Agenda

Supreme Court Advisory Committee
Utah Rules of Civil Procedure
May 25, 2022
4:00 to 6:00 p.m.
Via Webex

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Rule 26(a)(1)(A)(ii)	Tab 2	Tim Pack
Rule 26 Comments re: (a)(3) and (a)(4)	Tab 3	Todd Weiler / Stacy Haacke
Rules 7B(i), 109 and 7A(h)	Tab 4	Judge Mettler and Judge Stone
Rule 7(l)(1)	Tab 5	Rod Andreason
Rules 7 and 37	Tab 6	Trevor Lee
Other Business: • Review Subcommittees • Review New and Re-Appointments	Tab 7	Lauren DiFrancesco
Consent agenda - *None*		
Verify Pipeline items: • Rule 26 "any damages claimed" (Judge Stone and Judge Holmberg) • Court Notices (Susan Vogel and Loni Page) • Rule 5 (Susan, Loni, Tonya) • Revisit Rule 45 (Jim Hunnicutt and Susan Vogel) • Rule 3(a)(2) (Tim Clark)		Lauren DiFrancesco

Next Meeting: June 22

Future Meetings: 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 – April 27, 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	Keri Sargent
Lauren DiFrancesco, Chair	X		Kelly Miles
Judge Kent Holmberg		X	Cameron Sabin
James Hunnicutt		X	Steve Dixon
Judge Linda Jones		X	Jacqueline Carlton
Trevor Lee	X		Chris Williams
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) INTRODUCTIONS

The meeting started at 4:04 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests to the meeting. Ms. DiFrancesco and other Committee members

recognized and honored Mr. Leslie Slaugh who was attending his last meeting after over two decades of service.

(2) APPROVAL OF MINUTES

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

(3) RULE 81 AND HB367

Ms. DiFrancesco turned the floor over to Representative Kelly Miles to present on HB367 that proposes to amend Utah Probate Code as it relates to notice. Rep. Miles explained that he held off on running the bill and decided to approach the Committee first. He introduced fellow quests Mr. Chris Williams from Legislative Research and Counsel, Mr. Cameron Sabin, and Steve Dixon who have worked on the draft. Mr. Williams explained that the main thrust was to clarify when exactly the rules of civil procedure apply. He explained that the uniform probate code carries its own specific rules of procedure and dictates when certain actions begin and how and when interested parties receive notice. The Bill seeks to amend Utah Code 75-1-401 and 75-7-109. He further explained that after making the draft Bill public, they received feedback to reference Rule 81 (b) that dictates when the civil rules apply in probate and guardianship issues. Their main concern is that Rule 81(b) does not settle the issue the Bill was seeking to resolve—that it is unclear when exactly a probate matter is deemed as being contested.

Mr. Cameron Sabin explained that he is one of a few litigation attorneys who have raised the issue and has had the issue come up in his cases. He further explained that as a background, the issue comes up because in the existing code, when you file a petition for probate with the court, the procedure is to list all the potential interested parties, then the court of clerk sends a notice to all interested parties informing them of their rights to appear, object, and speak regarding the petition. Once an objection is filed, the case is referred to mediation and the matter becomes, under the probate code, a contested matter for purposes of litigation and the rule of civil procedure applies. He explained that this problem come where no one objects to a petition and then sometimes even a year later a potential party objects, seeking to unwind the court's order because service of the original petition was not done in accordance with Rule 4. He explained that most probate petitions are not served under Rule 4, where you do not know every potential interested party who may live all over the United States and that most petitions are filed without any contact to the potential beneficiaries. Sections 75-1-401 and 75-7-109 creates confusion where only section 75-7-109 refers the rules of civil procedure. The draft Bill proposes to remove the inconsistency by saying that it is at the point of an objection that the rules of civil procedure begin to apply.

Judge Laura Scott informed that there is a Probate Subcommittee of the Committee that has been working on revisions to the probate code to address the inconsistencies between the rules of civil procedure and the probate code. She described the work that has been done with that project and

invited Rep. Mile's team to meet with the Subcommittee to collaborate. Judge Scott also explained that the other related issue that the subcommittee has been addressing is the expected wave of pro se guardianship and estate filings that is coming and how to make our rules more friendly for these specific types of issues; and whether to address that as part of the probate code or another code or set of rules.

Ms. Susan Vogel added that, at the Self- Help Center, it is very difficult to translate the probate law to plain language for pro se litigants. She highlighted one additional potential issue where HB320 and SB 155 (Bill of Rights for Protected People under Adult Guardianship) requires for example a 14-day notice of the time to respond but the probate code allows for a 30-day right to object. She expressed that she hopes there will be wholistic fix to iron out the various issues with the code and that she would be happy to be a part of the subcommittee.

Mr. Slaugh stated that the concept makes sense but worries that the terminology that the rules of civil procedure only apply once a party files an objection where the current wording would eliminate Rule 26.4. Mr. Sabin agreed but explained that typically when a petition is filed, no one objects and typically at the hearing the judge will ask if there is anyone that is there to object to the petition; and the judge will note if it is contested and then either sign the order or take the matter under advisement. Mr. Sabin expressed that Rule 26.4 is helpful where it requires a written description of the objection. Mr. Slaugh noted that his concern is that lines 80–81 of the proposed amendment eliminates the need for a written objection. Mr. Sabin notes that the section could be amended to say once the party "raises" an objection. Rep. Miles noted a concerned that a change in the law or rules that does not require service would run afoul of the Supreme Court's due process requirement and asked Mr. Sabin to clarify if the law would indeed run afoul of due process. Mr. Sabin explained that this procedure is intended both to protect due process and memorialize what happens when someone does not file an objection.

Mr. Steve Dixon noted that he was on the committee when Utah adopted the Uniform Probate Code in 1996 and then in 2004 when Utah adopted the Uniform Trust Code. He added that in his years of practicing he has only had about two or three contested matters and so he is hoping we are not turning over the proverbial apple cart where most cases are concerned. Mr. Sabin agreed that there is a balancing act in protecting the rights of those who do contest the issue.

Ms. Vogel asked why the process is so different in probate cases as well as what is expected to be the effect of the Guardianship Bills of Rights on the probate practice. Mr. Sabin explained that the specific statute being amended does not relate to guardianship which is governed by a different statute. He explained that from his practice knowledge, the reality is that probate is dealing with matters that are largely uncontested unlike in guardianship or conservatorship cases where a contestation of party's rights and interests are normally at issue and tend to follow a litigation practice. Judge Scott noted that these concerns are issues that are important to be addressed through the subcommittee on probate rules of civil procedure. Ms. Di Francesco thanked everyone for their input and agreed that a meeting with Judge Scott's subcommittee is the best way forward and asked them

to include a redline memo to the subcommittee. Judge Scott suggested that they set up a call in the next week or so to ensure coordination of efforts.

(4) RULES 5

Ms. Keri Sargent raise the question of who sends out the notice under Rule 5(b)(5) where every paper prepared by the court must be served by the court. Ms. Sargent's raised the specific question: If a divorce decree is submitted by an attorney through e-filing and the judge signs it; does it then become a paper prepared by the court, requiring the court to send out notice of that signed document and not simply rely on e-filing as the notice of acceptance and signature of the decree? Ms. Sargent invited the Committee to provide feedback based on their understanding and expertise.

Ms. Stacey Haacke added that the issue has been discussed by the Committee before with no changes made but wanted to raise it again if anyone has any recollection of the intent or history regarding the specific line in the rule. Ms. DiFrancesco noted that she recalls the discussion but perhaps the Rule needs to be amended if the Administrative Office of the Court is seeing ambiguity or lack of clarity. Mr. Slaugh noted that it makes sense to say that any record prepared or signed by the court will be served by the court. Ms. DiFrancesco noted that her recollection was that that was proposed but the court expressed great human resource and financial burden in being able to comply with such a rule and it was eventually abandoned.

Ms. Loni Page asked whether attorneys are sending out signed orders to pro se litigants or just the proposed order that they send to the court. Ms. Vogel added an example of one case where the proposed pretrial order was sent to the pro se litigant but not the final order which the judge had changed significantly. She added that she believes that parties must receive copies of orders that they are expected to follow. She added that MyCase does take care of a lot those issues; but in the instances where it does not, the court should be sending them out. She proposed some changes to Rule 5 (a) (3) (A) (Methods of service) to include MyCase as a method of electronic filing. Ms. DiFrancesco noted that it sounds like a problem that is on its way to a solution as MyCase gets fully rolled out but still may not satisfy the requirements of service and so a different solution may be needed. Ms. DiFrancesco noted that one of the reasons discussed previously for not amending the section was regarding expanding the work of the court, for example with minute entries. Ms. Vogel added that sometimes minute entries are extremely important when there are the only on the record orders of the court for a specific issue and that a party needs to prove a right.

The Committee discussed other related issues such as the effect of judgments and the jurisdictional limitation on seeking to overturn judgments, the effect on motions for alternative service, and the effects of the burden on the court vs the burden and responsibility of parties to stay informed of their cases. Ms. DiFrancesco asked that the issue be more carefully considered by a subcommittee. Ms. Vogel, Ms. Page, Ms. Sargent, and Mr. Toth will serve on the subcommittee. Ms. Haacke suggested asking someone from the IT department should be invited to join the subcommittee.

(5) RULES 26 (a) (1)(C)

Judge Stone expressed that the issue Judge Holmberg was going to address under Rule 26 was regarding the need for a party to provide a calculation of noneconomic damages in disclosure even though everyone agrees that there is no practical way to calculate noneconomic damages. He proposed simple adding in "economic" in Rule 26 (a)(1)(C). Ms. DiFrancesco added that the issue is finding the right word to qualify what sort of damages are being referred to in the Rule such as economic or special. Judge Stone explained that the jury instructions specify economic and non-economic damages, and he would suggest we use that distinction. Mr. Toth wondered whether to include whether the party is seeking noneconomic damages even if that cannot be computed. Judge Stone noted that that fact is apparent from the filing of the case as a tier three case. After a little more discussion, Judge Stone moved to add "economic" in Rule 26 (a)(1)(C). Mr. Toth seconded. Mr. Pattison opposed the motion and suggested that the amendment be added in Rule 26.2 (Disclosures in personal injury actions). The motion passed by majority.

(6) Rule 30 (b) (6)

Ms. DiFrancesco explained that Judge Holmberg wanted to raise whether the Committee should make any corresponding changes to Rule 30(b)(6) considering the recent changes to the federal rule 30 (b)(6). The issue is on whether to obligate the parties to meet and confer under rule 30 (b) (6). Judges Stone and Scott added that they don't usually get a lot of disputes on the issue. Ms. Kim Neville, Mr. Toth, Ms. Tonya Wright, and Mr. Rod Andreason will join a subcommittee to analyze and report.

(7) ADJOURNMENT.

The next meeting will be on May 25, 2022. The Chair encouraged Committee members to reach out to her and Ms. Haacke if the pipeline issues will not be ready for next Committee meeting and thanked everyone for their time and effort and wished everyone a great month. The meeting adjourned at 5:56 p.m.

Tab 2

Re: Rule 26(a)(1)(A)(ii)

Dear Committee Members:

I came across an issue I think the committee should consider that was raised in the Johnson case issued a few days ago:

https://www.westlaw.com/Document/I9a6311204edf11ecbe28a1944976b7ad/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0

2021 UT App 130

The issue concerns Rule 26(a)(1)(A)(ii)'s obligation that while you have to disclose the opposing party as a witness if you intend to call them in your case in chief, unlike all other witnesses, you do not have to provide a summary of the opposing party's testimony. The Johnson case, I think, casts doubt on the rational for NOT requiring a disclosure of the expected testimony of the opposing party. Something to consider.

Tim Pack

Rule 26. General provisions governing disclosure and discovery.

Effective: 11/1/2021

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

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

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

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

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

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

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

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

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

(2) Timing of initial disclosures. The disclosures required by paragraph (a)(1) must be served on the other parties:

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

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

(3) Exemptions.

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

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

(ii) governed by Rule 65B or Rule 65C;

(iii) to enforce an arbitration award;

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

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

(4) Expert testimony.

(A) Disclosure of retained expert testimony. A party must, without waiting for a discovery request, serve on the other parties the following information regarding any person who may be used at trial to present evidence under Rule 702 of the Utah Rules of Evidence and who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony: (i) the expert's name and qualifications, including a list of all publications authored within the preceding 10 years, and a list of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years, (ii) a brief summary of the opinions to which the witness is expected to testify, (iii) the facts, data, and other information specific to the case that will be relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for the witness's study and testimony.

(B) Limits on expert discovery. Further discovery may be obtained from an expert witness either by deposition or by written report. A deposition must not exceed four hours and the party taking the deposition must pay the expert's reasonable hourly fees for attendance at the deposition. A report must be signed by the expert and must contain a complete statement of all opinions the expert will offer at trial and the basis and reasons for them. Such an expert may not

testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert must pay the costs for the report.

(C) Timing for expert discovery.

(i) The party who bears the burden of proof on the issue for which expert testimony is offered must serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the close of fact discovery. Within 14 days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert must be permitted.

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

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

The court may preclude an expert disclosed only as a rebuttal expert from testifying in the case in chief.

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

(E) Summary of non-retained expert testimony. If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party must serve on the other parties a written summary of the facts and opinions to which the witness is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). Such a witness cannot be required to provide a report pursuant to paragraph (a)(4)(B). A deposition of such a witness may not exceed four hoursand, unless manifest injustice would result, the party taking the deposition must pay the expert's reasonable hourly fees for attendance at the deposition.

(5) Pretrial disclosures.

(A) A party must, without waiting for a discovery request, serve on the other parties:

(i) the name and, if not previously provided, the address and telephone number of each witness, unless solely for impeachment, separately identifying witnesses the party will call and witnesses the party may call;

(ii) the name of witnesses whose testimony is expected to be presented by transcript of a deposition;

(iii) designations of the proposed deposition testimony; and

(iv) a copy of each exhibit, including charts, summaries, and demonstrative exhibits, unless solely for impeachment, separately identifying those which the party will offer and those which the party may offer.

(B) Disclosure required by paragraph (a)(5)(A) must be served on the other parties at least 28 days before trial. Disclosures required by paragraph (a)(5)(A)(i) and (a)(5)(A)(ii) must also be

filed on the date that they are served. At least 14 days before trial, a party must serve any counter designations of deposition testimony and any objections and grounds for the objections to the use of any deposition, witness, or exhibit if the grounds for the objection are apparent before trial. Other than objections under Rules 402 and 403 of the Utah Rules of Evidence, other objections not listed are waived unless excused by the court for good cause.

(6) Form of disclosure and discovery production. Rule 34 governs the form in which all documents, data compilations, electronically stored information, tangible things, and evidentiary material should be produced under this Rule.

(b) Discovery scope.

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

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

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

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

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

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

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

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

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

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

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

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

(7) Trial preparation; experts.

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

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

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

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

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

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

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

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

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

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

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

disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

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

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

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

(3) Definition of tiers for standard discovery. Actions claiming $50,000 or less in damages are permitted standard discovery as described for Tier 1. Actions claiming more than $50,000 and less than $300,000 in damages are permitted standard discovery as described for Tier 2. Actions claiming $300,000 or more in damages are permitted standard discovery as described for Tier 3. Absent an accompanying damage claim for more than $300,000, actions claiming non-monetary relief are permitted standard discovery as described for Tier 2. Domestic relations actions are permitted standard discovery as described for Tier 4.

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

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

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
1	$50,000 or less	3	0	5	5	120
2	More than $50,000 and less than $300,000 or non-monetary relief	15	10	10	10	180
3	$300,00 or more	30	20	20	20	210
4	Domestic relations actions	4	10	10	10	90

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

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

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

(C) obtain an expanded discovery schedule under Rule 100A.

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

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

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

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

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

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

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

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

Advisory Committee Notes

Note Adopted 2011

Disclosure requirements and timing. Rule 26(a)(1).

Not all information will be known at the outset of a case. If discovery is serving its proper purpose, additional witnesses, documents, and other information will be identified. The scope and the level of detail required in the initial Rule 26(a)(1) disclosures should be viewed in light of this reality. A party is not required to interview every witness it ultimately may call at trial in order to provide a summary of the witness's expected testimony. As the information becomes known, it should be disclosed. No summaries are required for adverse parties, including management level employees of business entities, because opposing lawyers are unable to interview them and their testimony is available to their own counsel. For uncooperative or hostile witnesses any summary of expected testimony would necessarily be limited to the subject areas the witness is reasonably expected to testify about. For example, defense counsel may be unable to interview a treating physician, so the initial summary may only disclose that the witness will be questioned concerning the plaintiff's diagnosis, treatment and prognosis. After medical records have been obtained, the summary may be expanded or refined.

Subject to the foregoing qualifications, the summary of the witness's expected testimony should be just that– a summary. The rule does not require prefiled testimony or detailed descriptions of everything a witness might say at trial. On the other hand, it requires more than the broad, conclusory statements that often were made under the prior version of Rule 26(a)(1)(e.g., "The witness will testify about the events in question" or "The witness will testify on causation."). The intent of this requirement is to give the other side basic information concerning the subjects about which the witness is expected to testify at trial, so that the other side may determine the witness's relative importance in the case, whether the witness should be interviewed or deposed, and whether additional documents or information concerning the witness should be sought. *See RJW Media Inc. v. Heath*, 2017 UT App 34, ¶¶ 23-25, 392 P.3d 956. This information is important because of the other discovery limits contained in Rule 26.

Likewise, the documents that should be provided as part of the Rule 26(a)(1) disclosures are those that a party reasonably believes it may use at trial, understanding that not all documents will be available at the outset of a case. In this regard, it is important to remember that the duty to provide documents and witness information is a continuing one, and disclosures must be promptly supplemented as new evidence and witnesses become known as the case progresses.

Early disclosure of damages information is important. Among other things, it is a critical factor in determining proportionality. The committee recognizes that damages often require additional discovery, and typically are the subject of expert testimony. The Rule is not intended to require expert disclosures at the outset of a case. At the same time, the subject of damages should not simply be deferred until expert discovery. Parties should make a good faith attempt to compute damages to the extent it is possible to do so and must in any event provide all discoverable information on the subject, including materials related to the nature and extent of the damages.

The penalty for failing to make timely disclosures is that the evidence may not be used in the party's case-in-chief. To make the disclosure requirement meaningful, and to discourage sandbagging, parties must know that if they fail to disclose important information that is helpful to their case, they will not be able to use that information at trial. The courts will be expected to enforce them unless the failure is harmless or the party shows good cause for the failure.

The purpose of early disclosure is to have all parties present the evidence they expect to use to prove their claims or defenses, thereby giving the opposing party the ability to better evaluate the case and determine what additional discovery is necessary and proportional.

Expert disclosures and timing. Rule 26(a)(3). Disclosure of the identity and subjects of expert opinions and testimony is automatic under Rule 26(a)(3) and parties are not required to serve interrogatories or use other discovery devices to obtain this information.

Experts frequently will prepare demonstrative exhibits or other aids to illustrate the expert's testimony at trial, and the costs for preparing these materials can be substantial. For that reason, these types of demonstrative aids may be prepared and disclosed later, as part of the Rule 26(a)(4) pretrial disclosures when trial is imminent.

If a party elects a written report, the expert must provide a signed report containing a complete statement of all opinions the expert will express and the basis and reasons for them. The intent is not to require a verbatim transcript of exactly what the expert will say at trial; instead the expert must fairly disclose the substance of and basis for each opinion the expert will offer. The expert may not testify in a party's case in chief concerning any matter that is not fairly disclosed in the report. To achieve the goal of making reports a reliable substitute for depositions, courts are expected to enforce this requirement. If a party elects a deposition, rather than a report, it is up to

the party to ask the necessary questions to "lock in" the expert's testimony. But the expert is expected to be fully prepared on all aspects of his/her trial testimony at the time of the deposition and may not leave the door open for additional testimony by qualifying answers to deposition questions.

There are a number of difficulties inherent in disclosing expert testimony that may be offered from fact witnesses. First, there is often not a clear line between fact and expert testimony. Many fact witnesses have scientific, technical or other specialized knowledge, and their testimony about the events in question often will cross into the area of expert testimony. The rules are not intended to erect artificial barriers to the admissibility of such testimony. Second, many of these fact witnesses will not be within the control of the party who plans to call them at trial. These witnesses may not be cooperative, and may not be willing to discuss opinions they have with counsel. Where this is the case, disclosures will necessarily be more limited. On the other hand, consistent with the overall purpose of the 2011 amendments, a party should receive advance notice if their opponent will solicit expert opinions from a particular witness so they can plan their case accordingly. In an effort to strike an appropriate balance, the rules require that such witnesses be identified and the information about their anticipated testimony should include that which is required under Rule 26(a)(1)(A)(ii), which should include any opinion testimony that a party expects to elicit from them at trial. If a party has disclosed possible opinion testimony in its Rule 26(a)(1)(A)(ii) disclosures, that party is not required to prepare a separate Rule 26 (a)(4)(E) disclosure for the witness. And if that disclosure is made in advance of the witness's deposition, those opinions should be explored in the deposition and not in a separate expert deposition. Otherwise, the timing for disclosure of non-retained expert opinions is the same as that for retained experts under Rule 26(a)(4)(C) and depends on whether the party has the burden of proof or is responding to another expert.

Scope of discovery—Proportionality. Rule 26(b). Proportionality is the principle governing the scope of discovery. Simply stated, it means that the cost of discovery should be proportional to what is at stake in the litigation.

In the past, the scope of discovery was governed by "relevance" or the "likelihood to lead to discovery of admissible evidence." These broad standards may have secured just results by allowing a party to discover all facts relevant to the litigation. However, they did little to advance

two equally important objectives of the rules of civil procedure—the speedy and inexpensive resolution of every action. Accordingly, the former standards governing the scope of discovery have been replaced with the proportionality standards in subpart (b)(1).

The concept of proportionality is not new. The prior rule permitted the Court to limit discovery methods if it determined that "the discovery was unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation." The Federal Rules of Civil Procedure contains a similar provision. See Fed. R. Civ. P. 26(b)(2) (C).

Any system of rules which permits the facts and circumstances of each case to inform procedure cannot eliminate uncertainty. Ultimately, the trial court has broad discretion in deciding whether a discovery request is proportional. The proportionality standards in subpart (b)(2) and the discovery tiers in subpart (c) mitigate uncertainty by guiding that discretion. The proper application of the proportionality standards will be defined over time by trial and appellate courts.

Standard and extraordinary discovery. Rule 26(c). As a counterpart to requiring more detailed disclosures under Rule 26(a), the 2011 amendments place new limitations on additional discovery the parties may conduct. Because the committee expects the enhanced disclosure requirements will automatically permit each party to learn the witnesses and evidence the opposing side will offer in its case-in-chief, additional discovery should serve the more limited function of permitting parties to find witnesses, documents, and other evidentiary materials that are harmful, rather than helpful, to the opponent's case.

Parties are expected to be reasonable and accomplish as much as they can during standard discovery. A statement of discovery issues may result in additional discovery and sanctions at the expense of a party who unreasonably fails to respond or otherwise frustrates discovery. After the expiration of the applicable time limitation, a case is presumed to be ready for trial. Actions for nonmonetary relief, such as injunctive relief, are subject to the standard discovery limitations of Tier 2, absent an accompanying monetary claim of $300,000 or more, in which case Tier 3 applies.

Consequences of failure to disclose. Rule 26(d). If a party fails to disclose or to supplement timely its discovery responses, that party cannot use the undisclosed witness, document, or material at any hearing or trial, absent proof that non-disclosure was harmless or justified by good cause. More complete disclosures increase the likelihood that the case will be resolved justly, speedily, and inexpensively. Not being able to use evidence that a party fails properly to disclose provides a powerful incentive to make complete disclosures. This is true only if trial courts hold parties to this standard. Accordingly, although a trial court retains discretion to determine how properly to address this issue in a given case, the usual and expected result should be exclusion of the evidence.

Legislative Note

Note adopted 2012

S.J.R. 15

(1) The amended language in paragraph (b)(1) is intended to incorporate long-standing protections against discovery and admission into evidence of privileged matters connected to medical care review and peer review into the Utah Rules of Civil Procedure. These privileges, found in both Utah common law and statute, include Sections 26-25-3, 58-13-4, and 58-13-5, UCA, 1953. The language is intended to ensure the confidentiality of peer review, care review, and quality assurance processes and to ensure that the privilege is limited only to documents and information created specifically as part of the processes. It does not extend to knowledge gained or documents created outside or independent of the processes. The language is not intended to limit the court's existing ability, if it chooses, to review contested documents in camera in order to determine whether the documents fall within the privilege. The language is not intended to alter any existing law, rule, or regulation relating to the confidentiality, admissibility, or disclosure of proceedings before the Utah Division of Occupational and Professional Licensing. The Legislature intends that these privileges apply to all pending and future proceedings governed by court rules, including administrative proceedings regarding licensing and reimbursement.

(2) The Legislature does not intend that the amendments to this rule be construed to change or alter a final order concerning discovery matters entered on or before the effective date of this amendment.

(3) The Legislature intends to give the greatest effect to its amendment, as legally permissible, in matters that are pending on or may arise after the effective date of this amendment, without regard to when the case was filed.

Effective date. Upon approval by a constitutional two-thirds vote of all members elected to each house. [March 6, 2012]

Tab 3

Re: Rule 26 Advisory Committee Notes

Dear Committee Members,

The Advisory Committee Notes in the published Utah Court Rules Annotated refer to Rule 26(a)(3), not 26(a)(4), and specifically require the production of the expert's file. The version of Rule 26 Advisory Committee Notes on the official Court website (which also refer to 26(a)(3)) is very different from the published version and says nothing about the expert's file. Which Committee Notes are the most authoritative? And why don't either of them have the correct Rule referenced?

The published rule has been amended effective Nov. 21, 2021, to expand the days available to disclose experts, request reports, etc., from 7 days to 14 days, among other things. The amendments do not discuss the Advisory Committee Notes but the document circulated by the Supreme Court notifying everyone of the effective date of the amendments includes the Advisory Committee Notes from the website rather than the those in the book, and still refers to Rule 26(a)(3).

Todd Weiler

Update

This request was received by Michael Drechsel, who compared the online version of Rule 26 with the printed Westlaw version, and the two are identical. A printed version of the rule in LexisNexis has not been obtained for review yet, but this is apparently the version with the discrepancy. This will be clarified as soon as possible with the publisher.

The comments regarding 26(a)(3) can be found starting on lines 311 of Rule 26 that has been included in Tab 2. The concern is the reference to Rule 26(a)(3) instead of (a)(4) in the comments.

Tab 4

Re: Rules 7B, 109, and 7A

Does Rule 7B regarding motions to enforce and/or for sanctions apply to the domestic relations injunction issued pursuant to Rule 109? It appears to apply, however, the first sentence of Rule 7B(i) says it doesn't apply to an order that is issued by the court on its own initiative. That would seem to include the domestic relations injunction.

- Judge Mettler

Does the limitation in 7B(i) actually refers to an order to attend a hearing issued by a court on its own initiative. That would seem consistent with the remainder of that subsection. In any event, I can't imagine a reason not to permit a party to initiate proceedings to enforce the Rule 109 injunction—I think this needs to be clarified/corrected.

- Judge Stone

This appears in 7A(h) as well. I believe we modeled this rule after the fifth district local rule at the time and I wonder if it was something in there, but I can't find that either. The only thing I can think of we might have meant was that the opposing party isn't responsible for service of a motion issued by the court on its own initiative, but if that's what we meant, we certainly weren't very clear and I agree a change is in order as we would certainly want parties to be able to enforce Rule 109 injunctions. But I wonder if we need to clarify both 7A(h) and 7B(i).

- Lauren DiFrancesco

Rule 7A. Motion to enforce order and for sanctions.

Effective: 5/1/2021

(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, 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 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 7B. Motion to enforce order and for sanctions in domestic law matters.

Effective: 5/1/0201

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, 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. If the motion is to be heard by a commissioner, the motion must also follow the procedures of Rule 101. For purpose of this rule, an order includes a decree.

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

(c) Proposed order. The motion must be accompanied by a 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 at least 14 days before the hearing, unless the court sets a different time, and that any written response must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(d) Service of the order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting affidavits served on the 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 at least 14 days before the hearing, unless the court sets a different time, and must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(f) Reply. If the nonmoving party files a written opposition, the moving party may file a reply at least 7 days before the hearing, unless the court sets a different time. Any reply must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(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) Counter Motions. A responding party may request affirmative relief only by filing a counter motion, to be heard at the same hearing. 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 opposition. Any opposition to the counter motion must be filed and served no later than the reply to the motion. Any reply to the opposition to the counter motion must be filed and served at least 3 business days before the hearing 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). The party who filed the counter motion bears the burden of proof on all claims made in the counter motion. A separate proposed order is required only for counter motions to enforce a court order or to obtain a sanctions order for violation of an order, in which case the proposed order for the counter motion must:

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

(2) state the relief sought in the counter motion;

(3) state whether the counter 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 the scheduled hearing to explain whether that party has violated the order; and

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

(i) Limitations. This rule does not apply to an order that is issued by the court on its own initiative. This rule applies only to domestic relations actions, including divorce; temporary separation; separate maintenance; parentage; custody; child support; adoptions; cohabitant abuse protective orders; child protective orders; civil stalking injunctions; grandparent visitation; and modification actions. 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.

(j) 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 109. Injunction in certain domestic relations cases.

Effective: 1/1/0021

(a) **Actions in which a domestic injunction enters.** Unless the court orders otherwise, in an action for divorce, annulment, temporary separation, custody, parent time, support, or paternity, the court will enter an injunction when the initial petition is filed. Only the injunction's applicable provisions will govern the parties to the action.

(b) **General provisions.**

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

(2) Neither party may, through electronic or other means, disturb the peace of, harass, or intimidate the other party.

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

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

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

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

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

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

(A) an itinerary of travel dates and destinations;

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

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

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

(A) demean or disparage the other party;

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

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

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

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

(d) **Service.** The court will serve the injunction on the petitioner at the time the petition is filed. The petitioner must provide the respondent with a copy of the injunction as entered by the court through any means reasonably calculated to give notice.

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

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

(2) on the respondent after filing of the initial petition and upon receipt of a copy of the injunction as entered by the court.

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

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

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

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

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

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

Tab 5

Re: Rule 7(l)(1) Motions that may be acted upon without waiting for a response.

Dear Committee Members,

The list of motions in this subparagraph of Rule 7 does not include Motions to Expedite, but I would suggest they would fit in this section as motions the court may act upon without waiting for a response, and are reasonably common motions.

- Rod Andreason

[Rule 7 is included under Tab 6 as we have been previously discussing word limits]

Tab 6

Re: Rules 7 and 37 word/page limits

Dear Committee Members,

Attached is an updated draft of Rules 7 and 37. I made two changes per our discussion last month: I tweaked the numbers to get closer to 350 words/page (rather than 400), and I put the word limits in a table in Rule 7 instead of spread out throughout Rules 7 and 37.

I know this issue is a pipeline issue for tomorrow, so just circulating in case we end early and want to address this tomorrow.

Rod, I know you voiced some concern about using the State and Federal appellate rules as guidelines to determine words per page, as those rules require larger font (13 for state and 14 for federal). Curiously, the appellate rules actually trend in the *opposite* direction that you would expect given the larger font. This is best demonstrated by looking to the column below showing how many pages each set of rules allotts per 1,000 words. Because the Utah civil rules require 12 pt font, and because the federal court of appeals rules require 14 pt font, you would expect that the federal rules would permit *more* pages to fit 1,000 words, as the words are bigger. But in fact they permit fewer pages:

I'm not sure what this means in terms of using other rules as a guide, except to suggest that we should be in the 2.1-3.2 pages per 1,000 words range. My current proposal is 360 words/page, or 2.7 pages for every 1,000 words.

Finally, take a look below at the Committee Notes for the federal appellate rules from 1998 when they adopted word limits. They call the prior 50-page appellate limit "virtually meaningless," which is essentially the impetus for us making the change as well:

Subparagraph (a)(7)(A) contains a safe-harbor provision. A principal brief that does not exceed 30 pages complies with the type-volume limitation without further question or certification. A reply brief that does not exceed 15 pages is similarly treated. The current limit is 50 pages but that limit was established when most briefs were produced on typewriters. The widespread use of personal computers has made a multitude of printing options available to practitioners. Use of a proportional typeface alone can greatly increase the amount of material per page as compared with use of a monospace typeface. Even though the rule requires use of 14-point proportional type, there is great variation in the x-height of different 14-point typefaces. Selection of a typeface with a small x-height increases the amount of text per page. Computers also make possible fine gradations in spacing between lines and tight tracking between letters and words. All of this, and more, have made the 50-page limit virtually meaningless. Establishing a safe-harbor of 50 pages would permit a person who makes use of the multitude of printing “tricks” available with most personal computers to file a brief far longer than the “old” 50-page brief. Therefore, as to those briefs not subject to any other volume control than a page limit, a 30-page limit is imposed.

The limits in subparagraph (B) approximate the current 50-page limit and compliance with them is easy even for a person without a personal computer. The aim of these provisions is to create a

level playing field. The rule gives every party an equal opportunity to make arguments, without permitting those with the best in-house typesetting an opportunity to expand their submissions.

- Trevor Lee

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 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. 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 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) Length of Briefs.

(1) Unless a brief complies with the following page limits, it must comply with the following word limits:

Type of Brief	**Page Limit**	**Word Limit**
Motion for Relief Authorized by Rule 12(b), 12(c), 56, or 65A	25	9,000
All Other Motions for Relief	15	5,400
Opposition to Motion Authorized by Rule 12(b), 12(c), 56, or 65A	25	9,000
Opposition to All Other Motions for Relief	15	5,400

Reply In Support of Motion for Relief Authorized by Rule 12(b), 12(c), 56, or 65A	15	5,400
Reply In Support of All Other Motions for Relief	10	3,600
Objection and Response to Evidence in Reply under Rule 7(f)	3	1,100
Notice of Supplemental Authority and Response under Rule 7(i)	2	700
Statement of Discovery Issues and Objection under Rule 37(a)(2) and 27(a)(3)	4	1,500

(2) The word and page limits in this rule exclude the following: caption, table of contents, table of authorities, signature block, certificate of service, certification, exhibits, and attachments.

(3) 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.

Effective May 1, 2021

Rule 37. Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence.

(a) Statement of discovery issues.

(1) A party or the person from whom discovery is sought may request that the judge enter an order regarding any discovery issue, including:

(A) failure to disclose under Rule 26;

(B) extraordinary discovery under Rule 26;

(C) a subpoena under Rule 45;

(D) protection from discovery; or

(E) compelling discovery from a party who fails to make full and complete discovery.

(2) Statement of discovery issues ~~length and~~ content. The statement of discovery issues ~~must be no more than 4 pages, not including permitted attachments, and~~ must include in the following order:

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

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

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

(D) if the statement requests extraordinary discovery, a statement certifying that the party has reviewed and approved a discovery budget.

(3) Objection ~~length and~~ content. No more than 7 days after the statement is filed, any other party may file an objection to the statement of discovery issues. The objection ~~must be no more than 4 pages, not including permitted attachments, and~~ must address the issues raised in the statement.

(4) Permitted attachments. The party filing the statement must attach to the statement only a copy of the disclosure, request for discovery or the response at issue.

(5) Proposed order. Each party must file a proposed order concurrently with its statement or objection.

(6) Decision. Upon filing of the objection or expiration of the time to do so, either party may and the party filing the statement must file a Request to Submit for Decision under Rule 7(g). The court will promptly:

(A) decide the issues on the pleadings and papers;

(B) conduct a hearing, preferably remotely and if remotely, then consistent with the safeguards in Rule 43(b); or

(C) order additional briefing and establish a briefing schedule.

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

(A) that the discovery not be had or that additional discovery be had;

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

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

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

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

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

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

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

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

(J) that the costs, expenses and attorney fees of discovery be allocated among the parties as justice requires; or

(K) that a party pay the reasonable costs, expenses, and attorney fees incurred on account of the statement of discovery issues if the relief requested is granted or denied, or if a party provides discovery or withdraws a discovery request after a

statement of discovery issues is filed and if the court finds that the party, witness, or attorney did not act in good faith or asserted a position that was not substantially justified.

(8) Request for sanctions prohibited. A statement of discovery issues or an objection may include a request for costs, expenses and attorney fees but not a request for sanctions.

(9) Statement of discovery issues does not toll discovery time. A statement of discovery issues does not suspend or toll the time to complete standard discovery.

(10) Length of Briefs. The length of a Statement of Discovery Issues and Objection is governed by Rule 7(q).

(b) Motion for sanctions. Unless the court finds that the failure was substantially justified, the court, upon motion, may impose appropriate sanctions for the failure to follow its orders, including the following:

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

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

(3) stay further proceedings until the order is obeyed;

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

(5) order the party or the attorney to pay the reasonable costs, expenses, and attorney fees, caused by the failure;

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

(7) instruct the jury regarding an adverse inference.

(c) Motion for costs, expenses and attorney fees on failure to admit. If a party fails to admit the genuineness of a document or the truth of a matter as requested under Rule 36, and if the party requesting the admissions proves the genuineness of the document or the truth of the matter, the party requesting the admissions may file a motion for an order requiring the other party to pay the reasonable costs, expenses and attorney fees incurred in making that proof. The court must enter the order unless it finds that:

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

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

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

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

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

(d) Motion for sanctions for failure of party to attend deposition. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) to testify on behalf of a party fails to appear before the officer taking the deposition after service of the notice, any other party may file a motion for sanctions under paragraph (b). The failure to appear may not be excused on the ground that the discovery sought is objectionable unless the party failing to appear has filed a statement of discovery issues under paragraph (a).

(e) Failure to preserve evidence. Nothing in this rule limits the inherent power of the court to take any action authorized by paragraph (b) if a party destroys, conceals, alters, tampers with or fails to preserve a document, tangible item, electronic data or other evidence in violation of a duty. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Advisory Committee Notes

The 2011 amendments to Rule 37 make two principal changes. First, the amended Rule 37 consolidates provisions for motions for a protective order (formerly set forth in Rule 26(c)) with provisions for motions to compel.

Second, the amended Rule 37 incorporates the new Rule 26 standard of "proportionality" as a principal criterion on which motions to compel or for a protective order should be evaluated.

Paragraph (a) adopts the expedited procedures for statements of discovery issues formerly found in Rule 4-502 of the Code of Judicial Administration. Statements of discovery issues replace discovery motions, and paragraph (a) governs unless the judge orders otherwise.

Effective May 1, 2021

Tab 7

URCP Subcommittees

Subject	Members	Primary
Probate	Judge Scott, Allison Barger, Brant Christiansen, David Parkinson, Judge Kelly, Kathie Brown Roberts, Keri Sargent, Russ Mitchell, Shonna Thomas	Judge Scott
Terminology	Susan Vogel, Ash McMurray, Trevor Lee, Leslie Slaugh	Susan Vogel
Court Notices	Susan Vogel, Loni Page	Susan Vogel
Records Classification	Judge Stone, Justin Toth, Jim Hunnicutt, Susan Vogel, Crystal Powell	Judge Stone
Standard POs	Judge Holmberg, Judge Stucki, Judge Oliver, Bryan Pattison	Judges Oliver and Holmberg
Rule 5	Susan Vogel, Loni Page, Tonya Wright	Loni Page
Probate	Judge Scott	Judge Scott
Rule 45	Jim Hunnicutt and Susan Vogel	Jim Hunnicutt
Rule 30(b)(6)	Justin, Tonya, Rod, Kim	Justin Toth