

Agenda

Supreme Court Advisory Committee

Utah Rules of Civil Procedure

February 23, 2022

4:00 to 6:00 p.m.

[Via Webex](#)

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Rule 5 and 76 – Public Comments Done	Tab 2	Lauren DiFrancesco
Rules 7 and 101 – Page Limits to Word Limits	Tab 3	Trevor Lee
Rule 45 – adding LPPs and Foreign Subpoenas	Tab 4	Tonya Wright and Tim Pack
Rule 26 – Disclosure of third party financing		Judge Stone
Rule 30(b)(6) – following change to federal rule in December, need Subcommittee.		Judge Holmberg
Legal Terminology		Susan Vogel
<i>Consent agenda</i> - <i>None</i>		
Verify Pipeline items: <ul style="list-style-type: none">• Rule 26(a)(1)(A)(ii) (Tim Pack)• Rules 7B(i), 109 and 7A(h) (Judge Stone and Judge Mettler)• Court Notices (Susan Vogel and Loni Page)		Lauren DiFrancesco

Next Meeting: March 23

Future Meetings: April 27, May 25, June 22, July 27, August 24, September 28, October 26, November 23, December 28

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

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

Tab 1

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE**

Summary Minutes – January 26, 2022

**DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX**

Committee members	Present	Excused	Guests/Staff Present
Robert Adler	X		Stacy Haacke, Staff
Rod N. Andreason	X		Crystal Powell, Recording Secretary
Judge James T. Blanch	X		Brent Salazar
Lauren DiFrancesco, Chair	X		Nicole Salazar-Hall
Judge Kent Holmberg	X		Judge Amy Oliver
James Hunnicutt	X		
Judge Linda Jones		X	
Trevor Lee	X		
Ash McMurray	X		
Judge Amber M. Mettler	X		
Kim Neville	X		
Timothy Pack		X	
Loni Page	X		
Bryan Pattison	X		
James Peterson	X		
Judge Laura Scott		X	
Leslie W. Slaugh	X		
Paul Stancil		X	
Judge Clay Stucki	X		
Judge Andrew H. Stone	X		
Justin T. Toth		X	
Susan Vogel	X		
Tonya Wright	X		

(1) MEMBER INTRODUCTIONS

The meeting started at 4:12 p.m. after forming a quorum. Ms. Di Francesco welcomed the Committee and guests to the meeting.

(2) APPROVAL OF MINUTES

Ms. Lauren DiFrancesco asked for approval of the Minutes subject to minor amendments noted by the Minutes subcommittee. Mr. Leslie Slaugh moved to adopt the minutes as amended. Judge Stucki seconded. The minutes were unanimously approved.

(3) RULE 42. CONSOLIDATION OF CASE NUMBERS

The Committee agreed to a minor change to Rule 42 (a) (3) after a brief discussion. The amendment changes “new case number” to “single case number.” Judge Stucki moved for adoption of the amendment. Judge Andrew Stone seconded. The amendment was unanimously approved.

(4) RULE 43 (C). REMOTE HEARING OATH

Ms. Loni Page proposed changing Rule 43 on the advice and suggestion of the Juvenile Clerks of Court to ensure that the Oath is correct also for Remote Hearings. The amendment of Rule 43 (c) deletes “issue (or matter pending between ____ and ____” and adds “in this matter.” After a brief discussion, Judge Amber Mettler moved for adoption of the amendment. Judge Stone seconded. The amendment was unanimously approved.

(5) RULE 7. PAGE LIMITS VS. WORD LIMITS IN LENGTH OF MOTIONS

Mr. Trevor Lee presented the issue giving a brief historical overview of the work the Committee has done on the issue over the past year and proposed a move to word counts in addition to page limits as a compromise to factor in hand-written motions. He explained that many jurisdictions including federal courts have switched to word count instead of page count. He expressed that page limits are not a good proxy for fairness given how easily pages can be manipulated in word processors; and that there is wisdom in using word counts instead. He proposed a word limit of about 400 per page to result in: 10,000 words or a 25-page motion; 6000 words or a 15-page opposing memorandum; 4000 words or 10-page reply memorandum; 1,200 words or 3-page objection to evidence in reply memorandum; 800 words or 2-page notice of supplemental authority. He further proposed for motion practice before commissioners: 4000 words or 10-page motion and response memoranda; 2000 words or 5-page reply.

As part of the discussion, Judge Stone questioned how the court would enforce the limit as briefs are sent in by PDF. Mr. Lee explained that attorneys would be required to certify the word count. Ms. Susan Vogel questioned how it would affect self-represented persons that are using court forms that are already in PDF and wondered if it would add a burden on self-represented persons

having to count the words in the court forms. She also noted that there are also different page limits in Rule 7 and Rule 101 and different words for the types of documents involved. Ms. Vogel asked if Jim Hunnicutt's subcommittee could create a chart to clarify what types of documents would be included in the word limit based in the Rules.

The Committee agreed to table to discussion until later in the meeting.

(6) STANDARD PROTECTIVE ORDERS FOR STATE COURTS.

Judge Amy Oliver presented on standard protective orders related to civil discovery issues. She recounted her frequent experience of discovery disputes in cases where parties are refusing to respond to discovery requests on the basis that a protective order is needed to do so, when in some cases it is not as well as attending difficulty and delay in agreeing on the contents of the protective order. Judge Oliver noted that federal courts have a standard protective order and wants to pursue a similar type of protective order in the state courts to mitigate the issues she outlined. Judge Oliver further noted that in federal court it is available as a standing order; but she is not sure that approach works because of the varying nature of cases in state court but it would be very beneficial for larger and more complicated cases.

One concern expressed was that the federal standing protective was too complex for many cases being litigated and that while the idea is great, it is geared towards very technical cases with a lot of experts. Another concern was that the order should be called "discovery protective order" instead of "protective order" to avoid the literary confusion where "protective order" most commonly relates to orders of protection against physical harm such as cohabitant abuse, sexual violence etc. A further concern was that only about one percent of cases would probably need an 'attorneys' eyes only' provision in the protective order and that a standard protective order that holds that provision is unfavorable as it would impede the open courts principle and the state's goals under GRAMA. Judge Mettler noted that there might be the idea to pilot it in the Third District to gain some understanding of how it would operate.

Judge Stone noted that an automatic protective order, ignores the rights of the public interest, and noted that judges are officers of the public and have a duty of transparency to the public as much as possible and a standing order would impede upon that duty. Mr. Slaugh noted that anything filed with the court should be public, but the order would apply only to discover materials that are not automatically public. Judge Stone clarified that his concern is the policy of the judge making it a default order rather than having parties make the decision to request it. Judge Holmberg noted that the obligation would be on the attorneys to certify that the order is being requested in good faith.

Judge Holmberg wondered whether the Forms Committee could create a form order that can be easily used and referred but not be implemented automatically. Ms. Tonya Wright questioned how available the form would be for situations where pro se parties have a need for a protective order limiting use of discovery beyond the case in domestic issues or when an individual is being assisted by a licensed paralegal practitioner. Mr. Hunnicutt noted that parties in divorce cases tend to avoid

requesting discovering protective orders as it is not usually in the interest of either party. Mr. Hunnicutt further noted that in the Third District there is short and simple stock order that is used to limit the use of custody evaluations.

Ms. DiFrancesco wondered when the pilot program might roll out, and Judge Mettler noted that discussions are very preliminary. Judge Holmberg moved to designate a few committee members to assist Judge Oliver in her work on the issue. Judge Stucki noted that he is not comfortable voting on a rule change at this point but agreed to moving for more work on the idea and producing a draft order in keeping with the concerns discussed. Judge Holmberg moved to designate Judge Stucki and Mr. Bryan Pattison to work with Judge Oliver. Judge Stucki seconded. The vote was unanimously approved.

(7) CLASSIFICATION OF DOCUMENTS

Judge Stone presented a draft Rule on records classification. He explained that the draft is taken liberally from the local federal rule. He summarized that the basics of the rule is to allow an ex parte motion to classify a case, a document, or the motion itself; requires a redacted version of the document; and gives the court the options to deny the motion, order less restrictive classification than requested, or order a response from the opposing party and hold a hearing.

Mr. Slaugh wondered if there would be an effort to retire the corresponding rule of judicial administration 4-202. Judge Stone noted that the rules would work in tandem and would provide a procedure to litigate issues under that rule but would not change the classifications in rule 4-202.

The concern was raised whether the language “Such motions are disfavored” should be included and whether it does enough to guide judges that these types of motions should not be granted without good reason. Mr. Slaugh noted that while the federal rule contains the discouraging language, he does not mind putting a standard in the rule; and prefers to not have discouraging language. Mr. Hunnicutt noted that he likes the discouraging language and doesn’t have a problem saying that the public policy is not to have things sealed. A suggestion was made to include the standard that the privacy interest must outweigh the public interest in open records in the court. Judge Holmberg noted that rule of judicial administration 4-202.04 (6) also have a standard that would be mirrored and suggested a committee advisory note that envisions how the rule is intended to work. Judge Stone noted the subcommittee also discussed having an advisory note that references the expectations for the rule.

Ms. DiFrancesco asked about what the Committee was envisioning under Rule for the procedure of filing the redacted copy. Ms. Kim Neville asked how the open courts policy will be affected by this rule and wondered if there is a trend at the district court level of disputes for court to be more open and public. Judge noted that he doesn’t see a lot of disputes but what he sees is that all the substantive issues that the public has an interest in are being protected. Judge Mettler agrees that all motions that are filed to protect documents should also have appropriate version for the public.

Ms. DiFrancesco wondered whether there would be an option or procedure for the requesting party to withdraw the document where the motion to classify is denied. Judge Stone explained that the subcommittee discussed that issue and concluded that a stay of 14 days to allow due process of appeal. He noted that the option to motion to withdraw is feasible but typically once a record is filed and the court determines that it is not subject to protection then it is rightly part of the record. The Committee suggested changing 14 days to 28 days in keeping with Rule 62 (a). It was proposed to give the party an absolute right to withdraw a document that won't be classified as requested. Judge Stone questioned whether that was possible in our system. Judge Stone would favor not having an absolute right to withdraw in favor of due process and the right to appeal and expressed that a unilateral right to withdraw a document in an adversarial process is unprecedented. After a full discussion, it was agreed that such a unilateral right to withdraw would not be supported by this Rule.

The Committee discussed whether to add another provision subsection (7) that "nothing in this rule limits the court's discretion, to review documents in camera." Ultimately, Judge Holmberg moved to remove subsection (7) and change the time of stay from 14 to 28 days. Judge Stone seconded. The motion passed with one opposing vote. Ms. Di Francesco asked the subcommittee to draft an advisory note. Judge Stone also asked for the highlighted sections to remain so that the Supreme court can have input on that discussion as well.

(7) SERVICE IN DOMESTIC CASES

Mr. Brent Salazar and Ms. Nicole Salazar-Hall presented on a proposed change to Rule 26.1 and suggested an amendment to clarify the time for service in domestic relations. Ms. Vogel asked for some discussion on hammering out some of the discrepancies on what cases require what levels of disclosure and asked to join their sub-committee. Lauren thanked guests for coming.

(9) RULE 7 (CONTINUED).

Mr. Slaugh questioned whether the suggested wording for page limits creates an either/or situation or requires both standards under subsection (c) (8) Length of motion. That is, does it both have to be no more than 25 pages and under 10,000 of words. Mr. Lee noted that option one makes more sense as then the certification language appear just once at the end of the document. Ms. Vogel said she would like it if people do not have to count words. The Committee suggested making the language clearer by saying for example: "10,000 words or in the alternative...." Mr. Ash McMurray agreed to look more closely on the correct punctuation. The Committee did not vote on the amendments and tabled the discussion due to time.

(9) ADJOURNMENT.

The next meeting will be on February 23, 2022. The Chair thanked everyone for their time and effort and wished everyone a great month. The meeting adjourned at 6:00 p.m.

Tab 2

Comments – Rule 5 and Rule 76

Judge Brendan P. McCullagh

The proposed amendment to subsection (d) of Rule 5 eliminating service certificates for electronically filed documents should specifically reference the limitation from sub (b)(3)(A) that this only means service when BOTH parties have accounts with the efilng provider. It is implicit but should be explicit.

Subsection (d) should still require a certificate of service to the court when the electronically filed “paper” that needs to be served on a party not represented by counsel.

Also in Rule 76 eliminate the modifier “civil” with respect to stalking injunctions. There are criminal stalking injunctions, see UCA 78B–701 et seq..

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

(a) When service is required.

(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) a judgment;

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

(C) a pleading after the original complaint;

(D) a paper relating to disclosure or discovery;

(E) a paper 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.

(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\(g\)](#); 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 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 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 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 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.

(3) Methods of service. A paper is served under this rule by using one or more of the methods in the following paragraphs.:

(A) Electronic filing. ~~except~~ Except in the juvenile court, a paper is served by 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) Email. A paper not electronically served under paragraph (b)(3)(A) is served by 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 (ii) ~~to~~ the email address on file with the Utah State Bar. If email service to the email address is returned as undeliverable, service must then be made by another method in accordance with paragraph (b)(3)(C). Service is complete upon the attempted email service for purposes of the sender meeting any time period, provided service by another

method is made within 3 days following receipt of an undeliverable email notice, excluding Saturday, Sunday, or legal holidays.

(C) **Mail and other methods.** This paragraph applies if the person required to serve or be served with a paper has notified the court and the parties that the person does not have the ability to serve and receive documents by email or an email is returned as undeliverable. This paragraph also applies if the person to be served has not provided an email address to the court under Rule 10. A paper may be served under this paragraph 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 or these rules:

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

(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:

(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;

(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. No certificate of service is required when a paper is served by filing it with the court's electronic-filing system under paragraph (b)(3)(A). When a paper that is required to be served is served by other means:

(1) if the paper is filed, a certificate of service showing the date and manner of service must be filed with it or within a reasonable time after service; and

(2) if the paper is not filed, a certificate of service need not be filed unless filing is required by rule or court order.

~~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:

- (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.

[Effective January 1, 2022](#)

Advisory Committee Notes

Note adopted 2015

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

127 having been filed. So in the juvenile court, a party electronically filing a document must
128 serve that document by one of the other permitted methods.

1 **Rule 76. Notice of contact information change.**

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

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Tab 3

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

(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.

(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 [10,000 words](#), [or, in the alternative](#), 25 pages, ~~not counting the attachments~~, unless a longer motion is permitted by the court. Other motions may not exceed [6,000 words](#), [or, in the alternative](#), 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 10,000 words, or in the alternative, 25 pages, ~~not counting the attachments~~, unless a longer memorandum is permitted by the court. Other opposing memoranda may not exceed 6,000 words, or in the alternative, 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 6,000 words, or 15 pages, ~~not counting the attachments~~, unless a longer memorandum is permitted by the court. Other reply memoranda may not exceed 4,000 words, or 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 [1,200 words, or](#) 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. A motion hearing may be held remotely, consistent with the safeguards in Rule 43(b).

(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 [800 words, or](#) 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 [800 words, or](#) 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) Word and page limits. The word and page limits in this rule exclude the following: caption, table of contents, table of authorities, signature block, certificate of service, and exhibits. Any filer relying on the word limits in this rule must include a certification that the document complies with the applicable word limit and must state the number of words in the document.

232 Effective May 1, 2021

233

1 **Rule 101. Motion practice before court commissioners.**

2 **(a) Written motion required.** An application to a court commissioner for an
3 order must be by motion which, unless made during a hearing, must be made
4 in accordance with this rule.

5 (1) A motion must be in writing and state succinctly and with
6 particularity the relief sought and the grounds for the relief sought. Any
7 evidence necessary to support the moving party's position must be
8 presented by way of one or more affidavits or declarations or other
9 admissible evidence. The motion may also include a supporting
10 memorandum.

11 (2) All motions must provide the bilingual Notice to Responding Party
12 approved by the Judicial Council.

13 (3) Each motion to a court commissioner must include the following
14 caution language at the top right corner of the first page, in bold
15 type: **This motion will be decided by the court commissioner at an**
16 **upcoming hearing. If you do not appear at the hearing, the Court**
17 **might make a decision against you without your input. In addition,**
18 **you may file a written response at least 14 days before the hearing.**

19 (4) Failure to provide the bilingual Notice to Responding Party or to include
20 the caution language may provide the non-moving party with a basis under
21 Rule 60(b) for excusable neglect to set aside any resulting order or
22 judgment. **(b) Time to file and serve.** The moving party must file the motion
23 and any supporting papers with the clerk of the court and obtain a hearing
24 date and time. The moving party must serve the responding party with the
25 motion and supporting papers, together with notice of the hearing at least 28
26 days before the hearing. If service is more than 90 days after the date of entry
27 of the most recent appealable order, service may not be made through
28 counsel.

29 **(c) Response.** Any other party may file a response, consisting of any
30 responsive memorandum, affidavit(s) or declaration(s). The response must be
31 filed and served on the moving party at least 14 days before the hearing.

32 **(d) Reply.** The moving party may file a reply, consisting of any reply
33 memorandum, affidavit(s) or declaration(s). The reply must be filed and

served on the responding party at least 7 days before the hearing. The contents of the reply must be limited to rebuttal of new matters raised in the response to the motion.

(e) Counter motion. Responding to a motion is not sufficient to grant relief to the responding party. A responding party may request affirmative relief by way of a counter motion. A counter motion need not be limited to the subject matter of the original motion. All of the provisions of this rule apply to counter motions except that a counter motion must be filed and served with the response. Any response to the counter motion must be filed and served no later than the reply to the motion. Any reply to the response to the counter motion must be filed and served at least 3 business days before the hearing. The reply must be served in a manner that will cause the reply to be actually received by the party responding to the counter motion (i.e. hand-delivery, fax or other electronic delivery as allowed by rule or agreed by the parties) at least 3 business days before the hearing. A separate notice of hearing on counter motions is not required.

(f) Necessary documentation. Motions and responses regarding temporary orders concerning alimony, child support, division of debts, possession or disposition of assets, or litigation expenses, must be accompanied by verified financial declarations with documentary income verification attached as exhibits, unless financial declarations and documentation are already in the court's file and remain current. Attachments for motions and responses regarding child support and child custody must also include a child support worksheet.

(g) No other papers. No moving or responding papers other than those specified in this rule are permitted.

(h) Exhibits; objection to failure to attach.

(1) Except as provided in paragraph (h)(3) of this rule, any documents such as tax returns, bank statements, receipts, photographs, correspondence, calendars, medical records, forms, or photographs must be supplied to the court as exhibits to one or more affidavits (as appropriate) establishing the necessary foundational requirements. Copies of court papers such as decrees, orders, minute entries, motions, or affidavits, already in the court's case file, may not be filed as exhibits. Court papers from cases other than

that before the court, such as protective orders, prior divorce decrees, criminal orders, information or dockets, and juvenile court orders (to the extent the law does not prohibit their filing), may be submitted as exhibits.

(2) If papers or exhibits referred to in a motion or necessary to support the moving party's position are not served with the motion, the responding party may file and serve an objection to the defect with the response. If papers or exhibits referred to in the response or necessary to support the responding party's position are not served with the response, the moving party may file and serve an objection to the defect with the reply. The defect must be cured within 2 business days after notice of the defect or at least 3 business days before the hearing, whichever is earlier.

(3) Voluminous exhibits which cannot conveniently be examined in court may not be filed as exhibits, but the contents of such documents may be presented in the form of a summary, chart or calculation under Rule 1006 of the Utah Rules of Evidence. Unless they have been previously supplied through discovery or otherwise and are readily identifiable, copies of any such voluminous documents must be supplied to the other parties at the time of the filing of the summary, chart or calculation. The originals or duplicates of the documents must be available at the hearing for examination by the parties and the commissioner. Collections of documents, such as bank statements, checks, receipts, medical records, photographs, e-mails, calendars and journal entries that collectively exceed ten pages in length must be presented in summary form. Individual documents with specific legal significance, such as tax returns, appraisals, financial statements and reports prepared by an accountant, wills, trust documents, contracts, or settlement agreements must be submitted in their entirety.

(i) Length. Initial and responding memoranda may not exceed [4,000 words, or](#) 10 pages₂ of argument without leave of the court. Reply memoranda may not exceed [2000 words, or](#) 5 pages₂ of argument without leave of the court. The total number of pages submitted to the court by each party may not exceed 25 pages, including affidavits, attachments and summaries, but excluding financial declarations and income verification. The court commissioner may permit the party to file an over-length memorandum upon ex parte application and showing of good cause. [The word and page limits exclude the](#)

103 following: caption, table of contents, table of authorities, signature block, certificate of
104 service, and exhibits. Any filer relying on the word limits in this rule must include a
105 certification that the document complies with the applicable word limit and must state
106 the number of words in the document.

107 **(j) Late filings; sanctions.** If a party files or serves papers beyond the time
108 required in this rule, the court commissioner may hold or continue the
109 hearing, reject the papers, impose costs and attorney fees caused by the failure
110 and by the continuance, and impose other sanctions as appropriate.

111 **(k) Limit on order to show cause.** An application to the court for an order to
112 show cause may be made only for enforcement of an existing order or for
113 sanctions for violating an existing order. An application for an order to show
114 cause must be supported by affidavit or other evidence sufficient to show
115 cause to believe a party has violated a court order.

116 **(l) Hearings.**

117 (1) The court commissioner may not hold a hearing on a motion for
118 temporary orders before the deadline for an appearance by the respondent
119 under Rule 12.

120 (2) Unless the court commissioner specifically requires otherwise, when the
121 statement of a person is set forth in an affidavit, declaration or other
122 document accepted by the commissioner, that person need not be present
123 at the hearing. The statements of any person not set forth in an affidavit,
124 declaration or other acceptable document may not be presented by proffer
125 unless the person is present at the hearing and the commissioner finds that
126 fairness requires its admission.

127 **(m) Motions to judge.** The following motions must be to the judge to whom
128 the case is assigned: motion for alternative service; motion to waive 30-day
129 waiting period; motion to waive divorce education class; motion for leave to
130 withdraw after a case has been certified as ready for trial; and motions in
131 limine. A court may provide that other motions be considered by the judge.

132 **(n) Objection to court commissioner's recommendation.** A recommendation
133 of a court commissioner is the order of the court until modified by the court.
134 A party may object to the recommendation by filing an objection under Rule
135 108.

136

137 Effective May 1, 2021

138

Tab 4

To: Supreme Court Advisory Committee on Utah Rules of Civil Procedure
From: Tonya Wright
Date: January 24, 2022
Re: Proposed Rule 45 Amendments relating to Licensed Paralegal Practitioners (LPPs)

The proposed changes to U.R.C.P. 45 relating to LPPs are explained below.

It is true that U.R.C.P. 86(a) and (b) provides: “[L]icensed paralegal practitioners must be treated in the same manner as attorneys for purposes of interpreting and implementing these rules. **If a rule permits or requires an attorney to sign or file a document, a licensed paralegal practitioner may do so only if there is an applicable court-approved form available and the practice is consistent with the scope of the licensed paralegal practitioner’s license.**” and “(b) Terms “attorney” and “counsel.” Throughout these rules, **where the terms “attorney,” “lawyer,” and “counsel” are used, they refer to legal professionals. Legal professionals include licensed paralegal practitioners in the practice areas for which licensed paralegal practitioners are authorized to practice.** Those practice areas are set forth in Utah Special Practice Rule 14-802 unless specifically carved out in this rule.” (emphasis added)

However, there has been (and continues to be) confusion about Rule 45 and its wording. Specifically, the wording found in (2):

“The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. **An attorney admitted to practice in Utah may issue and sign a subpoena as an officer of the court.**” (emphasis added)

Because the LPP licensed is a limited license, and because LPPs want to be careful and cognizant about what is permitted and what is not, it would be very helpful if Rule 45

were amended to incorporate Rule 86. It would also provide clarity to attorneys who may be on the opposite side of the case with an LPP and who might be inclined to argue about the validity of a subpoena issued by an LPP, because the LPP is currently omitted from the language in Rule 45. It would also be helpful to recipient(s) of the subpoena(s), because the required “Notice to Persons Served With Subpoena” would undergo a change as well.

Forms

Additionally, there is already a subpoena form available in the Court’s self-help section of the website. (linked here:

https://www.utcourts.gov/resources/forms/subpoena/docs/1220GE_Subpoena.pdf - and attached to this memo)

Rule 14-802(c) of the Rules of Professional Conduct permits Licensed Paralegal Practitioners to engage in the limited practice of law in the areas outlined. 14-802(c)(1)(C) & (E) specifies that LPPs may complete forms approved by the Judicial Council and sign, file, and complete service of the form(s).

In the advisory committee notes for 14-802, regarding Paragraph (c)(1)(E), it states:

A Licensed Paralegal Practitioner may complete forms that are approved by the Judicial Council and that are related to the limited scope of practice of law described in paragraph (c). The Judicial Council approves forms for the Online Consumer Assistance Program and for use by the public. The forms approved by the Judicial Council may be found at <https://www.utcourts.gov/ocap> and <https://www.utcourts.gov/selfhelp/>.

I therefore respectfully request that Rule 45 be amended to provide clarity and to incorporate Rule 86.

Lastly, (and this is likely more appropriate for the forms committee), if Rule 45 is amended and these changes are incorporated, it would be helpful if a form like the one attached to this memo be incorporated in the approved forms for LPP use, so the LPP is able to comply with Rule 45(b)(3):

If the subpoena commands a person to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things for inspection, copying, testing or sampling or to permit inspection of premises, the party or attorney responsible for issuing the subpoena shall serve each party with the subpoena by delivery or other method of actual notice before serving the subpoena.

Rule 45. Subpoena.**(a) Form; issuance.**

(1) Every subpoena shall:

(A) issue from the court in which the action is pending;

(B) state the title and case number of the action, the name of the court from which it is issued, and the name and address of the party, attorney, or Licensed Paralegal Practitioner ~~party or attorney~~ responsible for issuing the subpoena;

(C) command each person to whom it is directed

(i) to appear and give testimony at a trial, hearing or deposition, or

(ii) to appear and produce for inspection, copying, testing or sampling documents, electronically stored information or tangible things in the possession, custody or control of that person, or

(iii) to copy documents or electronically stored information in the possession, custody or control of that person and mail or deliver the copies to the party, attorney, or Licensed Paralegal Practitioner ~~party or attorney~~ responsible for issuing the subpoena before a date certain, or

(iv) to appear and to permit inspection of premises;

(D) if an appearance is required, give notice of the date, time, and place for the appearance and, if remote transmission is requested, instructions for participation and whom to contact if there are technical difficulties; and

(E) include a notice to persons served with a subpoena in a form substantially similar to the approved subpoena form. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(2) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney or Licensed Paralegal Practitioner admitted to practice in Utah may issue and sign a subpoena as an officer of the court.

(b) Service; fees; prior notice.

(1) A subpoena may be served by any person who is at least 18 years of age and not a party to the case. Service of a subpoena upon the person to whom it is directed shall be made as provided in Rule 4(d).

(2) If the subpoena commands a person's appearance, the party, attorney, or Licensed Paralegal Practitioner ~~party or attorney~~ responsible for issuing the subpoena shall tender with the subpoena the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States, or this state, or any officer or agency of either, fees and mileage need not be tendered.

(3) If the subpoena commands a person to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things for inspection, copying, testing or sampling or to permit inspection of premises, the party, attorney, or Licensed Paralegal Practitioner~~party or attorney~~ responsible for issuing the subpoena shall serve each party with the subpoena by delivery or other method of actual notice before serving the subpoena.

(c) Appearance; resident; non-resident.

(1) A person who resides in this state may be required to appear:

(A) at a trial or hearing in the county in which the case is pending; and

(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county in which the person resides, is employed, or transacts business in person, or at such other place as the court may order.

(2) A person who does not reside in this state but who is served within this state may be required to appear:

(A) at a trial or hearing in the county in which the case is pending; and

(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county in which the person is served or at such other place as the court may order.

(d) Payment of production or copying costs. The party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing the subpoena shall pay the reasonable cost of producing or copying documents, electronically stored information, or tangible things. Upon the request of any other party and the payment of reasonable costs, the party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing the subpoena shall provide to the requesting party copies of all documents, electronically stored information or tangible things obtained in response to the subpoena or shall make the tangible things available for inspection.

(e) Protection of persons subject to subpoenas; objection.

(1) The party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on the person subject to the subpoena. The court shall enforce this duty and impose upon the party ~~or~~ attorney, or Licensed Paralegal Practitioner in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

(2) A subpoena to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things, or to permit inspection of premises shall comply with Rule 34(a) and (b)(1), except that the person subject to the subpoena must be allowed at least 14 days after service to comply.

(3) The person subject to the subpoena or a non-party affected by the subpoena may object ~~under Rule 37~~ if the subpoena:

(A) fails to allow reasonable time for compliance;

(B) requires a resident of this state to appear at other than a trial or hearing in a county in which the person does not reside, is not employed, or does not transact business in person;

(C) requires a non-resident of this state to appear at other than a trial or hearing in a county other than the county in which the person was served;

(D) requires the person to disclose privileged or other protected matter and no exception or waiver applies;

(E) requires the person to disclose a trade secret or other confidential research, development, or commercial information;

(F) subjects the person to an undue burden or cost;

(G) requires the person to produce electronically stored information in a form or forms to which the person objects;

(H) requires the person to provide electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost; or

(I) requires the person to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study that was not made at the request of a party.

(4) Timing and form of objections.

(A) If the person subject to the subpoena or a non-party affected by the subpoena objects, the objection must be made before the date for compliance.

(B) The objection shall be stated in a concise, non-conclusory manner.

(C) If the objection is that the information commanded by the subpoena is privileged or protected and no exception or waiver applies, or requires the person to disclose a trade secret or other confidential research, development, or commercial information, the objection shall sufficiently describe the nature of the documents, communications, or things not produced to enable the party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing the subpoena to contest the objection.

(D) If the objection is that the electronically stored information is from sources that are not reasonably accessible because of undue burden or cost, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost.

(E) The objection shall be served on the party ~~or~~ attorney, or Licensed Paralegal Practitioner - responsible for issuing the subpoena. The party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing the subpoena shall serve a copy of the objection on the other parties.

(5) If objection is made, or if a party requests a protective order, the party ~~or~~ attorney, or

Licensed Paralegal Practitioner -responsible for issuing the subpoena is not entitled to compliance but may request an order to compel compliance under Rule 37(a). The objection or request shall be served on the other parties and on the person subject to the subpoena. An order compelling compliance shall protect the person subject to or affected by the subpoena from significant expense or harm. The court may quash or modify the subpoena. If the party-~~or~~-attorney, or Licensed Paralegal Practitioner -responsible for issuing the subpoena shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions.

(f) Duties in responding to subpoena.

(1) A person commanded to copy and mail or deliver documents or electronically stored information or to produce documents, electronically stored information or tangible things shall serve on the party, attorney, or Licensed Paralegal Practitioner ~~party or attorney~~-responsible for issuing the subpoena a declaration under penalty of law stating in substance:

- (A) that the declarant has knowledge of the facts contained in the declaration;
- (B) that the documents, electronically stored information or tangible things copied or produced are a full and complete response to the subpoena;
- (C) that the documents, electronically stored information or tangible things are the originals or that a copy is a true copy of the original; and
- (D) the reasonable cost of copying or producing the documents, electronically stored information or tangible things.

(2) A person commanded to copy and mail or deliver documents or electronically stored information or to produce documents, electronically stored information or tangible things shall copy or produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena.

(3) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in the form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(4) If the information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party who received the information of the claim and the basis for it. After being notified, the party must promptly return, sequester, or destroy the specified information and any copies of it 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 the information. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt. Failure by any person without adequate excuse to obey a subpoena served upon that person is punishable as contempt of court.

(h) **Procedure when witness evades service or fails to attend.** If a witness evades service of a subpoena or fails to attend after service of a subpoena, the court may issue a warrant to the sheriff of the county to arrest the witness and bring the witness before the court.

(i) **Procedure when witness is an inmate.** If the witness is an inmate as defined in Rule 6(e)(1), a party may move for an order to examine the witness in the institution or to produce the witness before the court or officer for the purpose of being orally examined.

(j) **Subpoena unnecessary.** A person present in court or before a judicial officer may be required to testify in the same manner as if the person were in attendance upon a subpoena.

(k) Foreign subpoenas.

(1) "Foreign subpoena" means a subpoena issued under authority of a court of record of any State or Territory of the United States other than Utah.

(2) Issuance and service of a foreign subpoena. A party or attorney shall submit a foreign subpoena to a clerk of court in the county in which discovery is sought to be conducted in Utah in accordance with Utah Code Ann. § 78B-17-101 *et seq.*

(3) Enforcement and objections to a foreign subpoena. Objections to and enforcement of a foreign subpoena must comply with Rule 45(e). Any paper filed under Rule 37(a) shall be submitted to the Utah court that issued the subpoena.

(j)

Effective May 1, 2021

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Name

Address

City, State, Zip

Phone

Email

Check your email. You will receive information and documents at this email address.

I am ☐ Plaintiff/Petitioner ☐ Defendant/Respondent
☐ Plaintiff/Petitioner's Attorney ☐ Defendant/Respondent's Attorney (Utah Bar #:_____)
☐ Plaintiff/Petitioner's Licensed Paralegal Practitioner
☐ Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #:_____)

In the ☐ District ☐ Justice Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>v.</p> <p>_____ Defendant/Respondent</p>	<p>Subpoena (Utah Rule of Civil Procedure 30 and 45)</p> <p>_____ Case Number</p> <p>_____ Judge</p> <p>_____ Commissioner</p>
---	---

The following records and forms must be attached to this Subpoena and served with it.

- Notice to Persons Served with a Subpoena.
- Objection to Subpoena.
- Declaration of Compliance with Subpoena.
- Witness fee.
- Application for Subpoena under the Utah Uniform Interstate Depositions and Discovery Act with attachments (for cases from states in which the Uniform Act applies).
- Notice of Deposition and Request for Subpoena in Case Pending Out of State (for cases from states in which the Uniform Act does not apply).

Serve all of these documents by one of the methods described in Utah Rule of Civil Procedure 4(d).

To:

Name and Address

Name and Address

1. ☐ You must appear at:

Address (Dirección):

Date (Fecha): _____ Time (Hora): _____ ☐ a.m. ☐ p.m.

Room (Sala): _____

To: (Choose all that apply.)

☐ testify at a trial or hearing.

Interpretation. If you do not speak or understand English, the court will provide an interpreter. Contact court staff immediately to ask for an interpreter.

Interpretación. Si usted no habla ni entiende el Inglés el tribunal le proveeré un intérprete. Contacte a un empleado del tribunal inmediatamente para pedir un intérprete.

ADA Accommodation. If you need an accommodation, including an ASL interpreter, contact court staff immediately to ask for an accommodation.

Adaptación o Arreglo en Caso de Discapacidad. Si usted requiere una adaptación o arreglo, que incluye un intérprete de la lengua de signos americana, contacte a un empleado del tribunal inmediatamente para pedir una adaptación.

☐ testify at a deposition.

☐ permit inspection of the following premises:

_____ (address)

☐ produce the following documents or tangible things:

2. ☐ You must copy the documents or electronically stored information listed below. You must mail or deliver the copies to the person at the address at the top of the first page of this Subpoena by: _____ (date).

3. The Notice to Persons Served with a Subpoena must be served with this Subpoena. The notice explains your rights and obligations.
4. ☐ This subpoena is for a deposition and is being served on a corporation, partnership, association or governmental agency. (Utah Rule of Civil Procedure 30). You must designate one or more persons who will be questioned on your behalf .

The questions will be about (describe):

5. ☐ This Subpoena includes the terms of the attached subpoena issued by _____ (state).

If you are representing yourself or you checked paragraph 5, only the court clerk may sign this subpoena.

_____	Signature ►
Date	Printed name of:
	Court Clerk <input type="checkbox"/> _____
	Attorney for
	Plaintiff/Petitioner <input type="checkbox"/> _____
	Defendant/Respondent <input type="checkbox"/> _____
	Licensed Paralegal Practitioner for
	Plaintiff/Petitioner <input type="checkbox"/> _____
	Defendant/Respondent <input type="checkbox"/> _____

IN THE DISTRICT COURT OF THE *** JUDICIAL DISTRICT
COUNTY OF ***, STATE OF UTAH

***,

Plaintiff,

v.

***,

Defendants.

**NOTICE OF INTENT TO SERVE
SUBPOENAS DUCES TECUM**

Civil No. ***

Judge: ***

TO THE ABOVE-NAMED PARTIES AND THEIR COUNSEL:

NOTICE IS HEREBY GIVEN pursuant to U.R.C.P. Rule 45(b)(3) that counsel for Plaintiff will issue the attached subpoenas duces tecum for the production of documents, electronically stored information, or tangible things for inspection, which may include, without limitation, the copying and inspection of documents.

The requested records/documents and inspection are related to an element of a claim or defense in the above-captioned lawsuit at issue.

Plaintiffs intend to serve a Subpoena *Duces Tecum* on each of the following:

1. ***
2. ***
3. ***

The requested records are to be delivered to the offices of _____ on the date and time set forth in each individual Subpoena *Duces Tecum*.

DATED this ____ day of November 2021.

/s/ _____

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November 2021, pursuant to Rule 5 of the Utah Rules of Civil Procedure, a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE SUBPOENAS DUCES TECUM** has been served upon all parties and/or attorneys with electronic filing accounts by submitting the same for electronic filing with the Court through Green Filing, LLC. Parties or attorneys without electronic filing accounts will be served with a true and correct copy of the foregoing by email or by mailing via the United States Postal Service, postage pre-paid, at the addresses listed below:

X Electronic Filing

/s/

Rule 45. Subpoena.

(a) Form; issuance.

(1) Every subpoena shall:

(A) issue from the court in which the action is pending;

(B) state the title and case number of the action, the name of the court from which it is issued, and the name and address of the [party, attorney, or Licensed Paralegal Practitioner](#) ~~party or attorney~~ responsible for issuing the subpoena;

(C) command each person to whom it is directed

(i) to appear and give testimony at a trial, hearing or deposition, or

(ii) to appear and produce for inspection, copying, testing or sampling documents, electronically stored information or tangible things in the possession, custody or control of that person, or

(iii) to copy documents or electronically stored information in the possession, custody or control of that person and mail or deliver the copies to the [party, attorney, or Licensed Paralegal Practitioner](#) ~~party or attorney~~ responsible for issuing the subpoena before a date certain, or

(iv) to appear and to permit inspection of premises;

(D) if an appearance is required, give notice of the date, time, and place for the appearance and, if remote transmission is requested, instructions for participation and whom to contact if there are technical difficulties; and

(E) include a notice to persons served with a subpoena in a form substantially similar to the approved subpoena form. A subpoena may specify the form or forms in which electronically stored information is to be produced.

(2) The clerk shall issue a subpoena, signed but otherwise in blank, to a party requesting it, who shall complete it before service. An attorney [or Licensed Paralegal Practitioner](#) admitted to practice in Utah may issue and sign a subpoena as an officer of the court.

(b) Service; fees; prior notice.

(1) A subpoena may be served by any person who is at least 18 years of age and not a party to the case. Service of a subpoena upon the person to whom it is directed shall be made as provided in Rule 4(d).

(2) If the subpoena commands a person's appearance, the party, attorney, or Licensed Paralegal Practitioner~~party or attorney~~ responsible for issuing the subpoena shall tender with the subpoena the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States, or this state, or any officer or agency of either, fees and mileage need not be tendered.

(3) If the subpoena commands a person to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things for inspection, copying, testing or sampling or to permit inspection of premises, the party, attorney, or Licensed Paralegal Practitioner~~party or attorney~~ responsible for issuing the subpoena shall serve each party with the subpoena by delivery or other method of actual notice before serving the subpoena.

(c) Appearance; resident; non-resident.

(1) A person who resides in this state may be required to appear:

(A) at a trial or hearing in the county in which the case is pending; and

(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county in which the person resides, is employed, or transacts business in person, or at such other place as the court may order.

(2) A person who does not reside in this state but who is served within this state may be required to appear:

(A) at a trial or hearing in the county in which the case is pending; and

(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county in which the person is served or at such other place as the court may order.

(d) Payment of production or copying costs. The party ~~or attorney~~, or Licensed Paralegal Practitioner responsible for issuing the subpoena shall pay the

reasonable cost of producing or copying documents, electronically stored information, or tangible things. Upon the request of any other party and the payment of reasonable costs, the party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing the subpoena shall provide to the requesting party copies of all documents, electronically stored information or tangible things obtained in response to the subpoena or shall make the tangible things available for inspection.

(e) Protection of persons subject to subpoenas; objection.

(1) The party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on the person subject to the subpoena. The court shall enforce this duty and impose upon the party ~~or~~ attorney, or Licensed Paralegal Practitioner in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

(2) A subpoena to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things, or to permit inspection of premises shall comply with Rule 34(a) and (b)(1), except that the person subject to the subpoena must be allowed at least 14 days after service to comply.

(3) The person subject to the subpoena or a non-party affected by the subpoena may object ~~under Rule 37~~ if the subpoena:

(A) fails to allow reasonable time for compliance;

(B) requires a resident of this state to appear at other than a trial or hearing in a county in which the person does not reside, is not employed, or does not transact business in person;

(C) requires a non-resident of this state to appear at other than a trial or hearing in a county other than the county in which the person was served;

(D) requires the person to disclose privileged or other protected matter and no exception or waiver applies;

(E) requires the person to disclose a trade secret or other confidential research, development, or commercial information;

(F) subjects the person to an undue burden or cost;

(G) requires the person to produce electronically stored information in a form or forms to which the person objects;

(H) requires the person to provide electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost; or

(I) requires the person to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study that was not made at the request of a party.

(4) Timing and form of objections.

(A) If the person subject to the subpoena or a non-party affected by the subpoena objects, the objection must be made before the date for compliance.

(B) The objection shall be stated in a concise, non-conclusory manner.

(C) If the objection is that the information commanded by the subpoena is privileged or protected and no exception or waiver applies, or requires the person to disclose a trade secret or other confidential research, development, or commercial information, the objection shall sufficiently describe the nature of the documents, communications, or things not produced to enable the party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing the subpoena to contest the objection.

(D) If the objection is that the electronically stored information is from sources that are not reasonably accessible because of undue burden or cost, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost.

(E) The objection shall be served on the party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing the subpoena. The party ~~or~~ attorney, or Licensed Paralegal Practitioner responsible for issuing the subpoena shall serve a copy of the objection on the other parties.

(5) If objection is made, or if a party requests a protective order, the party ~~or~~

attorney, [or Licensed Paralegal Practitioner](#) -responsible for issuing the subpoena is not entitled to compliance but may request an order to compel compliance under Rule 37(a). The objection or request shall be served on the other parties and on the person subject to the subpoena. An order compelling compliance shall protect the person subject to or affected by the subpoena from significant expense or harm. The court may quash or modify the subpoena. If the party ~~or~~ [attorney, or Licensed Paralegal Practitioner](#) -responsible for issuing the subpoena shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions.

(f) Duties in responding to subpoena.

(1) A person commanded to copy and mail or deliver documents or electronically stored information or to produce documents, electronically stored information or tangible things shall serve on the [party, attorney, or Licensed Paralegal Practitioner](#) ~~party or attorney~~ responsible for issuing the subpoena a declaration under penalty of law stating in substance:

(A) that the declarant has knowledge of the facts contained in the declaration;

(B) that the documents, electronically stored information or tangible things copied or produced are a full and complete response to the subpoena;

(C) that the documents, electronically stored information or tangible things are the originals or that a copy is a true copy of the original; and

(D) the reasonable cost of copying or producing the documents, electronically stored information or tangible things.

(2) A person commanded to copy and mail or deliver documents or electronically stored information or to produce documents, electronically stored information or tangible things shall copy or produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena.

(3) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in the form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(4) If the information produced in response to a subpoena is subject to a claim

162 of privilege or of protection as trial-preparation material, the person making
163 the claim may notify any party who received the information of the claim and
164 the basis for it. After being notified, the party must promptly return, sequester,
165 or destroy the specified information and any copies of it and may not use or
166 disclose the information until the claim is resolved. A receiving party may
167 promptly present the information to the court under seal for a determination of
168 the claim. If the receiving party disclosed the information before being notified,
169 it must take reasonable steps to retrieve the information. The person who
170 produced the information must preserve the information until the claim is
171 resolved.

172 (g) **Contempt.** Failure by any person without adequate excuse to obey a
173 subpoena served upon that person is punishable as contempt of court.

174 (h) **Procedure when witness evades service or fails to attend.** If a witness evades
175 service of a subpoena or fails to attend after service of a subpoena, the court may
176 issue a warrant to the sheriff of the county to arrest the witness and bring the
177 witness before the court.

178 (i) **Procedure when witness is an inmate.** If the witness is an inmate as defined in
179 Rule 6(e)(1), a party may move for an order to examine the witness in the
180 institution or to produce the witness before the court or officer for the purpose of
181 being orally examined.

182 (j) **Subpoena unnecessary.** A person present in court or before a judicial officer
183 may be required to testify in the same manner as if the person were in
184 attendance upon a subpoena.

185 (k) **Foreign subpoenas.**

186 (1) “Foreign subpoena” means a subpoena issued under authority of a court
187 of record of any State or Territory of the United States other than Utah.

188 (2) Issuance and service of a foreign subpoena. A party or attorney shall
189 submit a foreign subpoena to a clerk of court in the county in which discovery
190 is sought to be conducted in Utah in accordance with Utah Code Ann. § 78B-
191 17-101 et seq.

192 (3) Enforcement and objections to a foreign subpoena. Objections to and
193 enforcement of a foreign subpoena must comply with Rule 45(e). Any paper
194 filed under Rule 37(a) shall be submitted to the Utah court that issued the

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195 [subpoena.](#)
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IN THE DISTRICT COURT OF THE *** JUDICIAL DISTRICT
COUNTY OF ***, STATE OF UTAH

***,

Plaintiff,

v.

***,

Defendants.

**NOTICE OF INTENT TO SERVE
SUBPOENAS DUCES TECUM**

Civil No. ***

Judge: ***

TO THE ABOVE-NAMED PARTIES AND THEIR COUNSEL:

NOTICE IS HEREBY GIVEN pursuant to U.R.C.P. Rule 45(b)(3) that counsel for Plaintiff will issue the attached subpoenas duces tecum for the production of documents, electronically stored information, or tangible things for inspection, which may include, without limitation, the copying and inspection of documents.

The requested records/documents and inspection are related to an element of a claim or defense in the above-captioned lawsuit at issue.

Plaintiffs intend to serve a Subpoena *Duces Tecum* on each of the following:

1. ***
2. ***

3. ***

The requested records are to be delivered to the offices of Shaun L Peck, Peck Hadfield Baxter & Moore, LLC, 399 N. Main Street, Ste 300, Logan, UT 84321 on the date and time set forth in each individual Subpoena *Duces Tecum*.

DATED this ____ day of November 2021.

/s/_____

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November 2021, pursuant to Rule 5 of the Utah Rules of Civil Procedure, a true and correct copy of the foregoing **NOTICE OF INTENT TO SERVE SUBPOENAS DUCES TECUM** has been served upon all parties and/or attorneys with electronic filing accounts by submitting the same for electronic filing with the Court through Green Filing, LLC. Parties or attorneys without electronic filing accounts will be served with a true and correct copy of the foregoing by email or by mailing via the United States Postal Service, postage pre-paid, at the addresses listed below:

X Electronic Filing

/s/ Tonya R. Wright
Tonya R. Wright
Paralegal