleadings, motions, affidavits, and other papers; representations to court; sanctions.

(a) Signature.

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

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

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

(b) Representations to court. By presenting a pleading, written motion, or other paper to the court (whether by signing, filing, submitting, or advocating), an attorney, licensed paralegal practitioner, or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(b)(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b)(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(b)(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that paragraph (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, licensed paralegal practitioners, law firms, or parties that have violated paragraph (b) or are responsible for the violation.

(c)(1) How initiated.

(c)(1)(A) By motion. A motion for sanctions under this rule must be made separately from other motions or requests and must describe the specific conduct alleged to violate paragraph (b). It must be served as provided in Rule 5, but may not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney or licensed paralegal practitioner fees incurred in

presenting or opposing the motion. In appropriate circumstances, a law firm may be held jointly responsible for violations committed by its partners, members, and employees.

(c)(1)(B) On court's initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate paragraph (b) and directing an attorney, licensed paralegal practitioner, law firm, or party to show cause why it has not violated paragraph (b) with respect thereto.

(c)(2) Nature of sanction; limitations. A sanction imposed for violation of this rule must be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in paragraphs (c)(2)(A) and (c)(2)(B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney or licensed paralegal practitioner fees and other expenses incurred as a direct result of the violation.

(c)(2)(A) Monetary sanctions may not be awarded against a represented party for a violation of paragraph (b)(2).

(c)(2)(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys or licensed paralegal practitioners are, to be sanctioned.

(c)(3) Order. When imposing sanctions, the court will describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Advisory Committee Notes

Rule 53. Masters.

(a) Appointment and compensation. Any or all of the issues in an action may be referred by the court to a master upon the written consent of the parties, or the court may appoint a master in an action, in accordance with the provisions of Subdivision (b) of this rule. As used in these rules the word "master" includes a referee, an auditor, and an examiner. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) Reference. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account, a reference shall, in the absence of the written consent of the parties, be made only upon a showing that some exceptional condition requires it.

(c) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Utah Rules of Evidence for a court sitting without a jury.

(d) Proceedings.

(d)(1) Meetings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys or licensed paralegal practitioners to be held within 21 days after the date of the order of reference and shall notify the parties or their attorneys or licensed paralegal practitioners. It is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

(d)(2) Witnesses. The parties may procure the attendance of witnesses before the master by the issuance and service of subpoenas as provided in Rule 45. If without adequate excuse a witness fails to appear or give evidence, he may be punished as for a contempt and be subjected to the consequences, penalties, and remedies provided in Rules 37 and 45.

(d)(3) Statement of accounts. When matters of accounting are in issue before the master, he may prescribe the form in which the accounts shall be submitted and in any proper case may require or receive in evidence a statement by a certified public accountant who is called as a witness. Upon objection of a party to any of the items thus submitted or upon a showing that the form of statement is insufficient, the master may require a different form of statement to be furnished, or the accounts or specific items thereof to be proved by oral examination of the accounting parties or upon written interrogatories or in such other manner as he directs.

(e) Report.

(e)(1) Contents and filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court and in an action to be tried without a jury, unless otherwise directed by the order of reference, shall file with it a transcript of the proceedings and of the evidence and the original exhibits. The clerk shall forthwith mail to all parties notice of the filing.

(e)(2) In non-jury actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 14 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 6(d). The court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(e)(3) In jury actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(e)(4) Stipulation as to findings. The effect of a master's report is the same whether or not the parties have consented to the reference; but, when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

(e)(5) Draft report. Before filing his report a master may submit a draft thereof to counsel for all parties for the purpose of receiving their suggestions.

(f) Objections to appointment of master. A party may object to the appointment of any person as a master on the same grounds as a party may challenge for cause any prospective trial juror in the trial of a civil action. Such objections must be heard and disposed of by the court in the same manner as a motion.

Rule 56. Summary judgment.

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

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

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

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

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

(b) Time to file a motion. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may move for summary judgment at any time after service of a motion for summary judgment by the adverse party or after 21 days from the commencement of the action. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move for summary judgment at any time. Unless the court orders otherwise, a party may file a motion for summary judgment at any time no later than 28 days after the close of all discovery.

(c) Procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Advisory Committee Notes

Rule 58B. Satisfaction of judgment.

(a) Satisfaction by acknowledgment. Within 28 days after full satisfaction of the judgment, the owner or the owner's attorney or licensed paralegal practitioner must file an acknowledgment of satisfaction in the court in which the judgment was entered. If the owner is not the original judgment creditor, the owner or owner's attorney or licensed paralegal practitioner must also file proof of ownership. If the satisfaction is for part of the judgment or for fewer than all of the judgment debtors, it must state the amount paid or name the debtors who are released.

(b) Satisfaction by order of court. The court in which the judgment was first entered may, upon motion and satisfactory proof, enter an order declaring the judgment satisfied.

(c) Effect of satisfaction. Satisfaction of a judgment, whether by acknowledgement or order, discharges the judgment, and the judgment ceases to be a lien as to the debtors named and to the extent of the amount paid. A writ of execution or a writ of garnishment issued after partial satisfaction must include the partial satisfaction and must direct the officer to collect only the balance of the judgment, or to collect only from the judgment debtors remaining liable.

(d) Filing certificate of satisfaction in other counties. After satisfaction of a judgment, whether by acknowledgement or order, has been entered in the court in which the judgment was first entered, a certificate by the clerk showing the satisfaction may be filed with the clerk of the district court in any other county where the judgment has been entered.

Rule 65A. Injunctions.

(a) **Preliminary injunctions.**

(a)(1) **Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(a)(2) **Consolidation of hearing.** Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) **Temporary restraining orders.**

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

(b)(2) **Form of order.** Every temporary restraining order shall be endorsed with the date and hour of issuance and shall be filed forthwith in the clerk's office and entered of record. The order shall define the injury and state why it is irreparable. The order shall expire by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

(b)(3) **Priority of hearing.** If a temporary restraining order is granted, the motion for a preliminary injunction shall be scheduled for hearing at the earliest possible time and takes precedence over all other civil matters except older matters of the same character. When the motion comes on for hearing, the party who obtained the temporary restraining order shall have the burden to show entitlement to a preliminary injunction; if the party does not do so, the court shall dissolve the temporary restraining order.

(b)(4) **Dissolution or modification.** On 48 hours' notice to the party who obtained the temporary restraining order without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification. In that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

(c) **Security.**

(c)(1) **Requirement.** The court shall condition issuance of the order or injunction on the giving of security by the applicant, in such sum and form as the court deems proper, unless it appears that

none of the parties will incur or suffer costs, attorney or licensed paralegal practitioner fees or damage as the result of any wrongful order or injunction, or unless there exists some other substantial reason for dispensing with the requirement of security. No such security shall be required of the United States, the State of Utah, or of an officer, agency, or subdivision of either; nor shall it be required when it is prohibited by law.

(c)(2) **Amount not a limitation.** The amount of security shall not establish or limit the amount of costs, including reasonable attorney or licensed paralegal practitioner fees incurred in connection with the restraining order or preliminary injunction, or damages that may be awarded to a party who is found to have been wrongfully restrained or enjoined.

(c)(3) **Jurisdiction over surety.** A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) **Form and scope.** Every restraining order and order granting an injunction shall set forth the reasons for its issuance. It shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. It shall be binding only upon the parties to the action, their officers, agents, servants, employees, ~~and~~ attorneys, and licensed paralegal practitioners, and upon those persons in active concert or participation with them who receive notice, in person or through counsel, licensed paralegal practitioner, or otherwise, of the order. If a restraining order is granted without notice to the party restrained, it shall state the reasons justifying the court's decision to proceed without notice.

(e) **Grounds.** A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

(e)(1) The applicant will suffer irreparable harm unless the order or injunction issues;

(e)(2) The threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined;

(e)(3) The order or injunction, if issued, would not be adverse to the public interest; and

(e)(4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.

(f) **Domestic relations cases.** Nothing in this rule shall be construed to limit the equitable powers of the courts in domestic relations cases.

Advisory Committee Notes

Rule 73. ~~Attorney~~ Legal professional fees.

(a) **Definitions.** For purposes of this rule, legal professional means an attorney or licensed paralegal practitioner.

(~~a~~b) **Time in which to claim.** ~~Attorney~~Legal professional fees must be claimed by filing a motion for ~~attorney~~legal professional fees no later than 14 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~~c) **Content of motion.** The motion must:

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

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

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

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

(~~b~~c)(5) disclose if the ~~attorney~~legal professional 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~~legal professional will not share the fee in violation of Rule of Professional Conduct 5.4.

(~~c~~d) **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, licensed paralegal practitioner, paralegal, administrative assistant, etc.) and hourly rate of the persons who performed the work, and establishes that the claimed fee is reasonable.

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

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

(~~f~~g)(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~~legal professional fees, and the clerk or the

court shall allow any amount requested up to $350.00 for such ~~attorney~~legal professional fees without a supporting affidavit.

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

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

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

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

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

Action	~~Attorney~~Legal professional Fees Allowed
Application for any writ under Rules 64, 64A, 64B, 64C, or 64E, and first application for a writ under Rule 64D to any particular garnishee;	$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~~g)(4) **Fees in excess of the schedule.** If a party seeks ~~attorney~~legal professional fees in excess of the amounts set forth in paragraphs (f)(1), (f)(2), or (f)(3), the party shall comply with paragraphs (a) through (c) of this rule.

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

Advisory Committee Notes

Rule 74. Withdrawal of ~~counsel~~legal professional.

(a) **Definitions.** For purposes of this rule, legal professional means an attorney or licensed paralegal practitioner.

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

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

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

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

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

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

Rule 75. Limited appearance.

(a) **Definitions.** For purposes of this rule, legal professional means an attorney or licensed paralegal practitioner.

(~~a~~b) **Purposes.** ~~An attorney~~ A licensed paralegal practitioner 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~~b)(1) filing a pleading or other paper;

(~~a~~b)(2) acting as ~~counsel~~ the legal professional for a specific motion;

(~~a~~b)(3) acting as ~~counsel~~ the legal professional for a specific discovery procedure;

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

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

(~~b~~c) **Notice.** Before commencement of the limited appearance the ~~attorney~~ legal professional shall file a Notice of Limited Appearance signed by the ~~attorney~~ legal professional and the party or, if permitted by the judge, orally announce the limited appearance on the record in a proceeding. 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~~ legal professional'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~~d) **Motion to clarify.** Any party may move to clarify the description of the purpose and scope of the limited appearance.

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

Rule 76. Notice of contact information change.

An attorney, licensed paralegal practitioner, and unrepresented party must promptly notify the court in writing of any change in that person's address, e-mail address, phone number or fax number.

Tab 5

KIRTON | McCONKIE

Rod N. Andreason
randreason@kmclaw.com
801.321.4853

MEMORANDUM

TO: Nancy Sylvester

FROM: Rod Andreason, Chair, URCP 26 Subcommittee

DATE: October 19, 2018

SUBJECT: URCP 26 Subcommittee Report and Proposed Changes

On June 27, 2018, at the regular monthly meeting of the Utah Supreme Court Advisory Committee on the Utah Rules of Civil Procedure, Chairman Jon Hafen formed a subcommittee consisting of Committee members Rod Andreason (chair), Leslie Slaugh, Trystan Smith, and Tim Pack to discuss and draft proposed changes to URCP 26. After soliciting input regarding potential problems with the Rule and meeting twice to discuss them, the subcommittee has decided to propose the following changes to the Rule, for the following reasons:

1. Add at the end of (a)(1), insert: "Rule 34 governs the form of producing all documents, data compilations, electronically stored information, tangible things, and evidentiary material pursuant to this Rule."

   Reason: Ensure compliance with URCP 34 in initial disclosure document production.

2. Revise (a)(2)(A) to: "by a plaintiff within 14 days after filing of the first answer to that plaintiff's complaint; and"

   Reason: There may be multiple plaintiffs, some of which may join the case at a later date.

3. Revise (a)(2)(B) to: "by a defendant within 42 days after filing of that defendant's first answer to the complaint."

   Reason: There may be multiple defendants; some of them may seek to file a motion to dismiss or similar motion after appearance that is not an answer, and such should not have to provide initial disclosures before such motion is resolved.

4. Revise (a)(4)(A) title to: "Disclosure of retained expert testimony."

   Reason: Clarity; this paragraph only pertains to this type of expert witness.

5. Revise (a)(4)(C)(i) to: "The party who bears the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by

paragraph (a)(4)(A) within 14 days after the close of fact discovery. Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted."

Reason: Practitioners reportedly need more time for these actions.

6. Revise (a)(4)(C)(ii) to "The party who does not bear the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the later of (A) the date on which the disclosure under paragraph (a)(4)(C)(i) is due, or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(i). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted."

   Reason: Practitioners reportedly need more time for these actions. Also, when the party bearing the burden fails to disclose an expert, the party who does not bear the burden currently has no triggering event for providing its expert disclosure.

7. Revise (a)(4)(C)(iii) to "(a)(4)(C)(iii) If the party who bears the burden of proof on an issue wants to designate rebuttal expert witnesses, it shall serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the later of (A) the date on which the election under paragraph (a)(4)(C)(ii) is due or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(ii). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted."

   Reason: Practitioners reportedly need more time for these actions.

8. Revise (a)(4)(E) to: "If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party must serve on the other parties a written summary of the facts and opinions to which the witness is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). Such a witness cannot be required to provide a report pursuant to (a)(4)(B). A deposition of such a witness may not exceed four hours. No further discovery of such a witness is permitted."

   Reason: Prohibit excessive discovery and expense in seeking testimony information from non-retained experts.

9. Revise (a)(5)(B) to "Disclosure required by paragraph (a)(5)(A) shall be served on the other parties at least 28 days before trial. Disclosures required by paragraph (a)(5)(A)(i) and (a)(5)(A)(ii) shall also be filed. At least 14 days before trial, a party shall serve and file any counter designations of deposition testimony and any objections and grounds for the objections to the use of any deposition, witness, or exhibit. 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."

   Reasons: Judges reportedly want to see these items, although not all of the proposed trial exhibits (we would like judges' input and confirmation on this). Also, this section needs parallel reference to objections to witnesses as well as other disclosures. Although many objections to witnesses, as well as exhibits, must be considered within the scope of their offering at trial, this funnels down the scope of such potential objections. (If this is too demanding as to witnesses, it is likely too demanding for exhibits as well, requiring both to be removed).

10. Revise (c)(6)(A) to: "before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a stipulated statement that extraordinary discovery is necessary and proportional under paragraph (b)(2) and, for each party represented by an attorney, a statement that the attorney consulted with the client about the request for extraordinary discovery."

    Reason: The current requirement has been universally ignored and may be too onerous and expensive relative to its desired goal: ensuring that parties know that extraordinary discovery will result in additional expense.

11. Revise (d)(3) to “A party is not excused from making disclosures or responses because the party has not completed investigating the case, the party challenges the sufficiency of another party's disclosures or responses, or another party has not made disclosures or responses.

    Reason: Language.

A redline of Rule 26 with these proposed changes is attached.

Rule 26. General provisions governing disclosure and discovery.

(a) Disclosure. This rule applies unless changed or supplemented by a rule governing disclosure and discovery in a practice area.

(a)(1) Initial disclosures. Except in cases exempt under paragraph (a)(3), a party shall, without waiting for a discovery request, serve on the other parties:

(a)(1)(A) the name and, if known, the address and telephone number of:

(a)(1)(A)(i) each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information; and

(a)(1)(A)(ii) each fact witness the party may call in its case-in-chief and, except for an adverse party, a summary of the expected testimony;

(a)(1)(B) a copy of all documents, data compilations, electronically stored information, and tangible things in the possession or control of the party that the party may offer in its case-in-chief, except charts, summaries and demonstrative exhibits that have not yet been prepared and must be disclosed in accordance with paragraph (a)(5);

(a)(1)(C) a computation of any damages claimed and a copy of all discoverable documents or evidentiary material on which such computation is based, including materials about the nature and extent of injuries suffered;

(a)(1)(D) a copy of any agreement under which any person may be liable to satisfy part or all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment; and

(a)(1)(E) a copy of all documents to which a party refers in its pleadings.

(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 first answer to the complaint or within 28 days after that defendant's appearance, whichever is later.

(a)(3) Exemptions.

(a)(3)(A) Unless otherwise ordered by the court or agreed to by the parties, the requirements of paragraph (a)(1) do not apply to actions:

(a)(3)(A)(i) for judicial review of adjudicative proceedings or rule making proceedings of an administrative agency;

(a)(3)(A)(ii) governed by Rule 65B or Rule 65C;

(a)(3)(A)(iii) to enforce an arbitration award;

(a)(3)(A)(iv) for water rights general adjudication under Title 73, Chapter 4, Determination of Water Rights.

(a)(3)(B) In an exempt action, the matters subject to disclosure under paragraph (a)(1) are subject to discovery under paragraph (b).

(a)(4) Expert testimony.

(a)(4)(A) Disclosure of expert testimony. A party shall, without waiting for a discovery request, serve on the other parties the following information regarding any person who may be used at trial to present evidence under Rule 702 of the Utah Rules of Evidence and who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony: (i) the expert's name and

qualifications, including a list of all publications authored within the preceding 10 years, and a list of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years, (ii) a brief summary of the opinions to which the witness is expected to testify, (iii) all data and other information that will be relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for the witness's study and testimony.

(a)(4)(B) Limits on expert discovery. Further discovery may be obtained from an expert witness either by deposition or by written report. A deposition shall not exceed four hours and the party taking the deposition shall pay the expert's reasonable hourly fees for attendance at the deposition. A report shall be signed by the expert and shall contain a complete statement of all opinions the expert will offer at trial and the basis and reasons for them. Such an expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert shall pay the costs for the report.

(a)(4)(C) Timing for expert discovery.

(a)(4)(C)(i) The party who bears the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the close of fact discovery. Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(C)(ii) The party who does not bear the burden of proof on the issue for which expert testimony is offered shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the later of (A) the date on which the election under paragraph (a)(4)(C)(i) is due, or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(i). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(C)(iii) If the party who bears the burden of proof on an issue wants to designate rebuttal expert witnesses it shall serve on the other parties the information required by paragraph (a)(4)(A) within seven days after the later of (A) the date on which the election under paragraph (a)(4)(C)(ii) is due, or (B) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(ii). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be served on the other parties, within 28 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert shall be permitted.

(a)(4)(D) Multiparty actions. In multiparty actions, all parties opposing the expert must agree on either a report or a deposition. If all parties opposing the expert do not agree, then further discovery of the expert may be obtained only by deposition pursuant to paragraph (a)(4)(B) and Rule 30.

(a)(4)(E) Summary of non-retained expert testimony. If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party

must serve on the other parties a written summary of the facts and opinions to which the witness is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). A deposition of such a witness may not exceed four hours.

(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.

(b) Discovery scope.

(b)(1) In general. Parties may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality set forth below. Privileged matters that are not discoverable or admissible in any proceeding of any kind or character include all information in any form provided during and created specifically as part of a request for an investigation, the investigation, findings, or conclusions of peer review, care review, or quality assurance processes of any organization of health care providers as defined in the Utah Health Care Malpractice Act for the purpose of evaluating care provided to reduce morbidity and mortality or to improve the quality of medical care, or for the purpose of peer review of the ethics, competence, or professional conduct of any health care provider.

(b)(2) Proportionality. Discovery and discovery requests are proportional if:

(b)(2)(A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;

(b)(2)(B) the likely benefits of the proposed discovery outweigh the burden or expense;

(b)(2)(C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;

(b)(2)(D) the discovery is not unreasonably cumulative or duplicative;

(b)(2)(E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and

(b)(2)(F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

(b)(3) Burden. The party seeking discovery always has the burden of showing proportionality and relevance. To ensure proportionality, the court may enter orders under Rule 37.

(b)(4) Electronically stored information. A party claiming that electronically stored information is not reasonably accessible because of undue burden or cost shall describe the source of the electronically stored information, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to evaluate the claim.

(b)(5) Trial preparation materials. A party may obtain otherwise discoverable documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain substantially equivalent materials by other means. In ordering discovery of such materials, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(b)(6) Statement previously made about the action. A party may obtain without the showing required in paragraph (b)(5) a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement about the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order under Rule 37. A statement previously made is (A) a written statement signed or approved by the person making it, or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(b)(7) Trial preparation; experts.

(b)(7)(A) Trial-preparation protection for draft reports or disclosures. Paragraph (b)(5) protects drafts of any report or disclosure required under paragraph (a)(4), regardless of the form in which the draft is recorded.

(b)(7)(B) Trial-preparation protection for communications between a party's attorney and expert witnesses. Paragraph (b)(5) protects communications between the party's attorney and any witness required to provide disclosures under paragraph (a)(4), regardless of the form of the communications, except to the extent that the communications:

(b)(7)(B)(i) relate to compensation for the expert's study or testimony;

(b)(7)(B)(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(b)(7)(B)(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(b)(7)(C) Expert employed only for trial preparation. Ordinarily, a party may not, by interrogatories or otherwise, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. A party may do so only:

(b)(7)(C)(i) as provided in Rule 35(b); or

(b)(7)(C)(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(b)(8) Claims of privilege or protection of trial preparation materials.

(b)(8)(A) Information withheld. If a party withholds discoverable information by claiming that it is privileged or prepared in anticipation of litigation or for trial, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced in a manner that, without revealing the information itself, will enable other parties to evaluate the claim.

(b)(8)(B) Information produced. If a party produces information that the party claims is privileged or prepared in anticipation of litigation or for trial, the producing party may notify any receiving party of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

(c) Methods, sequence and timing of discovery; tiers; limits on standard discovery; extraordinary discovery.

(c)(1) Methods of discovery. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; requests for admission; and subpoenas other than for a court hearing or trial.

(c)(2) Sequence and timing of discovery. Methods of discovery may be used in any sequence, and the fact that a party is conducting discovery shall not delay any other party's discovery. Except for cases exempt under paragraph (a)(3), a party may not seek discovery from any source before that party's initial disclosure obligations are satisfied.

(c)(3) Definition of tiers for standard discovery. Actions claiming $50,000 or less in damages are permitted standard discovery as described for Tier 1. Actions claiming more than $50,000 and less than $300,000 in damages are permitted standard discovery as described for Tier 2. Actions claiming $300,000 or more in damages are permitted standard discovery as described for Tier 3. Absent an accompanying damage claim for more than $300,000, actions claiming non-monetary relief are permitted standard discovery as described for Tier 2.

(c)(4) Definition of damages. For purposes of determining standard discovery, the amount of damages includes the total of all monetary damages sought (without duplication for alternative theories) by all parties in all claims for relief in the original pleadings.

(c)(5) Limits on standard fact discovery. Standard fact discovery per side (plaintiffs collectively, defendants collectively, and third-party defendants collectively) in each tier is as follows. The days to complete standard fact discovery are calculated from the date the first defendant's first disclosure is due and do not include expert discovery under paragraphs(a)(4)(C) and (D).

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
1	$50,000 or less	3	0	5	5	120
2	More than $50,000 and less than $300,000 or non-monetary relief	15	10	10	10	180

3	$300,000 or more	30	20	20	20	210

(c)(6) Extraordinary discovery. To obtain discovery beyond the limits established in paragraph (c)(5), a party shall file:

(c)(6)(A) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a stipulated statement that extraordinary discovery is necessary and proportional under paragraph (b)(2) and that each party has reviewed and approved a discovery budget; or

(c)(6)(B) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, a request for extraordinary discovery under Rule 37(a).

(d) Requirements for disclosure or response; disclosure or response by an organization; failure to disclose; initial and supplemental disclosures and responses.

(d)(1) A party shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

(d)(2) If the party providing disclosure or responding to discovery is a corporation, partnership, association, or governmental agency, the party shall act through one or more officers, directors, managing agents, or other persons, who shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

(d)(3) A party is not excused from making disclosures or responses because the party has not completed investigating the case or because the party challenges the sufficiency of another party's disclosures or responses or because another party has not made disclosures or responses.

(d)(4) If a party fails to disclose or to supplement timely a disclosure or response to discovery, that party may not use the undisclosed witness, document or material at any hearing or trial unless the failure is harmless or the party shows good cause for the failure.

(d)(5) If a party learns that a disclosure or response is incomplete or incorrect in some important way, the party must timely serve on the other parties the additional or correct information if it has not been made known to the other parties. The supplemental disclosure or response must state why the additional or correct information was not previously provided.

(e) Signing discovery requests, responses, and objections. Every disclosure, request for discovery, response to a request for discovery and objection to a request for discovery shall be in writing and signed by at least one attorney of record or by the party if the party is not represented. The signature of the attorney or party is a certification under Rule 11. If a request or response is not signed, the receiving party does not need to take any action with respect to it. If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may take any action authorized by Rule 11 or Rule 37(b).

(f) Filing. Except as required by these rules or ordered by the court, a party shall not file with the court a disclosure, a request for discovery or a response to a request for discovery, but shall file only the certificate of service stating that the disclosure, request for discovery or response has been served on the other parties and the date of service.

Advisory Committee Notes

Legislative Note

Tab 6

Administrative Office of the Courts

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

Hon. Mary T. Noonan
Interim State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

MEMORANDUM

To: Civil Rules Committee
From: Nancy Sylvester
Date: February 25, 2019
Re: New Rule 7A. Motion to enforce order and for sanctions

The Forms Committee proposed a change to the procedure for enforcing court orders by doing everything through regular motion practice. A subcommittee consisting of Lauren DiFrancesco (chair), Jim Hunnicutt, Susan Vogel, Judge Holmberg, and Leslie Slaugh has adopted the Forms Committee's recommendation regarding motion practice and proposes calling this process a motion to enforce order and for sanctions, rather than order to show cause. The subcommittee will provide more details about the changes they've proposed. But one noteworthy aspect of the proposal is that it includes the option for a two-step process; namely, recognizing the court's discretion to convene a telephone conference before the hearing to resolve any preliminary issues, but not requiring the conference.

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 7A. Motion to enforce order and for sanctions.

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, a party must file a motion to enforce order and for sanctions (if requested), pursuant to the procedures of this rule and Rule 7. The timeframes set forth in this rule rather than those set forth in Rule 7 govern motions to enforce orders and for sanctions. If the motion is to be heard by a commissioner, the motion must also follow the procedures of Rule 101. For purpose of this rule, an order includes a judgment.

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

(c) Proposed order. The motion must be accompanied by a proposed order to attend hearing, which must:

(c)(1) state the title and date of entry of the order that the moving party seeks to enforce;

(c)(2) state the relief sought by the moving party;

(c)(3) state whether the moving party has requested that the nonmoving party be held in contempt and, if that request has been made, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(c)(4) order the nonmoving party to appear personally or through counsel at a specific date, time and place to explain whether the nonmoving party has violated the order; and

(c)(5) state that no written response is required but is permitted if filed at least 14 days before the hearing, unless the court sets a different time, and that any written response must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(d) Service of the order. If the court grants the motion and issues an order to attend hearing, the moving party must have the order, the motion, and all supporting affidavits personally served on the nonmoving party in a manner provided in Rule 4 at least 28 days before the hearing. For good cause the court may order that service be made on the nonmoving party's counsel of record in a manner provided in Rule 5. The court may order less than 28 days' notice of the hearing if:

(d)(1) the motion requests an earlier date; and

(d)(2) 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 hearing is not held sooner.

(e) Reply. A reply is not required, but if filed, must be filed at least 7 days before the hearing, unless the court sets a different time.

(f) Hearing. At the hearing the court may receive evidence, hear argument, and rule upon the motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all claims made in the motion. At the court's discretion, the court may convene a telephone conference before the

hearing to preliminarily address any issues related to the motion, including whether the court would like to order a briefing schedule other than as set forth in this rule.

(g) Limitations. This rule does not apply to an order to show cause that is issued by the court on its own initiative. A motion to enforce order and for sanctions presented to a court commissioner must also follow Rule 101, including all time limits set forth in Rule 101. This rule applies only in civil actions, and does not apply in criminal cases.

(h) Orders to show cause. The process set forth in this rule replaces and supersedes the prior order to show cause procedure. An order to attend hearing serves as an order to show cause as that term is used in statute.

Tab 7

Advisory Committe Notes Project

Civil Rules	Committee Note?	Subcommittee
Part I Scope of Rules - One Form of Action		**A**
Rule 1 General provisions.	Yes	
Rule 1 General provisions. (superseded 11/1/2011)	n/a	
Rule 2 One form of action.	No	
Part II Commencement of Action; Service of Process, Pleadings, Motions and Orders		**A**
Rule 3 Commencement of action.	Yes	
Rule 4 Process.	Yes	
Rule 5 Service and filing of pleadings and other papers.	Yes	
Rule 6 Time.	No	
Part III Pleadings, Motions, and Orders		**B**
Rule 7 Pleadings allowed; motions, memoranda, hearings, orders.	Yes	**(Group A did this one)**
Rule 8 General rules of pleadings.	Yes	
Rule 8 General rules of pleadings. (superseded 11/1/2011)	n/a	
Rule 9 Pleading special matters.	Yes	
Rule 9 Pleading special matters. (superseded 11/1/2011)	n/a	
Rule 10 Form of pleadings and other papers.	Yes	
Rule 11 Signing of pleadings, motions, and other papers; representations to court; sanctions.	Yes	
Rule 12 Defenses and objections.	No	
Rule 13 Counterclaim and cross-claim.	No	
Rule 14 Third-party practice.	No	
Rule 15 Amended and supplemental pleadings.	Yes	
Rule 16 Pretrial conferences.	Yes	
Rule 16 Pretrial conferences. (superseded 11/1/2011)	n/a	
Part IV Parties		**A**
Rule 17 Parties plaintiff and defendant.	Yes	**(Assign to Group B)**
Rule 18 Joinder of claims and remedies.	No	

A	B
Lauren DiFrancesco	Prof. Lincoln Davies
Larissa Lee	Prof. Paul Stancil
Trevor Lee	Michael Petrogeorge
Susan Vogel	Judge Kent Holmberg
Dawn Hautamaki	Jim Hunnicut
C	**D**
Rod N. Andreason	Judge Andrew Stone
Leslie Slaugh	Judge James Blanch
Trystan Smith	Bryan Pattison
Tim Pack	Judge Laura Scott
	E
	Judge Amber Mettler
	Judge Clay Stucki
	Justin Toth
	Heather Sneddon

Rule 19 Joinder of persons needed for just adjudication.	No	
Rule 20 Permissive joinder of parties.	No	
Rule 21 Misjoinder and non-joinder of parties.	No	
Rule 22 Interpleader.	No	
Rule 23 Class actions.	No	
Rule 23A Derivative actions by shareholders.	No	
Rule 24 Intervention.	No	
Rule 25 Substitution of parties.	No	
Part V Depositions and Discovery		**C**
Rule 26 General provisions governing disclosure and discovery.	Yes (long)	
Rule 26 General provisions governing disclosure and discovery. (superseded 11/1/2011)	n/a	
Rule 26.1 Disclosure in domestic relations actions.	Yes	
Rule 26.2. Disclosures in personal injury actions.	Yes	
Rule 26.3. Disclosure in unlawful detainer actions.	No	
Rule 27 Depositions before action or pending appeal.	Yes	
Rule 28 Persons before whom depositions may be taken.	Yes	
Rule 29 Stipulations regarding disclosure and discovery procedure.	No	
Rule 29 Stipulations regarding disclosure and discovery procedure. (superseded 11/1/2011)	n/a	
Rule 30 Depositions upon oral questions.	No	
Rule 30 Depositions upon oral questions. (superseded 11/1/2011)	n/a	
Rule 31 Depositions upon written questions.	No	
Rule 31 Depositions upon written questions. (superseded 11/1/2011)	n/a	
Rule 32 Use of depositions in court proceedings.	Yes	
Rule 33 Interrogatories to parties.	No	
Rule 33 Interrogatories to parties. (superseded 11/1/2011)	n/a	
Rule 34 Production of documents and things and entry upon land for inspection and other purposes.	Yes	
Rule 34 Production of documents and things and entry upon land for inspection and other purposes. (superseded 11/1/2011)	n/a	

Rule 35 Physical and mental examination of persons.	Yes	
Rule 35 Physical and mental examination of persons. (superseded 11/1/2011)	n/a	
Rule 36 Request for admission.	Yes	
Rule 36 Request for admission. (superseded 11/1/2011)	n/a	
Rule 37 Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence.	Yes	
Rule 37 Discovery and disclosure motions; Sanctions. (superseded 11/1/2011)	n/a	
Part VI Trials		**D**
Rule 38 Jury trial of right.	No	
Rule 39 Trial by jury or by the court.	No	
Rule 40 Assignment of cases for trial; continuance.	No	
Rule 41 Dismissal of actions.	Yes	
Rule 42 Consolidation; separate trials.	No	
Rule 43 Evidence.	Yes	
Rule 44 Proof of official record.	No	
Rule 45 Subpoena.	Yes	
Rule 46 Exceptions unnecessary.	No	
Rule 47 Jurors.	Yes (long)	
Rule 48 Juries of less than eight - Majority verdict.	No	
Rule 49 Special verdicts and interrogatories.	No	
Rule 50 Judgment as a matter of law in a jury trial; related motion for a new trial; conditional ruling.	Yes	
Rule 51 Instructions to jury; objections.	No	
Rule 52 Findings by the court; correction of the record.	Yes	
Rule 53 Masters.	No	
Part VII Judgment		**E**
Rule 54 Judgments; costs.	Yes	
Rule 54 Judgments; costs. (superseded 11/1/2011)	n/a	
Rule 55 Default.	No	
Rule 56 Summary judgment.	Yes	
Rule 57 Declaratory judgments.	No	
Rule 58A Entry of judgment; abstract of judgment.	Yes (long)	
Rule 58B Satisfaction of judgment.	No	
Rule 58C Motion to renew judgment.	Yes	

Rule 59 New trials; amendments of judgment.	No	
Rule 60 Relief from judgment or order.	Yes	
Rule 61 Harmless error.	No	
Rule 62 Stay of proceedings to enforce a judgment.	Yes	
Rule 63 Disability or disqualification of a judge.	No	
Rule 63A Change of judge as a matter of right.	No	
Part VIII Provisional and Final Remedies and Special Proceedings		**E**
Rule 64 Writs in general.	No	
Rule 64A Prejudgment writs in general.	No	
Rule 64B Writ of replevin.	No	
Rule 64C Writ of attachment.	No	
Rule 64D Writ of garnishment.	No	
Rule 64E Writ of execution.	No	
Rule 64F REPEALED.	n/a	
Rule 64G REPEALED.	n/a	
Rule 65A Injunctions.	Yes	
Rule 65B Extraordinary relief.	Yes	
Rule 65C Post-conviction relief.	Yes	
Rule 66 Receivers.	No	
Rule 67 Deposit in court.	No	
Rule 68 Settlement offers.	Yes	
Rule 69 REPEALED.	n/a	
Rule 69A Seizure of property.	No	
Rule 69B Sale of property; delivery of property.	No	
Rule 69C Redemption of real property after sale.	No	
Rule 70 Judgment for specific acts; vesting title.	No	
Rule 71 Process in behalf of and against persons not parties.	No	
Rule 71B REPEALED.	n/a	
Rule 72 Property bonds.	No	
Part IX Attorneys		**B**
Rule 73 Attorney fees.	Yes	
Rule 74 Withdrawal of counsel.	No	
Rule 75 Limited appearance.	No	
Rule 76 Notice of contact information change.	No	
Part X District courts and clerks		**A**
Rule 77 District courts and clerks.	Yes	
Rule 78 REPEALED.	n/a	

Rule 79 REPEALED.	n/a	
Rule 80 REPEALED.	n/a	
Part XI General Provisions		**None**
Rule 81 Applicability of rules in general.	No	
Rule 82 Jurisdiction and venue unaffected.	No	
Rule 83 Vexatious litigants.	No	
Rule 84 REPEALED.	n/a	
Rule 85 Title.	No	
Part XII Family Law		**None**
Rule 100 Coordination of cases pending in district court and juvenile court.	No	
Rule 101 Motion practice before court commissioners.	No	
Rule 102 Motion and order for payment of costs and fees.	No	
Rule 103 REPEALED.	n/a	
Rule 104 Divorce decree upon affidavit.	No	
Rule 105. Shortening 30 day waiting period in divorce actions.	No	
Rule 106 Modification of final domestic relations order.	No	
Rule 107 Decree of adoption; Petition to open adoption records.	No	
Rule 108 Objection to court commissioner's recommendation.	No	
FAQs About Disclosure and Discovery		
Appendix Of Forms		