Agenda

Advisory Committee on Rules of Civil Procedure

December 2, 2020

4:00 to 5:30 p.m.

Via Webex

Welcome and approval of minutes.	Tab 1	Jonathan Hafen, Chair
Legislative standing agenda item • Reserved		
Rules back from comment: Consolidation and Venue Transfer Amendments (i) URCP042. CONSOLIDATION; SEPARATE TRIALS; VENUE TRANSFER. AMEND. Domestic Injunction Amendments (ii) URCP005. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS. AMEND. (iii) URCP109. INJUNCTION IN CERTAIN DOMESTIC RELATIONS CASES. AMEND. Notice Amendments (iv) URCP004. PROCESS. AMEND. (v) URCP007. PLEADINGS ALLOWED; MOTIONS, MEMORANDA, HEARINGS, ORDERS. AMEND. (vi) URCP008. GENERAL RULES OF PLEADINGS. AMEND. (vii) URCP036. REQUEST FOR ADMISSION. AMEND. (viii) URCP101. MOTION PRACTICE BEFORE COURT COMMISSIONERS. AMEND. Service of Process Amendments (ix) URCP004. PROCESS. AMEND. Supplemental Proceedings Amendments (x) URCP64. WRITS IN GENERAL. AMEND. (xi) URCP007A. MOTION TO ENFORCE ORDER AND FOR SANCTIONS. NEW.	Tab 2	Nancy Sylvester

2021 Meeting Schedule: 4th Wednesday at 4pm unless otherwise scheduled

(xii) URCP007B. MOTION TO ENFORCE ORDER AND FOR SANCTIONS IN DOMESTIC LAW MATTERS. NEW. (xiii) URCP007. PLEADINGS ALLOWED; MOTIONS, MEMORANDA, HEARINGS, ORDERS. AMEND. Vexatious Litigant Amendments (xiv) URCP083. VEXATIOUS LITIGANTS. AMEND.		
Other business		Jonathan Hafen, Chair
Next month's tentative agenda: • Family law amendments • Continue Rule 26 discussions • Expungements		---

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

2021 Meeting Schedule: 4th Wednesday at 4pm unless otherwise scheduled

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – November 18, 2020

DUE TO THE COVID-19 PANDEMIC AND STATE OF EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members, staff & guests	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair	X		
Robert Alder	X		
Rod N. Andreason	X		
Paul Barron	X		
Judge James T. Blanch	X		
Lauren DiFrancesco	X		
Judge Kent Holmberg	X		
James Hunnicutt	X		
Larissa Lee		X	
Trevor Lee		X	
Judge Amber M. Mettler	X		
Brooke McKnight	X		
Ash McMurray	X		
Timothy Pack	X		
Bryan Pattison	X		
Michael Petrogeorge	X		
Judge Clay Stucki	X		
Judge Laura Scott	X		
Leslie W. Slaugh	X		
Trystan B. Smith	X		
Heather M. Sneddon			
Paul Stancil	X		
Judge Andrew H. Stone	X		
Justin T. Toth		X	
Susan Vogel	X		
Chris Williams		X	
Kimberly Neville	X		
Nancy Sylvester, Staff	X		
Brent Hall, Guest	X		
Nicole Salazar- Hall, Guest	X		
Jacqueline Carlton	X		

(1) WELCOME AND APPROVAL OF MINUTES

Jonathan Hafen welcomed the committee and asked for approval of the minutes (as amended with comments from the subcommittee.) Rod Andreason moved to approve the minutes; Robert Adler seconded. The minutes were approved unanimously.

(2) RULES 5, 43, AND 76.

Mr. Hafen provided an update on the Supreme Court's Comments to the pandemic-response rules, beginning with Rule 5. The Court raised a question as to how parties should determine that an email address is invalid.

Leslie Slaugh also raised a comparable issue with respect to lines 46-49, suggesting that the language should be revised to include "unless the sender has reason to know the email address is invalid." Judge Stone commented that the concern would apply equally to physical addresses, particularly in landlord-tenant matters in which a tenant may have been evicted and the service address is no longer valid.

Susan Vogel suggested that Rule 76 could be improved to address this issue, and to emphasize that parties need to use valid contact information and to notify opposing parties of updated contact information, absent the information being protected (such as in the context of a protective order). Ms. Vogel also noted that the Court's web page provides useful language that advises parties of their obligation to keep their contact information current. Additional revisions were proposed by Judge Stucki to clarify that notice is required "for purposes of receiving service and other communications from the court and other parties."

Additional discussion was held regarding Rule 5 as to whether it would be appropriate to include an Advisory Committee note indicating that parties were expected to check email regularly. The consensus of the Committee was to minimize the use of Advisory Committee notes.

The Committee then discussed the Supreme Court's comments on Rule 43(b), with regard to remote hearing oaths. The Supreme Court expressed approval of the proposed language, which tracks the statutory language. However, the Court had questions regarding who had responsibility for providing the enumerated safeguards.

Nancy Sylvester proposed language indicating that the "court will provide all remote testimony safeguards to the extent possible." Additional language was proposed indicating that the parties would provide any missing safeguards in the event the court is unable to do so. Additional discussion was held as to whether a hearing should proceed if all enumerated safeguards are not provided, with some trial judges noting that parties occasionally attempt to improperly delay or avoid remote hearings, claiming technical difficulties. Dean Alder suggested that the language be revised to state that: "No hearing may proceed unless the court ensures that all necessary remote

testimony safeguards are provided, by the court or by the parties." Dean Alder also indicated that the word necessary implies some degree of discretion for the trial court to determine whether the safeguards are available. Judge Stone further proposed that language be included indicating that "any objection to a lack of safeguards is waived unless timely made."

At the conclusion of discussion, Mr. Hafen called for a motion. Jim Hunnicutt moved to send the proposed amendment to the Supreme Court; Judge Stone seconded. The motion passed unanimously.

The proposed amendments (**Attachment A**) were sent to the Supreme Court for consideration.

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(3) FAMILY LAW AMENDMENTS

Mr. Hunnicutt introduced Brent Hall and Nicole Salazar-Hall, who introduced proposed amendments to certain rules that govern family law proceedings. Mr. Hall stated that the working group has proposed two significant amendments: (1) Rule 26 – to include a Tier 4 category specific to family law cases and to modify certain discovery limits in those cases; (2) to add Rule 100.5 to include a track to prioritize cases that can be resolved quickly. The working group is working cooperatively with the Family Law Section to seek broader input. Additional stylistic changes were proposed to other rules to use less confrontational language in the family law setting (for example, changing "plaintiff" and "defendant" to parties or "respondent.")

Ms. Vogel commented that the Court's website has been updated to improve instructions for family law participants, with a goal of simplifying the process for pro se and family law parties. Mr. Hunnicutt also commented on efforts to utilize case management conferences to more efficiently move cases through the system, as well as to utilize the Tier 4 track to improve the timeline needed in divorce cases. Mr. Hunnicutt noted that the modern approach in family law is to remove some of the more traditional acrimonious case titles (for example, using the term "versus") in order to reflect a more cooperative effort to separate married persons, provide for shared children, and equitably distribute assets.

Ms. Salazar-Hall presented the proposed revisions, starting with Rule 3(c), indicating that suggested language was derived from the Juvenile Rules and removes certain acrimonious concepts in how parties are labeled in parentage disputes. Mr. Slaugh suggested that it may be appropriate to use language from the appellate rules, which implements a comparable concept. Judge Stone suggested that the working group consider clarifying the order of proof in evidentiary proceedings, as the "petitioner" would traditionally proceed first and carry the burden of proof. Mr. Andreason

and Mr. Slaugh suggested potentially combining or cross-referencing the caption amendments in Rule 7 or Rule 10. After discussion, the working group will move the suggested revision to Rule 7 and 10.

Additional amendments were proposed to Rule 12 to remove adversarial language in domestic cases. Ms. Vogel proposed that the language be revised to clarify that pleadings are required to both "filed" and "served."

The working group has also proposed a revision to Rule 26 to add a Tier 4 specific to domestic relations actions. The working group has proposed a total of 4 hours of fact deposition hours and a 90-day limit for discovery. Ms. Salazar-Hall noted that discovery often follows a pattern in domestic cases which lends itself to a more efficient timeframe than in a commercial case. Ms. Salazar-Hall further noted that parties in domestic cases would often benefit from a more speedy resolution, particularly if children are at issue.

Rule 104 was revised to change "opposing" party to "other" party, again, removing an adversarial concept.

Finally, Mr. Hall introduced the proposed addition of Rule 100.5, which would implement a case management process for domestic relations actions. Mr. Hall explained that the proposed amendment is intended to address legislative concerns that domestic cases are taking too long to resolve. Judge Holmberg offered to place the proposal on the judicial subcommittee on divorce proceedings' calendar to solicit feedback from that group.

The working group will coordinate with the Family Law Section and other interested parties to obtain additional feedback and submit a proposal at a later meeting.

(4) RULES BACK FROM COMMENT

Ms. Sylvester shared comments on a number of rules that had been sent out for comment, including public comments to Rules 7, 7A, 8, 36, 42, and 64.

A number of comments were received regarding use of bilingual notices, which should be addressed by the court's forms.

Additional comments were raised regarding Rule 64 and potential increased costs to litigants. After discussion, the Committee decided to investigate the concern further and include this item for later discussion.

A comment was raised regarding the "ex parte" language of proposed Rule 7A. Mr. Hunnicutt noted that the term "ex parte" motion has been interpreted as a motion that does not require a response. An additional comment was raised regarding the use of the term affidavit, as

inconsistent with the statute authorizing use of declarations. The term declaration was also added to address this comment. Judge Blanch also commented that there is inconsistent use of the term "ex parte motion" by practitioners, noting that a true ex parte motion (in which the other side is not notified of the motion) is used very sparingly.

(5) ADJOURNMENT

The remaining items were deferred until January 27, 2021. The meeting adjourned at 6:00 p.m.

Attachment A

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

(a) When service is required.

(1) ~~Papers~~Documents that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following ~~papers~~documents must be served on every party:

(A) a judgment;

(B) an order that states it must be served;

(C) a pleading after the original complaint;

(D) a ~~paper~~document relating to disclosure or discovery;

(E) a ~~paper~~document filed with the court other than a motion that may be heard ex parte; and

(F) a written notice, appearance, demand, offer of judgment, or similar ~~paper~~document.

(2) Serving parties in default. No service is required on a party who is in default except that:

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

(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

(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;

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

(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.

(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.

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

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

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

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

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

(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) for papers not electronically served under paragraph (b)(3)(A), emailing it to

~~(i)~~ the most recent email address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76, or by other notice, or

~~(ii)~~ to the email address on file with the Utah State Bar;

(C) if the person's email address has not been provided to the court and other parties, or if the person required to serve the document does not have the ability to email, a document may be served under this rule by:

(i) mailing it to the person's last known mailing address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76,

~~(D)~~(ii) handing it to the person;

~~(E)~~(iii) 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;

~~(F)~~(iv) 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

~~(G)~~(v) any other method agreed to in writing by the parties.

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

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

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

(B) every ~~paper~~document 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:

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

(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;

Comment [NS1]: Court had questions about what makes an email address invalid. Bounce back message?

Committee resolved by eliminating the language.

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

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

(d) Certificate of service. A ~~paper~~document required by this rule to be served, including electronically filed ~~papers~~documents, 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 ~~paper~~documents 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~~ documents 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~~document electronically. A party without an electronic filing account may file a ~~paper~~document 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:

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

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

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

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

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

Advisory Committee Notes

~~Rule 5(d) is amended to give the trial court the option, either on an ad hoc basis or by local rule, of ordering that discovery papers, depositions, written interrogatories, document requests, requests for admission, and answers and responses need not be filed unless required for specific use in the case. The committee is of the view that a local rule of the district courts on the subject should be encouraged.~~

~~The 1999 amendment to subdivision (b)(1)(B) does not authorize the court to conduct a hearing with less than 5 days notice, but rather specifies the manner of service of the notice when the court otherwise has that authority.~~

~~2001 amendments~~

~~Paragraph (b)(1)(A) has been changed to allow service by means other than U.S. Mail and hand delivery if consented to in writing by the person to be served, i.e. the attorney of the party. Electronic means include facsimile transmission, e-mail and other possible electronic means.~~

~~While it is not necessary to file the written consent with the court, it would be advisable to have the consent in the form of a stipulation suitable for filing and to file it with the court.~~

~~Paragraph (b)(1)(B) establishes when service by electronic means, if consented to in writing, is complete. The term "normal business hours" is intended to mean 8:00 a.m. to 5:00 p.m. Monday through Friday, excluding legal holidays. If a fax or e-mail is received after 5:00 p.m., the service is deemed complete on the next business day.~~

2015 amendments

~~Since the Rules of Juvenile Procedure do not have a rule on serving papers, this rule applies in juvenile court proceedings under Rule 1, Rule 81(a) and Rule of Juvenile Procedure 2.~~

Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the document on lawyers who have an e filing account. (Lawyers representing parties in the district court are required to have an account and electronically file documents. Code of Judicial Administration Rule 4 503.) The 2015 amendment excepts from this provision documents electronically filed in juvenile court.

Although electronic filing in the juvenile court presents to the parties the documents that have been filed, the juvenile court e filing application (CARE), unlike that in the district court, does not deliver an email alerting the party to that fact. The Board of Juvenile Court Judges and the Advisory Committee on the Rules of Juvenile Procedure believe this difference renders electronic filing alone insufficient notice of a document having been filed. So in the juvenile court, a party electronically filing a document must serve that document by one of the other permitted methods.

[*Comment regarding advisory committee note: The Civil Rules Committee thought this procedure should go into a juvenile rule. The Juvenile Rules Committee respectfully requested that the Civil Rules Committee retain all of the 2015 amendments with the exception of the first sentence, which is no longer accurate. This is the sentence that reads "Since the Rules of Juvenile Procedure do not have a rule on serving papers, this rule applies in juvenile court proceedings under Rule 1, Rule 81(a) and Rule of Juvenile Procedure 2."*

The Juvenile Rules Committee stressed the importance of leaving the remainder of the 2015 amendments in Rule 5 to instruct practitioners and pro se parties on the differences between practice in juvenile and district court. While these distinctions are included in the body of Juvenile Rule 18, the committee expressed the desire to have the differences spelled out in both rules, since those new to juvenile court practice may not realize the necessity of reviewing service requirements in both the juvenile and civil rules.]

Rule 43. Evidence.

(a) Form. In all trials and evidentiary hearings, the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. In civil proceedings, the court may, upon request or on its own order, and ~~F~~for good cause and with appropriate safeguards, ~~the court may~~ permit remote testimony in open court. Remote testimony will be presented via videoconference if reasonably practical, or if not, via telephone or assistive device.

(b) Remote testimony safeguards. Remote testimony safeguards must include:

Comment [NS1]: Court: Spell out which will be provided by the court or give flexibility.

(1) notice of the date, time, and method of transmission, including instructions for participation, and whom to contact if there are technical difficulties;

(2) the ability for a party and the party's counsel to communicate confidentially;

(3) a means for sharing documents, photos, and other things among the remote participants;

(4) access to the necessary technology to participate, including telephone or assistive device;

(5) an interpreter or assistive device, if needed;

(6) a verbatim record of the testimony; and

(7) any other measures the court deems necessary to maintain the integrity of the proceedings.

No hearing may proceed unless the court ensures that all necessary remote testimony safeguards are provided, by the court or by the parties. An objection to a lack of safeguards is waived unless timely made.

(c) **Remote hearing oath**. An oath in substantially the following form must be given prior to any remote hearing testimony: "You do solemnly swear (or affirm) that the evidence you shall give in this issue (or matter) pending between ____ and ____ shall be the truth, the whole truth and nothing but the truth, and that you will neither

communicate with, nor receive any communications from, another person during your testimony unless authorized by the court, so help you God (or, under the pains and penalties of perjury)."

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

~~**Advisory Committee Note**~~

~~Federal Rule of Civil Procedure 43 has permitted testimony by contemporaneous transmission since 1996. State court judges have been conducting telephone conferences for many decades. These range from simple scheduling conferences to resolution of discovery disputes to status conferences to pretrial conferences. These conferences tend not to involve testimony, although judges sometimes permit testimony by telephone or more recently by video conference with the consent of the parties. The 2016 amendments are part of a coordinated effort by the Supreme Court and the Judicial Council to authorize a convenient practice that is more frequently needed in an increasingly connected society and to bring a level of quality to that practice suitable for a court record. As technology evolves the methods of contemporaneous transmission will change.~~

Rule 76. Notice of contact information change.

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

Tab 2

COMMENTS TO URCP. NOVEMBER 16, 2020.

Rules back from comment:

Consolidation and Venue Transfer Amendments

(i) **URCP042.** CONSOLIDATION; SEPARATE TRIALS; VENUE TRANSFER. AMEND.

Domestic Injunction Amendments

(ii) **URCP005.** SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS. AMEND.

(iii) **URCP109.** INJUNCTION IN CERTAIN DOMESTIC RELATIONS CASES. AMEND.

Notice Amendments

(iv) **URCP004.** PROCESS. AMEND.

(v) **URCP007.** PLEADINGS ALLOWED; MOTIONS, MEMORANDA, HEARINGS, ORDERS. AMEND.

(vi) **URCP008.** GENERAL RULES OF PLEADINGS. AMEND.

(vii) **URCP036.** REQUEST FOR ADMISSION. AMEND.

(viii) **URCP101.** MOTION PRACTICE BEFORE COURT COMMISSIONERS. AMEND.

Service of Process Amendments

(ix) **URCP004.** PROCESS. AMEND.

Supplemental Proceedings Amendments

(x) **URCP64.** WRITS IN GENERAL. AMEND.

(xi) **URCP007A.** MOTION TO ENFORCE ORDER AND FOR SANCTIONS. NEW.

(xii) **URCP007B.** MOTION TO ENFORCE ORDER AND FOR SANCTIONS IN DOMESTIC LAW MATTERS. NEW.

(xiii) **URCP007.** PLEADINGS ALLOWED; MOTIONS, MEMORANDA, HEARINGS, ORDERS. AMEND.

Vexatious Litigant Amendments

(xiv) **URCP083.** VEXATIOUS LITIGANTS. AMEND.

Comments

Bart Kunz

Proposed URCP 7, 8, and 36: I suggest limiting the cautionary language and bilingual notice to situations where the party intended to receive the notice is unrepresented.

I'm in favor of improving notice to promote fairness, but this change shouldn't be necessary in situations where the parties are represented by counsel. The benefit this

change contemplates can be achieved without unnecessarily adding to counsel's growing task list in cases where the relevant parties are represented.

I realize represented parties can opt out (at least under the proposed rule 7), but I don't understand why they would need to take that additional step. Why is the caution/notice the default approach? I suspect that in many, many cases, these requirements will be surplusage. And they likely will expand the potential bases for counsel to seek delay or set aside.

Accordingly, I recommend the following revisions:

(added) Proposed URCP 7(c)(2), line 25, insert after "For all dispositive motions": "where the nonmoving party is unrepresented."

(added)Proposed URCP 7(c)(3), line 28, insert after "All motions": "directed to unrepresented parties."

(added)Proposed URCP 8(a), line 10, insert after "pleading requesting relief": "against an unrepresented party or a party whose representation is unknown."

(added)Proposed URCP 36(b)(1), line 11: insert after "All requests for admission": "directed to an unrepresented party." (I realize this proposal goes beyond the rule's current iteration, but I think this revision is consistent with my proposal.)

J. Bogart

URCP4:

4(3) Acceptance of Service:

(B)(i) and (ii) are particularly good changes. (no change)

URCP 7:

7(c)(2): I suppose this is intended to aid pro se litigants. Could a lawyer come into court and obtain relief under (4) because the notice was absent? I wonder why the amendment does not say it is limited to cases with a pro se litigant? (I can't imagine a judge granting an extension to an attorney. (4) says "may." Bart's amendments above would also address this situation.)

Why would anyone opt out of the Notice? What benefit is there to opting out?

Is the Notice to Responding Party the Bilingual Notice of subsection (3)? Why is there no reference to where the Notice to Responding Party is found? It looks like it is part of Rule 7(a), but it is not certain. Why not be specific about location, or label the

language in 7 as Notice to Responding Party? (We weren't specific because it has to be posted online and it hasn't been yet.)

7(c)(3): The Bilingual Notice is not available, so it is hard to know just what this section means. How is the language of the Bilingual Notice determined? Does the Judicial Council have some standard for which languages qualify for the Bilingual Notice? Why is there only one second language for Bilingual Notice? I would think that the languages ought to be tied to those spoken or read by the parties. (We actually included a link to an example of the notice when this circulated for comment. The notice contains other languages that tell a non-English or non-Spanish speaker how to access resources.)

Are the Notice to Responding Party and Bilingual Notice substantively identical? How are they related to the notice in Rule 8? Is it 2 notices or 3 that are required? Or is (c)(2) language something other than a Notice to Responding Party? You should set out clearly, in one place, what is what and what is required when. (I am not sure I see the confusion here. There is caution language that appears at the top of the first page and then there is a bilingual Notice to Responding Party. We may need to include a visual representation of this when it is circulated as final.)

URCP 8:

(a) How does this fit with 7(c)? What is the difference (if there is one) between "caution language" and "Notice to Responding Party"? (Same as last comment)

URCP 36

Same as 7(c). (Same as last comment)

URCP 64

(c)(1): This is a good change.

(c)(2): Why use the more onerous Rule 4? Rule 5 would seem sufficient, as Notice of Hearing goes to the parties to the case. Making judgments harder to collect seems to me the wrong idea. (He raises a good point but the Boards of District and Justice Courts were concerned about the party being properly served.)

URCP 7A:

(a) What do you mean by an "ex parte" motion? If filed electronically, there is notice to all counsel at least, which means it is not ex parte. Who is the motion not served on? If it is just to signal that different timelines apply, then ex parte is not necessary and

does no work. It would be clearer to jst say that no response is required (or permitted, or whatever), particularly as the Committee is making the Rules more accessible to pro se litigants. (I think he's right that this should be clarified.)

(b) To beat a horse that should be dead but seems resurrected once again, this subsection is in conflict with statute (78B-18a-104). The statute says one can use a declaration in lieu of an affidavit. The Rules of Civil Procedure do not outrank statutes, and there is no exception in the statute for this Rule. The text should say "affidavit or declaration" and "affiant or declarant." Using just "affidavit" etc., invites motions and argument, and encourages confusion. And for pro se litigants it encourages a waste of time and money in finding a notary. (He's right that this creates confusion and we should update it, although I don't think it's in conflict with the statute. The statute refers to the rules and then gives an out from the formal requirement.)

URCP 83:

Good changes.

A couple of questions: a represented party may be found a vexatious litigant. Assuming the attorney filed the offending papers, there is no sanction against the attorney? Is that to be pursued under some other rule? It seems odd that an attorney gets off free while the client gets sanctioned when the conduct was also by the attorney, and the attorney has a positive obligation not to engage in the sanctioned conduct. (The committee discussed that this is covered by Rule 11 and the Rules of Professional Conduct already.)

The relationship of the courts in (b) and (e) is a little unclear. "Any court" encompasses all courts, not just all Utah state courts. How does the consultation of of (e) work if the other court is a US District Court? Or is there none and the vexatious litigant order is ineffective except as to Utah courts? (We should clarify or add qualifier "if possible.")

Eric K. Johnson

Why require bilingual notices for everyone? If the party/attorney knows the person to be served speaks English, then there is no need for a bilingual notice. If the party/attorney knows the person to be served speaks Spanish, then there is no need for a bilingual notice. If the party/attorney knows the person to be served speaks

Marshallese, then there is no need for a bilingual notice either because the party/attorney can and should have the summons translated into Marshallese.

A lingua franca is necessary for an ordered society. If I moved to a country that did not speak my native tongue (English), I'd work hard to learn the local language. For my sake and for my family's. I'd ensure my children learned it too. For my and for their benefit. Not to penalize them. Not to burden them (even though learning a new language does take time and effort–it's well worth it). The last thing we should be doing in the legal profession is providing fewer incentives for people to learn and speak English. An immigrant who learns English benefits in every way here. People who don't learn English are at a disadvantage. Don't make it harder for them to succeed by making it easy not to learn and work within society in English. (This comment, while good intentioned, seems a bit tone deaf to the reality of many litigants. The bilingual notice is also just a boilerplate form—see above comments.)

Michael A Jensen

I concur with most of the above comments. In particular, the bilingual requirement should only be applicable for cases when the attorney filing pleadings, motions and other papers reasonably knows or should know that the opposing party or parties are not reasonably fluent in the English language. In the past 25 years, having filed hundreds of cases, I have never experienced a case where the other parties were not reasonably fluent in the English language. Imposing such a bilingual requirement is draconian and unnecessarily burdensome in 99.999% of the cases. (Similar response—just use the same form every time.)

Guy Galli

The proposal to have the "warning language" in the top right-hand corner (several of the rules, esp Rule 5) will/may interfere with the Judge's Electronic Signature in that same location. (Good point—suggestions??)

J. Duke Edwards

I agree with Eric's and Michael's comments above.

(1) I think that the nation's language should be required in legal proceedings, in promotion of cultural and national unity, rather than encouraging accommodation of multiple languages.

(2) The proposed 3-page Ten Day Summons is 2 pages too long, discouraging reading.

(3) !Auda! !Audame! I'm unable to print Arabic and Vietnamese characters, as on the suggested form, and Spanish only with difficulty. (See responses above)

Michael Menssen

I have a comment about the proposed amendment to Rule 42, specifically the second sentence of Rule 42(a)(2). The proposed amendment is written like this: "A motion to consolidate may be filed or opposed by any party. The motion shall be filed in and heard by the judge assigned to the first action filed and served on all parties in each action pursuant to Rule 5."

It is unclear to me whether the second sentence is saying (a) the motion must be filed and heard in the first action where a complaint has been filed and service has been effectuated on all parties, or (b) the motion must be filed and heard in the first action where a complaint is filed, and then that motion must be served on all parties in each action.

Option (a) could be problematic for a few reasons, including that parties might not be completely identical in actions that otherwise qualify for consolidation. Option (b) makes sense and does not appear problematic. Assuming option (b) is the intended interpretation, I recommend the sentence be modified to eliminate the ambiguity in this way: "The motion shall be filed in and heard by the judge assigned to the first action filed and MUST BE served on all parties in each action pursuant to Rule 5." (proposed addition in CAPS.) (Comment added to Rule 42 for discussion by committee.)

Jenny Gnagey

I want to comment in support of the bilingual notice requirements and, generally, in support of more notice to parties of their rights and obligations. I am not a lawyer, but my understanding is that, within the US judicial system, all people (regardless of language spoken) have a right to due process, and that two important components of

due process are notice and a hearing. I think the judicial system has a responsibility to do its best to ensure due process for everyone, including those who may not speak English, and I think these proposed rule changes are a good step toward fulfilling this responsibility.

A number of earlier comments support the proposed changes only for notices directed to unrepresented parties or parties where representation is unknown. First, from my experience working with and advocating for low income tenants, I think it is important to point out that according to the Utah Bar Foundation's "The Justice Gap" report (2020) over 80%* of defendants in civil cases in Utah were not represented by an attorney in fiscal year 2019. So unrepresented parties constitute a significant percentage of all parties in civil cases.

Second, I worry that narrowing these requirements to apply only to unrepresented parties would result in mistakes at best, and abuse at worst. If someone fails (whether by mistake or malice) to serve an unrepresented non-English-speaking party with a bilingual notice, it is unlikely they will be aware of, and able to assert, their right to a bilingual notice. If bilingual notice is required in all cases, failure to serve a bilingual notice to someone who needs it will be reduced. Overall, I think there is justification for making the new notice requirements apply universally for all civil cases.

**my own calculation based on The Justice Gap (2020) Figure 4*

Debt Collection: 62% of total civil cases; 98% of defendants unrepresented

Divorce/annulment: 14% of total civil cases; 81% of defendants unrepresented

Eviction: 6% of total civil cases; 95% of defendants unrepresented

Protective orders: 5% of total civil cases; 70% of defendants unrepresented

*(0.62*0.98) + (0.14*0.81) + (0.06*0.95) + (0.05*0.70) = 0.813 or 81.3%*

(This comment supports the amendments as they read when published for comment.)

Russell Mitchell

Rule 4(c)(e) already requires that the Summons must "notify the defendant that in case of failure to answer in writing, judgment by default will be entered against the defendant" So this notice is already contained in the Summons from the existing Rule. The required form of the "dual language" "10-day" summons that was provided in the

link with the Utah Court Notices email regarding all of these amendments now has a special "Deadline" section.

Now, if I read it correctly, Rule 8 is amended to require "A pleading requesting relief must include the following caution language at the top right of the first page, in bold print: If you do not respond to this document within applicable time limits, judgment could be entered against you as requested. Failure to include the caution language may provide the responding party with a basis under Rule 60(b) for excusable neglect to set aside any resulting judgment or order." With this Notice language in a special location at the top of the page, of the Complaint, and in bold.

However, the Complaint must be served with a Summons. Going back to the required form of the "dual language" "10-day" summons already mentioned above, it does not show this Notice in the upper part of page one (that is required for the Complaint), but has it only in the body of the document under "Deadline" – which makes it confusing as to just what format we are to follow with these proposed amendments.

The Summons is giving the deadline more than the Complaint is but the Complaint needs a special "page one" Notice. In addition, the amendment to the Rule 36 Request for Admission also requires the special "page one" Notice similar to that of the Complaint, but the Summons does not have a "page one" Notice but a special "Deadline" section within the body of the document.

On top of this, any Motion seeking relief needs its own "page one" Notice, which Notice is to be stated differently (different word combination) than what is required on a Complaint or Request for Admission.

These seem to be on a track to create confusion.

While I am guessing that attorneys can just change their basic formats for pleadings, discovery, motions, etc., it would appear that this is convoluting the process for pro se litigants, thus making it more difficult for people to access the judicial/legal system at a time we are trying to come up with ways to make the justice/legal system less costly and burdensome to the every-day person. These changes do not seem to be geared toward this more recent goal, unless that goal is not meant to apply to those petitioner/plaintiff pro se litigants and only geared to defendant pro se litigants.

As these rules appear to apply regardless of whether the parties have legal counsel, it does not seem geared to keep the cost down for those who already have, or routinely use litigation counsel, or make the practice of law run more smoothly or less expensively in any but the few of a certain group of potential defendants: in debt collection matters (already governed by the FDCPA on giving notice about an attempt to collect a debt); and residential landlord/tenant matters where pro se litigants are generally a high percentage (assuming the "Justice Gap" article in the Sep/Oct 2020 Bar Journal is accurate).

I can't get my head around just what the real goal/purpose is for these broad changes the way they are presented. Perhaps a different approach would be better? One tailored to these particular areas of litigation?

(Since our forms committee will be creating examples of all of this, I'm not sure it will be that confusing. Regarding costs, perhaps the amendments suggested above omitting represented parties will help.)

Kirk Cullimore

As to the proposed changes of URCP004, URCP007, URCP008, URCP036 and URCP101: directions are already pretty explicit on each of the pleadings already. Additional language will only appear more boilerplate and will not futher help direct pro se litigants. Also, the additional language requirements is unduly burdensome. If the courts want to help litigants that are either pro se or have a different native language then the courts can more effectively take that on without shifting the burden. More appropriate then addtional language might be reference to a self-help website administered by the courts. Each pleading or notice can direct the litigant to a website address. That link can then provide explanations for various types of summons, motions, discovery requests,etc. The website can also provide phone numbers, translations, or links for resources to help litigants that primarily speak a different language. An option like that can help address access to justice issues while not displacing additional burdens on the parties already trying to seek legal redress of grievances. It will also be a more succinct option that may be more effective than further complicating notices and pleadings with additional language. (The committee agrees—the notice includes links to helpful court webpages.)

(URCP64) Requiring motions and additional hearings in post-judgment remedies is a waste of judicial resources and prejudicial to prevailing parties. When a judgment has already entered, it is not uncommon for the party against whom a judgment was entered to either avoid enforcement or to cause additional delays. The proposed rule which would require motion practice in post-judgment remedies just gives those parties a new avenue to continue litigation (which is already resolved) and avoid the consequences of a judgment. Objections and hearings are already available to parties with a judgment. But, to require motions and hearings needlessly increases costs of collection, enforcement, and causes potentially more litigation on already resolved matters. With that said, it is already the usual practice of most courts to require personal service for a supplemental proceedings before issuing a bench warrant for failure to appear. Clarifying that usual practice in rule may be appropriate, but I am concerned about the precedent this rule may set for other post-judgment remedies like writs of garnishments, writs of execution, etc. Requiring personal service of post-judgment remedies is unduly burdensome, costly and prejudicial as well. If a party is already subject to a judgment then you can expect they will avoid service even more intentionally. This increases costs for parties that have already been adjudged to have been legally damaged. This also potentially decreases an aggrieved party's ability to effectively collect on a judgment if collection can be delayed by avoiding service in a matter where service was already effectuated.

I would strongly urge the rules committee to further consider notice requirements and other alternatives before implementing the above proposed rule changes. I would also strongly urge the rules committee to consider a revised, more narrow adoption of the proposed changes to Rule 64. (He makes some good points about increasing costs and narrowing the scope of the amendments.)

Nicholas Lloyd

In regards to the proposed bilingual notice amendments: the difficult thing about including different languages is that the proposed rule would only include English and Spanish. Utah has a number of litigants, particularly refugees, who speak neither English nor Spanish. Parties who speak neither English nor Spanish are often the ones who are the most unfamiliar with our court system, and need the most help in

interacting with the courts. But there would be obvious difficulties in requiring pleadings to be in every language. It would make more sense to provide a website URL on pleadings where parties could go to seek language assistance, rather than requiring Spanish explanations.

In regards to the caution language: the proposed amendments seem duplicative, burdensome, and potentially would be better served by pointing a party to where they can find help. The rule 7 amendment would say "this motion requires you to respond" but it doesn't say how to respond, when to respond, or what in the motion the respondent should focus on. Similar things could be said about the notices outlined in the amendments to Rules 8, 36, and 101. It wouldn't be practicable to include a statement telling the party the precise way that they should litigate their case – because each motion/situation is unique that's what an attorney is for. It would be a better use of resources to point parties to pro se assistance (such as the eviction and collection assistance that is already provided by the Utah Bar) rather than simply telling the party that they have to respond without informing them how/what/when they have to respond. (See responses to comments above.)

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

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

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

(4) an answer to a crossclaim;

(5) a third-party complaint;

(6) an answer to a third-party complaint; and

(7) a reply to an answer if ordered by the court.

(b) Motions. A request for an order must be made by motion. The motion must be in writing unless made during a hearing or trial, must state the relief requested, and must state the grounds for the relief requested. Except for the following, a motion must be made in accordance with this rule.

(1) A motion, other than a motion described in paragraphs (b)(2), (b)(3) or (b)(4), made in proceedings before a court commissioner must follow Rule 101.

(2) A request under Rule 26 for extraordinary discovery must follow Rule 37(a).

(3) A request under Rule 37 for a protective order or for an order compelling disclosure or discovery—but not a motion for sanctions—must follow Rule 37(a).

(4) A request under Rule 45 to quash a subpoena must follow Rule 37(a).

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

(c) Name and content of motion.

(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(2) **Caution language.** For all dispositive motions where the nonmoving party is unrepresented, the motion must include the following caution language at the top right corner of the first page, in bold type: **This motion requires you to respond. Please see the Notice to Responding Party.**

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(3) **Bilingual notice.** All motions directed to unrepresented parties must include or attach the bilingual Notice to Responding Party approved by the Judicial Council.

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(4) **Failure to include caution language and notice**. Failure to include the caution language in paragraph (c)(2) or the bilingual notice in paragraph (c)(3) may be grounds to continue the hearing on the motion, or may provide the non-moving party with a basis under Rule 60(b) for excusable neglect to set aside the order resulting from the motion. Parties may opt out of receiving the notices set forth in paragraphs (c)(2) and (c)(3) while represented by counsel.

(5) **Title of motion.** The moving party must title the motion substantially as: "Motion [short phrase describing the relief requested]."

(6) **Contents of motion.** The motion must include the supporting memorandum. The motion must include under appropriate headings and in the following order:

(A) a concise statement of the relief requested and the grounds for the relief requested; and

(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.

(~~2~~7) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the motion.

(~~3~~8) **Length of motion.** If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the motion may not exceed 25 pages, not counting the attachments, unless a longer motion is permitted by the court. Other

motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the court.

(d) Name and content of memorandum opposing the motion.

(1) A nonmoving party may file a memorandum opposing the motion within 14 days after the motion is filed. The nonmoving party must title the memorandum substantially as: "Memorandum opposing motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(A) a concise statement of the party's preferred disposition of the motion and the grounds supporting that disposition;

(B) one or more sections that include a concise statement of the relevant facts claimed by the nonmoving party and argument citing authority for that disposition; and

(C) objections to evidence in the motion, citing authority for the objection.

(2) If the non-moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the memorandum opposing the motion may not exceed 25 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other opposing memoranda may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

(e) Name and content of reply memorandum.

(1) Within 7 days after the memorandum opposing the motion is filed, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion. The moving party must

title the memorandum substantially as "Reply memorandum supporting motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

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

(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party not previously set forth that respond to the opposing party's statement of facts and argument citing authority rebutting the new matter;

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

(D) response to objections made in the memorandum opposing the motion, citing authority for the response.

(2) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the reply memorandum may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other reply memoranda may not exceed 10 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

(f) Objection to evidence in the reply memorandum; response. If the reply memorandum includes an objection to evidence, the nonmoving party may file a response to the objection no later than 7 days after the reply memorandum is filed. If the reply memorandum includes evidence not previously set forth, the nonmoving party may file an objection to the evidence no later than 7 days after the reply memorandum is filed, and the moving party may file a response to the objection no

later than 7 days after the objection is filed. The objection or response may not be more than 3 pages.

(g) Request to submit for decision. When briefing is complete or the time for briefing has expired, either party may file a "Request to Submit for Decision," but, if no party files a request, the motion will not be submitted for decision. The request to submit for decision must state whether a hearing has been requested and the dates on which the following documents were filed:

(1) the motion;

(2) the memorandum opposing the motion, if any;

(3) the reply memorandum, if any; and

(g)(4) the response to objections in the reply memorandum, if any.

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

(i) Notice of supplemental authority. A party may file notice of citation to significant authority that comes to the party's attention after the party's motion or memorandum has been filed or after oral argument but before decision. The notice may not exceed 2 pages. The notice must state the citation to the authority, the page of the motion or memorandum or the point orally argued to which the authority applies, and the reason the authority is relevant. Any other party may promptly file a response, but the court may act on the motion without waiting for a response. The response may not exceed 2 pages.

(j) Orders.

(1) Decision complete when signed; entered when recorded. However designated, the court's decision on a motion is complete when signed by the judge. The decision is entered when recorded in the docket.

(2) Preparing and serving a proposed order. Within 14 days of being directed by the court to prepare a proposed order confirming the court's decision, a party must serve the proposed order on the other parties for review and approval as to form. If the party directed to prepare a proposed order fails to timely serve the order, any other party may prepare a proposed order confirming the court's decision and serve the proposed order on the other parties for review and approval as to form.

(3) Effect of approval as to form. A party's approval as to form of a proposed order certifies that the proposed order accurately reflects the court's decision. Approval as to form does not waive objections to the substance of the order.

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

(5) Filing proposed order. The party preparing a proposed order must file it:

(A) after all other parties have approved the form of the order (The party preparing the proposed order must indicate the means by which approval was received: in person; by telephone; by signature; by email; etc.);

(B) after the time to object to the form of the order has expired (The party preparing the proposed order must also file a certificate of service of the proposed order.); or

(C) within 7 days after a party has objected to the form of the order (The party preparing the proposed order may also file a response to the objection.).

(6) Proposed order before decision prohibited; exceptions. A party may not file a proposed order concurrently with a motion or a memorandum or a request to submit for decision, but a proposed order must be filed with:

(A) a stipulated motion;

(B) a motion that can be acted on without waiting for a response;

(C) an ex parte motion;

(D) a statement of discovery issues under Rule 37(a); and

(E) the request to submit for decision a motion in which a memorandum opposing the motion has not been filed.

(7) Orders entered without a response; ex parte orders. An order entered on a motion under paragraph (l) or (m) can be vacated or modified by the judge who made it with or without notice.

(8) Order to pay money. An order to pay money can be enforced in the same manner as if it were a judgment.

(k) Stipulated motions. A party seeking relief that has been agreed to by the other parties may file a stipulated motion which must:

(1) be titled substantially as: "Stipulated motion [short phrase describing the relief requested]";

(2) include a concise statement of the relief requested and the grounds for the relief requested;

(3) include a signed stipulation in or attached to the motion and;

(4) be accompanied by a request to submit for decision and a proposed order that has been approved by the other parties.

(l) Motions that may be acted on without waiting for a response.

(1) The court may act on the following motions without waiting for a response:

(A) motion to permit an over-length motion or memorandum;

(B) motion for an extension of time if filed before the expiration of time;

(C) motion to appear pro hac vice; and

(D) other similar motions.

(2) A motion that can be acted on without waiting for a response must:

(A) be titled as a regular motion;

(B) include a concise statement of the relief requested and the grounds for the relief requested;

(C) cite the statute or rule authorizing the motion to be acted on without waiting for a response; and

(D) be accompanied by a request to submit for decision and a proposed order.

(m) Ex parte motions. If a statute or rule permits a motion to be filed without serving the motion on the other parties, the party seeking relief may file an ex parte motion which must:

(1) be titled substantially as: "Ex parte motion [short phrase describing the relief requested]";

(2) include a concise statement of the relief requested and the grounds for the relief requested;

(3) cite the statute or rule authorizing the ex parte motion;

(4) be accompanied by a request to submit for decision and a proposed order.

(n) Motion in opposing memorandum or reply memorandum prohibited. A party may not make a motion in a memorandum opposing a motion or in a reply memorandum. A party who objects to evidence in another party's motion or memorandum may not move to strike that evidence. Instead, the party must include in the subsequent memorandum an objection to the evidence.

(o) Overlength motion or memorandum. The court may permit a party to file an overlength motion or memorandum upon a showing of good cause. An overlength motion or memorandum must include a table of contents and a table of authorities with page references.

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

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

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

(3) motion to continue a hearing;

(4) motion to appoint a guardian ad litem;

(5) motion to substitute parties;

(6) motion to refer the action to or withdraw it from alternative dispute resolution under Rule 4-510.05;

(7) motion for a conference under Rule 16; and

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

~~**(q) Limit on order to show cause.** An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show cause to believe a party has violated a court order. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket.~~

Advisory Committee Notes

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, including in supplemental proceedings under Rule 64, a party must file an ex parte motion to enforce order and for sanctions (if requested), pursuant to this rule and Rule 7. The motion must be filed in the same case in which that order was entered. The timeframes set forth in this rule, rather than those set forth in Rule 7, govern motions to enforce orders and for sanctions.

(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 or declaration that is based on personal knowledge and shows that the affiant or declarant is competent to testify on the matters set forth. The verified motion, ~~or~~ affidavit, or declaration 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 request to submit for decision and a proposed order to attend hearing, which must:

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

(2) state the relief sought in the motion;

(3) state whether the motion is requesting that the other party be held in contempt and, if so, 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;

(4) order the other party to appear personally or through counsel at a specific place (the court's address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving party has violated the order; and

(5) state that no written response to the motion is required but is permitted if filed within 14 days of service of the order, unless the court sets a different time, and that any written response must follow the requirements of Rule 7.

(d) Service of the order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting affidavits served on the

Comment [A1]: Comment to simplify this language from John Bogart. What do you mean by an "ex parte" motion? If filed electronically, there is notice to all counsel at least, which means it is not ex parte. Who is the motion not served on? If it is just to signal that different timelines apply, then ex parte is not necessary and does no work. It would be clearer to just say that no response is required (or permitted, or whatever), particularly as the Committee is making the Rules more accessible to pro se litigants.

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nonmoving party at least 28 days before the hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28 day period if:

(1) the motion requests an earlier date; and

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

(e) Opposition. A written opposition is not required, but if filed, must be filed within 14 days of service of the order, unless the court sets a different time, and must follow the requirements of Rule 7.

(f) Reply. If the nonmoving party files a written opposition, the moving party may file a reply within 7 days of the filing of the opposition to the motion, unless the court sets a different time. Any reply must follow the requirements of Rule 7.

(g) 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.

(h) Limitations. This rule does not apply to an order that is issued by the court on its own initiative. This rule does not apply in criminal cases or motions filed under Rule 37. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket, or to limit the

authority of the court to hold a party in contempt for failure to appear pursuant to a court order.

(i) 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 Utah law.

Rule 8. General rules of pleadings.

(a) Claims for relief. An original claim, counterclaim, cross-claim or third-party claim must contain a short and plain: (1) statement of the claim showing that the party is entitled to relief; and (2) demand for judgment for specified relief. Relief in the alternative or of several different types may be demanded. A party who claims damages but does not plead an amount must plead that the damages are such as to qualify for a specified tier defined by Rule 26(c)(3). A pleading that qualifies for tier 1 or tier 2 discovery constitutes a waiver of any right to recover damages above the tier limits specified in Rule 26(c)(3), unless the pleading is amended under Rule 15. A pleading requesting relief against an unrepresented party or a party whose representation is unknown must include the following caution language at the top right of the first page, in bold print: **If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.** Failure to include the caution language may provide the responding party with a basis under Rule 60(b) for excusable neglect to set aside any resulting judgment or order.

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(b) Defenses; form of denials. A party must state in simple, short and plain terms any defenses to each claim asserted and must admit or deny the statements in the claim. A party without knowledge or information sufficient to form a belief about the truth of a statement must so state, and this has the effect of a denial. Denials must fairly meet the substance of the statements denied. A party may deny all of the statements in a claim by general denial. A party may specify the statement or part of a statement that is admitted and deny the rest. A party may specify the statement or part of a statement that is denied and admit the rest.

(c) Affirmative defenses. An affirmative defense must contain a short and plain: (1) statement of the affirmative defense; and (2) a demand for relief. A party must set forth affirmatively in a responsive pleading accord and satisfaction, arbitration and award, assumption of risk, comparative fault, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment,

release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. If a party mistakenly designates a defense as a counterclaim or a counterclaim as a defense, the court, on terms, may treat the pleadings as if the defense or counterclaim had been properly designated.

(d) Effect of failure to deny. Statements in a pleading to which a responsive pleading is required, other than statements of the amount of damage, are admitted if not denied in the responsive pleading. Statements in a pleading to which no responsive pleading is required or permitted are deemed denied or avoided.

(e) Consistency. A party may state a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. If statements are made in the alternative and one of them is sufficient, the pleading is not made insufficient by the insufficiency of an alternative statement. A party may state legal and equitable claims or legal and equitable defenses regardless of consistency.

(f) Construction of pleadings. All pleadings will be construed to do substantial justice.

Advisory Committee Notes

Rule 36. Request for admission.

(a) Request for admission. A party may serve upon any other party a written request to admit the truth of any discoverable matter set forth in the request, including the genuineness of any document. The matter must relate to statements or opinions of fact or of the application of law to fact. Each matter ~~shall~~must be separately stated and numbered. A copy of the document ~~shall~~ must be served with the request unless it has already been furnished or made available for inspection and copying. ~~The request shall notify the responding party that the matters will be deemed admitted unless the party responds within 28 days after service of the request.~~

(b) Required caution language on request for admission.

(1) All requests for admission directed to an unrepresented party must include the following caution language at the top right corner of the first page of the document, in bold type: **You must respond to these requests for admissions within 28 days or the court will consider you to have admitted the truth of the matter as set forth in these requests.**

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(2) Failure to include the caution language may provide the non-requesting party with a basis under Rule 60(b) for excusable neglect to set aside any resulting order or judgment.

(~~b~~c) Answer or objection.

(1) The matter is admitted unless, within 28 days after service of the request, the responding party serves upon the requesting party a written response.

(2) The answering party ~~shall~~ must restate each request before responding to it. Unless the answering party objects to a matter, the party must admit or deny the matter or state in detail the reasons why the party cannot truthfully admit or deny. A party may identify the part of a matter which is true and deny the rest. A denial ~~shall~~ must fairly meet the substance of the request. Lack of information is not a reason for failure to admit or deny unless, after reasonable inquiry, the information

known or reasonably available is insufficient to enable an admission or denial. A party who considers the subject of a request for admission to be a genuine issue for trial may not object on that ground alone but may, subject to Rule 37(c), deny the matter or state the reasons for the failure to admit or deny.

(3) If the party objects to a matter, the party ~~shall~~ must state the reasons for the objection. Any reason not stated is waived unless excused by the court for good cause. The party ~~shall~~ must admit or deny any part of a matter that is not objectionable. It is not grounds for objection that the truth of a matter is a genuine issue for trial.

(~~e~~d) Effect of admission. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or amendment if the presentation of the merits of the action will be promoted and withdrawal or amendment will not prejudice the requesting party. Any admission under this rule is for the purpose of the pending action only. It is not an admission for any other purpose, nor may it be used in any other action.

Rule 42. Consolidation; separate trials; venue transfer.

(a) Consolidation. When actions involving a common question of law or fact or arising from the same transaction or occurrence are pending before the court~~, it~~ in one or more judicial districts, the court may, on motion of any party or on the court's own initiative: order that the actions are consolidated in whole or in part, including for discovery, other pretrial matters, a joint hearing or trial ~~of any,~~ or for all ~~the matters in issue in the actions; it may order~~purposes; stay any or all of the proceedings in any action subject to the order; transfer any or all further proceedings in the actions ~~consolidated~~to a location in which any of the actions is pending after consulting with the presiding judge of the transferee court; and ~~it may~~ make other such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(1) In determining whether to order consolidation and the appropriate location for the consolidated proceedings, the court may consider, among other factors: the complexity of the actions; the importance of any common question of fact or law to the determination of the actions; the risk of duplicative or inconsistent rulings, orders, or judgments; the relative procedural postures of the actions; the risk that consolidation may unreasonably delay the progress, increase the expense, or complicate the processing of any action; prejudice to any party that far outweighs the overall benefits of consolidation; the convenience of the parties, witnesses, and counsel; and the efficient utilization of judicial resources and the facilities and personnel of the court.

(2) A motion to consolidate ~~cases shall~~ may be filed or opposed by any party. The motion shall be filed in and heard by the judge assigned to the first ~~case filed. Notice of a motion to consolidate cases shall be given to~~action filed and served on all parties in each ~~case. The~~ action pursuant to Rule 5. A notice of the motion shall be filed in each action. The movant shall, and any party may, file in each action notice of the order denying or granting the motion ~~shall be filed in each case.~~.

Comment [NS1]: It is unclear to me whether the second sentence is saying (a) the motion must be filed and heard in the first action where a complaint has been filed and service has been effectuated on all parties, or (b) the motion must be filed and heard in the first action where a complaint is filed, and then that motion must be served on all parties in each action.
Option (a) could be problematic for a few reasons, including that parties might not be completely identical in actions that otherwise qualify for consolidation. Option (b) makes sense and does not appear problematic. Assuming option (b) is the intended interpretation, I recommend the sentence be modified to eliminate the ambiguity in this way: "The motion shall be filed in and heard by the judge assigned to the first action filed and MUST BE served on all parties in each action pursuant to Rule 5." (proposed addition in CAPS.)

(~~2~~3) If ~~a motion to consolidate is granted, the~~the court orders consolidation, a new case number ~~of the first case filed shall~~will be used for all subsequent ~~papers~~filings ~~and the case shall be heard by the judge assigned to the first case.~~in the consolidated case. The court may direct that specified parties pay the expenses, if any, of consolidation. The presiding judge of the transferee court may assign the consolidated case to another judge for good cause.

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

(c) Venue Transfer.

(1) On timely motion of any party, where transfer to a proper venue is available, the court must transfer any action filed in an improper venue.

(2) The court must give substantial deference to a plaintiff's choice of a proper venue. On timely motion of any party, a court may: transfer venue of any action, in whole or in part, to any other venue, including for discovery, other pretrial matters, a joint hearing or trial, or for all purposes; stay any or all of the proceedings in the action; and make other such orders concerning proceedings therein to pursue the interests of justice and avoid unnecessary costs or delay. In determining whether to transfer venue and the appropriate venue for the transferred proceedings, the court may consider, among other factors, whether transfer will: increase the likelihood of a fair and impartial determination in the action; minimize expense or inconvenience to parties, witnesses, or the court; decrease delay; avoid hardship or injustice otherwise caused by venue requirements; and advance the interests of justice.

(3) The court may direct that specified parties pay the expenses, if any, of transfer.

Note: The addition of paragraph (c) arose in part from the Supreme Court's decision in *Davis County v. Purdue Pharma, L.P*, 2020 UT 17.

Rule 83. Vexatious litigants.

(a) Definitions.

(1) The court may find a person to be a "vexatious litigant" if the person, with or without legal representation, including an attorney acting pro se~~, without legal representation~~, does any of the following:

(A) In the immediately preceding seven years, the person has filed at least five claims for relief, other than small claims actions, that have been finally determined against the person, and the person does not have within that time at least two claims, other than small claims actions, that have been finally determined in that person's favor.

(B) After a claim for relief or an issue of fact or law in the claim has been finally determined, the person two or more additional times re-litigates or attempts to re-litigate the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined.

(C) In any action, the person three or more times does any one or any combination of the following:

(i) files unmeritorious pleadings or other papers,

(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

(D) The person purports to represent or to use the procedures of a court other than a court of the United States, a court created by the Constitution of the United States or by Congress under the authority of the Constitution of the

United States, a tribal court recognized by the United States, a court created by a state or territory of the United States, or a court created by a foreign nation recognized by the United States.

(2) "Claim" and "claim for relief" mean a petition, complaint, counterclaim, cross claim or third-party complaint.

(b) Vexatious litigant orders. The court may, on its own motion or on the motion of any party, enter an order requiring a vexatious litigant to:

(1) furnish security to assure payment of the moving party's reasonable expenses, costs and, if authorized, attorney fees incurred in a pending action;

(2) obtain legal counsel before proceeding in a pending action;

(3) obtain legal counsel before filing any future claim for relief;

(4) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any paper, pleading, or motion in a pending action;

(5) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any future claim for relief in any court; or

(6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct.

(c) Necessary findings and security.

(1) Before entering an order under subparagraph (b), the court must find by clear and convincing evidence that:

(A) the party subject to the order is a vexatious litigant; and

(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

(2) A preliminary finding that there is no reasonable probability that the vexatious litigant will prevail is not a decision on the ultimate merits of the vexatious litigant's claim.

(3) The court shall identify the amount of the security and the time within which it is to be furnished. If the security is not furnished as ordered, the court shall dismiss the vexatious litigant's claim with prejudice.

(d) Prefiling orders in a pending action.

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

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

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

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

(2) A prefiling order in a pending action shall be effective until a final determination of the action on appeal, unless otherwise ordered by the court.

(3) After a prefiling order has been effective in a pending action for one year, the person subject to the prefiling order may move to have the order vacated. The motion shall be decided by the judge to whom the pending action is assigned. In granting the motion, the judge may impose any other vexatious litigant orders permitted in paragraph (b).

(4) All papers, pleadings, and motions filed by a vexatious litigant subject to a prefiling order under this paragraph (d) shall include a judicial order authorizing the filing and any required security. If the order or security is not included, the clerk or court shall reject the paper, pleading, or motion.

(e) Prefiling orders as to future claims.

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

Comment [NS1]: Comment: what if it was federal judge? Maybe add "if possible."

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

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

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

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

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

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

(3) A prefiling order limiting the filing of future claims is effective indefinitely unless the court orders a shorter period.

(4) After five years a person subject to a pre-filing order limiting the filing of future claims may file a motion to vacate the order. The motion shall be filed in the same judicial district from which the order entered and be decided by the presiding judge of that district.

(5) A claim filed by a vexatious litigant subject to a prefiling order under this paragraph (e) shall include an order authorizing the filing and any required security. If the order or security is not included, the clerk of court shall reject the filing.

(f) Notice of vexatious litigant orders.

(1) The clerks of court shall notify the Administrative Office of the Courts that a pre-filing order has been entered or vacated.

(2) The Administrative Office of the Courts shall disseminate to the clerks of court a list of vexatious litigants subject to a prefiling order.

(g) Statute of limitations or time for filing tolled. Any applicable statute of limitations or time in which the person is required to take any action is tolled until 7 days after notice of the decision on the motion or application for authorization to file.

(h) Contempt sanctions. Disobedience by a vexatious litigant of a pre-filing order may be punished as contempt of court.

(i) Other authority. This rule does not affect the authority of the court under other statutes and rules or the inherent authority of the court.

(j) Applicability of vexatious litigant order to other courts. After a court has issued a vexatious litigant order, any other court may rely upon that court's findings and order its own restrictions against the litigant as provided in paragraph (b).