



Utah Supreme Court
Advisory Committee on the Utah Rules of Civil Procedure
Meeting Agenda
Rod Andreason, Chair

Location: WebEx Webinar: [Link](#)

Date: November 20, 2024

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Rod Andreason
Omnibus Subcommittee – Rules 7, 30, 37, 45 (<i>Discussion and motion for public comment</i>)	Tab 2	Justin Toth
New Rule 53A – Special masters for parenting disputes in domestic relations actions (<i>Discussion and motion for public comment</i>)	Tab 3	Brent Hall
Subcommittee List (<i>Information</i>)	Tab 4	

Reminder: Check style guide for conformity before rules are sent to the Supreme Court.

Upcoming Items:

- Subcommittees!
- Rules 26.4 and 107 back from public comment

URCP Committee Website: [Link](#)

2024 Meeting Schedule:

December 18

2025 Meeting Schedule:

Jan 22 • Feb 26 • Mar 26 • April 23 • May 28 • June 25 • Sep 24 • Oct 22 • Nov 26 • Dec 24

Tab 1

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

**Summary Minutes – October 23, 2024
via Webex**

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Chair	X		Stacy Haacke, Staff
Justin T. Toth, Vice Chair	X		Keri Sargent
Ash McMurray		X	Jacqueline Carlton
Michael Stahler	X		
Loni Page		X	
Bryan Pattison	X		
Trevor Lee	X		
Laurel Hanks	X		
Tonya Wright	X		
Judge Rita Cornish		X	
Commissioner Catherine Conklin	X		
Giovanna Speiss		X	
Jonas Anderson		X	
Heather Lester	X		
Brett Chambers	X		
Judge Blaine Rawson		X	
Judge Ronald Russell	X		
Rachel Sykes	X		
Michael Young	X		
Laurel Hanks	X		
Judge Laura Scott, <i>Emeritus</i>	X		
James Hunnicutt, <i>Emeritus</i>	X		

(1) INTRODUCTIONS

The meeting began at 4:04 p.m. after forming a quorum. Mr. Rod Andreason welcomed the Committee Members and guests.

(2) APPROVAL OF MINUTES

Mr. Rod Andreason asked for approval of the September 2024 Minutes subject to amendments noted by Mr. Jim Hunnicutt and Ms. Rachel Sykes. Mr. Michael Stahler moved. Mr. Michael Youth seconded. The Minutes were unanimously approved.

(3) RULES 7A AND 64 SUPPLEMENTAL HEARINGS AND MOTIONS TO ENFORCE ORDERS

Ms. Stacy Haacke reviewed that history of discussions and proposed amendments to these rules. Judge Scott discussed the evolution of what has been happening in third district and supplemental hearing policies. She thinks the language in the rule currently is consistent with what has been happening and the changes over the years. Commissioner Conklin explained what has happened in second district, which has been similar to third district. The Committee agrees to archive these amendments and requests, and to leave the language in the rules as they currently read.

(4) RULE 101 MOTION PRACTICE BEFORE COURT COMMISSIONERS

Mr. Hunnicutt reviewed generally the amendments that have been made to this rule. Judge Scott indicates they are making changes in third district and dispositive motions will go to the judge in the first instance before the commissioner. This process is currently allowed under subparagraph (m). Mr. Brett Chambers asks about the differences between this rule and rule 7. Mr. Hunnicutt indicates there has to be a hearing on a contested motion, the page limits are different, and there are exceptions to the page limits. This has evolved out of the filing of extensively long pleadings that were filed close to hearing dates. Commissioner Conklin also notes that under rule 7 once briefing is complete the parties file a request for decision, where in rule 101 the response deadline is calculated back from the hearing date.

Mr. Hunnicutt notes that in domestic cases that have been dormant for a period of time, the parties will need to be served directly and this language has been updated. With e-filing the lawyer will still receive notice of the filing. Commissioner Conklin notes they did not want unrepresented parties to require rule 4 service on everything, especially with the evolution of e-filing.

Mr. Hunnicutt notes the amendment to require the submission of financial information for the appointment of court-annexed professionals in subparagraph (f). There

has also been a lot of confusion surrounding subparagraphs (h) and (i) and a lack of applying the rule universally. Clarification has been added that documents may not be considered at a hearing unless filed pursuant to rule, there also needs to be an evidentiary basis for exhibits, and parties also need to provide direction as to what is filed and why, not just notice that documents have been filed. There is also a clarification as to what does not count towards the page limits, and that summaries need to give context to a document.

Subparagraphs (k), (l), (m), and (n) were also amended to clean up some language, clarify when hearings could be scheduled, and when orders are enforceable.

Ms. Tonya Wright motions to approve to send the rule to the Supreme Court and to go out for public comment. Mr. Stahler seconds the motion. Motions passes unanimously.

(5) NOVEMBER AND DECEMBER MEETING DATES

These months are a little tricky with the holidays. Committee agrees to hold meetings on the third Wednesdays of the month.

(6) ADJOURNMENT

Mr. Andreason thanked everyone for their hard work for the Committee. With no more agenda items, the meeting was adjourned early. The next meeting will be November 20, 2024, at 4:00 p.m.

Tab 2

Rules 7, 30, 37, and 45
Omnibus Subcommittee
Justin Toth

Amendments to rules 30 and 45.

Rule 30(b)(6)

I addressed the Court's request to leave the original text of Rule 30(b)(6) intact and move the additions into sub-paragraphs within Rule 30(b)(6). I have also tried to address Justice Pohlman's points about the objection process. I have added some additional language at (a) that no requires that objections to be raised within 7 days of service of the notice. We had originally not included a requirement like that, but I think it is needed to force the meet-and-confer discussion to occur in a timely way. The remainder of the rule flows from that in subsections (b) – (d).

Rule 45

That's a great question: how does (5)(B) operate differently from (4)(E)? Admittedly, that was not as clear as it should have been. I've revised the Rule to make it clearer that 4(E) relates to objections to a subpoena being made by a non-party and 5(B) includes objections to a subpoena being made by a party via a protective order through Rule 37.

Rules 7 and 37 were previously approved by the Committee to go to the Supreme Court and out for public comment.

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

2 **(a) Pleadings.** Only these pleadings are allowed:

- 3 (1) a complaint;
- 4 (2) an answer to a complaint;
- 5 (3) an answer to a counterclaim designated as a counterclaim;
- 6 (4) an answer to a crossclaim;
- 7 (5) a third-party complaint;
- 8 (6) an answer to a third-party complaint; and
- 9 (7) a reply to an answer if ordered by the court.

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

- 14 (1) A motion, other than a motion described in paragraphs (b)(2), (b)(3) or (b)(4),
15 made in proceedings before a court commissioner must follow Rule [101](#).
- 16 (2) A request under [Rule 26](#) for extraordinary discovery must follow Rule [37\(a\)](#).
- 17 (3) A request under Rule [37](#) for a protective order or for an order compelling
18 disclosure or discovery – but not a motion for sanctions – must follow Rule [37\(a\)](#).
- 19 (4) [A request for an order related to a subpoena under Rule 45 must follow Rule 37\(a\). A](#)
20 [request under Rule 45 to quash a subpoena must follow Rule 37\(a\).](#)
- 21 (5) A motion for summary judgment must follow the procedures of this rule as
22 supplemented by the requirements of Rule [56](#).

23 **(c) Name and content of motion.**

- 24 (1) The rules governing captions and other matters of form in pleadings apply to
25 motions and other papers.
- 26 (2) **Caution language.** For all dispositive motions, the motion must include the
27 following caution language at the top right corner of the first page, in bold
28 type: **This motion requires you to respond. Please see the Notice to Responding**
29 **Party.**
- 30 (3) **Bilingual notice.** All motions must include or attach the bilingual Notice to
31 Responding Party approved by the Judicial Council.

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

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

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

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

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

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

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

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

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

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

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

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

65 **(e) Name and content of reply memorandum.**

66 (1) Within 7 days after the memorandum opposing the motion is filed, the moving
67 party may file a reply memorandum, which must be limited to rebuttal of new
68 matters raised in the memorandum opposing the motion. The moving party must
69 title the memorandum substantially as "Reply memorandum supporting motion
70 [short phrase describing the relief requested]." The memorandum must include
71 under appropriate headings and in the following order:

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

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

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

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

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

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

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

97 (1) the motion;

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

99 (3) the reply memorandum, if any; and

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

101 **(h) Hearings.** The court may hold a hearing on any motion. A party may request a
102 hearing in the motion, in a memorandum or in the request to submit for decision. A
103 request for hearing must be separately identified in the caption of the document
104 containing the request. The court must grant a request for a hearing on a motion
105 under Rule 56 or a motion that would dispose of the action or any claim or defense in
106 the action unless the court finds that the motion or opposition to the motion is frivolous
107 or the issue has been authoritatively decided. A motion hearing may be held remotely,
108 consistent with the safeguards in Rule 43(b).

109 **(i) Notice of supplemental authority.** A party may file notice of citation to significant
110 authority that comes to the party's attention after the party's motion or memorandum
111 has been filed or after oral argument but before decision. The notice must state the
112 citation to the authority, the page of the motion or memorandum or the point orally
113 argued to which the authority applies, and the reason the authority is relevant. Any
114 other party may promptly file a response, but the court may act on the motion without
115 waiting for a response.

116 **(j) Orders.**

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

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

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

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

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

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

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

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

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

143 (A) a stipulated motion;

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

145 (C) an ex parte motion;

146 (D) a statement of discovery issues under Rule [37\(a\)](#); and

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

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

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

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

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

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

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

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

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

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

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

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

- 167 (C) motion to appear pro hac vice;
- 168 (D) motion for Rule 16 conference;
- 169 [\(E\) motion to strike a document filed by a vexatious litigant in violation of rule](#)
- 170 [83\(d\);](#)
- 171 [\(F\) motion to appear remotely;](#) and
- 172 ~~(E)~~ [\(G\)](#) other similar motions.
- 173 (2) A motion that can be acted on without waiting for a response must:
- 174 (A) be titled as a regular motion;
- 175 (B) include a concise statement of the relief requested and the grounds for the
- 176 relief requested;
- 177 (C) cite the statute or rule authorizing the motion to be acted on without waiting
- 178 for a response; and
- 179 (D) be accompanied by a request to submit for decision and a proposed order.
- 180 **(m) Ex parte motions.** If a statute or rule permits a motion to be filed without serving
- 181 the motion on the other parties, the party seeking relief may file an ex parte motion
- 182 which must:
- 183 (1) be titled substantially as: “Ex parte motion [short phrase describing the relief
- 184 requested]”;
- 185 (2) include a concise statement of the relief requested and the grounds for the relief
- 186 requested;
- 187 (3) cite the statute or rule authorizing the ex parte motion;
- 188 (4) be accompanied by a request to submit for decision and a proposed order.
- 189 **(n) Motion in opposing memorandum or reply memorandum prohibited.** A party
- 190 may not make a motion in a memorandum opposing a motion or in a reply
- 191 memorandum. A party who objects to evidence in another party’s motion or
- 192 memorandum may not move to strike that evidence. Instead, the party must include in
- 193 the subsequent memorandum an objection to the evidence.
- 194 **(o) Overlength motion or memorandum.** The court may permit a party to file
- 195 an overlength motion or memorandum upon a showing of good cause.
- 196 An overlength motion or memorandum must include a table of contents and a table of
- 197 authorities with page references.

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

- 201 (1) motion to allow an over-length motion or memorandum;
 202 (2) motion to extend the time to perform an act, if the motion is filed before the time
 203 to perform the act has expired;
 204 (3) motion to continue a hearing;
 205 (4) motion to appoint a guardian ad litem;
 206 (5) motion to substitute parties;
 207 (6) motion to refer the action to or withdraw it from alternative dispute resolution
 208 under Rule 4-510.05;
 209 (7) motion for a conference under Rule 16; and
 210 (8) motion to approve a stipulation of the parties.

211 **(q) Length of Filings.**

- 212 (1) Unless one of the following filings complies with the page limits set forth below,
 213 it must comply with the corresponding word limits:

Type of Filing	Page Limit	Word Limit
Motion for Relief Authorized by Rule 12(b), 12(c), 56, or 65A	25	9,000
All Other Motions	15	5,400
Memorandum Opposing Motion Authorized by Rule 12(b), 12(c), 56, or 65A	25	9,000
Memorandum Opposing All Other Motions	15	5,400
Reply Memorandum Supporting Motion for Relief Authorized by Rule 12(b), 12(c), 56, or 65A	15	5,400
Reply Memorandum Supporting All Other Motions	10	3,600
Objection and Response 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	4	1,500

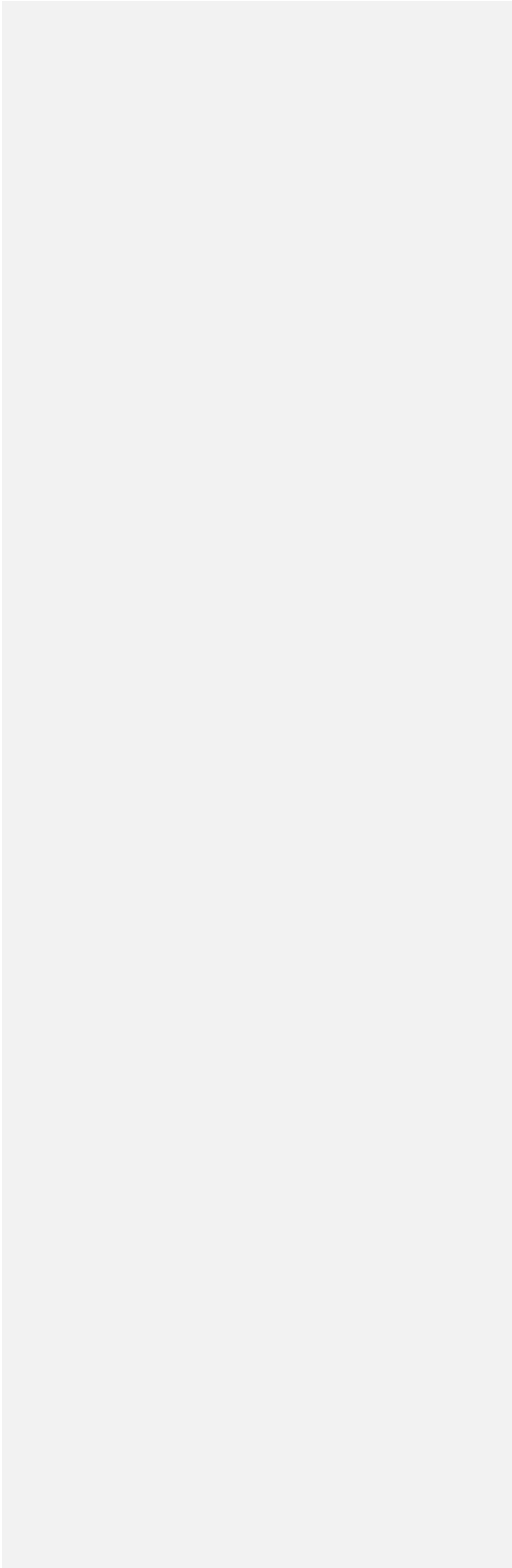
Rule 37(a)(2) and 37(a)(3)		
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214 (2) The word and page limits in this rule exclude the following: caption, table of
215 contents, table of authorities, signature block, certificate of service, certification,
216 exhibits, and attachments.

217 (3) Any filer relying on the word limits in this rule must include a certification that
218 the document complies with the applicable word limit and must state the number of
219 words in the document.

220

221 Effective May 1, 2023



1 **Rule 30. Depositions upon oral questions.**

2 **(a)When depositions may be taken; when leave required.** A party may depose a party
3 or witness by oral questions. A witness may not be deposed more than once in standard
4 discovery. An expert who has prepared a report disclosed under Rule [26\(a\)\(4\)\(B\)](#) may
5 not be deposed.

6 **(b)Notice of deposition; general requirements; special notice; non-stenographic**
7 **recording; production of documents and things; deposition of organization;**
8 **deposition by telephone.**

9 ~~(b)~~(1) The party deposing a witness ~~must~~[shall](#) give reasonable notice in writing to
10 every other party. The notice ~~shall~~[must](#) state the date, time and place for the
11 deposition and the name and address of each witness. If the name of a witness is not
12 known, the notice ~~shall~~[must](#) describe the witness sufficiently to identify the person
13 or state the class or group to which the person belongs. The notice ~~shall~~[must](#)
14 designate any documents and tangible things to be produced by a witness. The
15 notice ~~shall~~[must](#) designate the officer who will conduct the deposition.

16 ~~(b)~~(2) The notice ~~shall~~[must](#) designate the method by which the deposition will be
17 recorded. With prior notice to the officer, witness and other parties, any party may
18 designate a recording method in addition to the method designated in the notice.
19 Depositions may be recorded by sound, sound-and-visual, or stenographic means,
20 and the party designating the recording method shall bear the cost of the recording.
21 The appearance or demeanor of witnesses or attorneys ~~shall~~[must](#) not be distorted
22 through recording techniques.

23 ~~(b)~~(3) A deposition ~~shall~~[must](#) be conducted before an officer appointed or
24 designated under Rule [28](#) and ~~shall~~[must](#) begin with a statement on the record by
25 the officer that includes (A) the officer's name and business address; (B) the date,
26 time and place of the deposition; (C) the name of the witness; (D) the administration
27 of the oath or affirmation to the witness; and (E) an identification of all persons
28 present. If the deposition is recorded other than stenographically, the officer

29 ~~must~~~~shall~~ repeat items (A) through (C) at the beginning of each unit of the recording
30 medium. At the end of the deposition, the officer ~~shall~~~~must~~ state on the record that
31 the deposition is complete and ~~shall~~ state any stipulations.

32 ~~(b)~~(4) The notice to a party witness may be accompanied by a request under
33 Rule 34 for the production of documents and tangible things at the deposition. The
34 procedure of Rule 34 ~~shall~~~~will~~ apply to the request. The attendance of a nonparty
35 witness may be compelled by subpoena under Rule 45. Documents and tangible
36 things to be produced ~~shall~~~~must~~ be stated in the subpoena.

37 ~~(b)~~(5) A deposition may be taken by remote electronic means. A deposition taken by
38 remote electronic means is considered to be taken at the place where the witness is
39 located.

40 ~~(b)~~(6) A party may name as the witness a corporation, a partnership, an association,
41 or a governmental agency, describe with reasonable particularity the matters on
42 which questioning is requested, and direct the organization to designate one or
43 more officers, directors, managing agents, or other persons to testify on its behalf.

44 ~~Prior to the deposition, the serving party and the organization must confer in good~~
45 ~~faith about the matters for examination if any objections are raised. If the parties are~~
46 ~~unable to resolve the objections prior to the date of the deposition, either party may~~
47 ~~seek resolution from the court in accordance with Rule 37. If the objections are not~~
48 ~~resolved before the set date of the deposition, the deposition may proceed only on~~
49 ~~the matters to which no objection has been made.~~The organization ~~shall~~~~must~~ state,
50 for each person designated, the matters on which the person will testify. A subpoena
51 ~~shall~~~~must~~ advise a nonparty organization of its duty to make such a designation.
52 The person so designated ~~shall~~~~must~~ testify as to matters known or reasonably
53 available to the organization.

54 (a) Within 7 days of being served with a notice or subpoena, the noticed
55 organization may serve a written objection.

56 (b) Prior to the deposition, the serving party and the organization must confer
57 in good faith about the matters for examination regarding any objections, or those
58 objections are waived.

59 (c) If the parties are unable to resolve the objections prior to the date of the
60 deposition, either party may seek resolution from the court in accordance with Rule
61 37, or if the notice seeks a deposition of a non-party organization, the non-party
62 organization may seek resolution in accordance with Rule 45(e).

63 (d) If the objections are not resolved before the set date of the deposition, the
64 deposition may proceed only on the matters to which no objection has been made.

65 **(c) Examination and cross-examination; objections.**

66 ~~(e)~~(1) Questioning of witnesses may proceed as permitted at the trial under the Utah
67 Rules of Evidence, except Rules [103](#) and [615](#).

68 ~~(e)~~(2) All objections ~~shall~~must be recorded, but the questioning ~~shall~~must proceed,
69 and the testimony taken subject to the objections. Any objection ~~shall~~must be stated
70 concisely and in a non-argumentative and non-suggestive manner. A person may
71 instruct a witness not to answer only to preserve a privilege, to enforce a limitation
72 on evidence directed by the court, or to present a motion for a protective order
73 under Rule [37](#). Upon demand of the objecting party or witness, the deposition ~~shall~~
74 ~~be~~is suspended for the time necessary to make a motion. The party taking the
75 deposition may complete or adjourn the deposition before moving for an order to
76 compel discovery under Rule [37](#).

77 **(d) Limits.** During standard discovery, oral questioning of a nonparty ~~shall~~must not
78 exceed four hours, and oral questioning of a party ~~shall~~must not exceed seven hours.

79 **(e) Submission to witness; changes; signing.** Within 28 days after being notified by the
80 officer that the transcript or recording is available, a witness may sign a statement of
81 changes to the form or substance of the transcript or recording and the reasons for the
82 changes. The officer ~~shall~~must append any changes timely made by the witness.

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83 **(f) Record of deposition; certification and delivery by officer; exhibits; copies.**

84 ~~(f)~~(1) The officer ~~shall~~must record the deposition or direct another person present to
85 record the deposition. The officer ~~shall~~must sign a certificate, to accompany the
86 record, that the witness was under oath or affirmation and that the record is a true
87 record of the deposition. The officer ~~shall~~must keep a copy of the record. The officer
88 ~~shall~~must securely seal the record endorsed with the title of the action and marked
89 "Deposition of (name). Do not open." and ~~shall~~must promptly send the sealed
90 record to the attorney or the party who designated the recording method. An
91 attorney or party receiving the record ~~shall~~must store it under conditions that will
92 protect it against loss, destruction, tampering, or deterioration.

93 ~~(f)~~(2) Every party may inspect and copy documents and things produced for
94 inspection and must have a fair opportunity to compare copies and originals. Upon
95 the request of a party, documents and things produced for inspection ~~shall~~must be
96 marked for identification and added to the record. If the witness wants to retain the
97 originals, that person ~~shall~~must offer the originals to be copied, marked for
98 identification and added to the record.

99 ~~(f)~~(3) Upon payment of reasonable charges, the officer ~~shall~~must furnish a copy of
100 the record to any party or to the witness.

101 **(g) Failure to attend or to serve subpoena; expenses.** If the party giving the notice of a
102 deposition fails to attend or fails to serve a subpoena upon a witness who fails to attend,
103 and another party attends in person or by attorney, the court may order the party
104 giving the notice to pay to the other party the reasonable costs, expenses, and attorney
105 fees incurred.

106 **(h) Deposition in action pending in another state.** Any party to an action in another
107 state may take the deposition of any person within this state in the same manner and
108 subject to the same conditions and limitations as if such action were pending in this
109 state. Notice of the deposition ~~shall~~must be filed with the ~~clerk of the court~~ clerk of the

110 county in which the person whose deposition is to be taken resides or is to be served.
111 Matters required to be submitted to the court ~~shall~~must be submitted to the court in the
112 county where the deposition is being taken.

113 **(i)Stipulations regarding deposition procedures.** The parties may by written
114 stipulation provide that depositions may be taken before any person, at any time or
115 place, upon any notice, and in any manner and when so taken may be used like other
116 depositions.

117

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

3 *Effective: 5/1/2021*

4 **(a) Statement of discovery issues.**

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

7 (A) failure to disclose under Rule [26](#);

8 (B) extraordinary discovery under Rule [26](#);

9 (C) a subpoena under Rule [45](#);

10 (D) protection from discovery; or

11 (E) compelling discovery from a party who fails to make full and complete
12 ~~discovery~~[disclosure](#).

13 **(2) Statement of discovery issues length and content.** The statement of discovery
14 issues must be no more than [four](#)⁴ pages, not including permitted attachments, and
15 must include in the following order:

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

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

21 (C) a statement regarding proportionality under Rule [26\(b\)\(2\)](#); ~~and~~

22 (D) if the statement requests extraordinary discovery, a statement certifying that
23 the party has reviewed and approved a discovery budget; [and](#)

24 [\(E\) if objection was made under Rule 45\(e\)\(4\), a statement certifying that the](#)
25 [statement of discovery issues has been served on the person subject to the](#)

26 subpoena or a non-party affected by the subpoena ~~in objection was made under~~
27 Rule 45(e)(4).

28 **(3) Objection length and content.** No more than seven⁷ days after the statement is
29 filed, any other party may file an objection to the statement of discovery issues. If a
30 the person subject to a~~the~~ subpoena or a non-party affected by a~~the~~ subpoena timely
31 filed an objection under Rule 45(e)(4), the person subject to the subpoena or the a
32 non-party affected by the subpoena may file an objection to the statement of
33 discovery issues. The objection must be no more than four⁴ pages, not including
34 permitted attachments, and must address the issues raised in the statement.

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

38 **(5) Proposed order.** Each party, or a~~the~~ person subject to a~~the~~ subpoena or a non-
39 party affected by a ~~the~~ subpoena, must file a proposed order concurrently with its
40 statement or objection.

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

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

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

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

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

- 52 (A) that the discovery not be had or that additional discovery be had;
- 53 (B) that the discovery may be had only on specified terms and conditions,
54 including a designation of the time or place;
- 55 (C) that the discovery may be had only by a method of discovery other than that
56 selected by the party seeking discovery;
- 57 (D) that certain matters not be inquired into, or that the scope of the discovery be
58 limited to certain matters;
- 59 (E) that discovery be conducted with no one present except persons designated
60 by the court;
- 61 (F) that a deposition after being sealed be opened only by order of the court;
- 62 (G) that a trade secret or other confidential information not be disclosed or be
63 disclosed only in a designated way;
- 64 (H) that the parties simultaneously deliver specified documents or information
65 enclosed in sealed envelopes to be opened as directed by the court;
- 66 (I) that a question about a statement or opinion of fact or the application of law to
67 fact not be answered until after designated discovery has been completed or until
68 a pretrial conference or other later time;
- 69 (J) that the costs, expenses and attorney fees of discovery be allocated among the
70 parties as justice requires; or
- 71 (K) that a party pay the reasonable costs, expenses, and attorney fees incurred on
72 account of the statement of discovery issues if the relief requested is granted or
73 denied, or if a party provides discovery or withdraws a discovery request after a
74 statement of discovery issues is filed and if the court finds that the party, witness,
75 or attorney did not act in good faith or asserted a position that was not
76 substantially justified.

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

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

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

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

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

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

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

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

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

96 ~~(6)~~ instruct the jury regarding an adverse inference.

97 **(c) Motion for costs, expenses_z and attorney fees on failure to admit.** If a party fails to
98 admit the genuineness of a document or the truth of a matter as requested under
99 Rule [36](#), and if the party requesting the admissions_s proves the genuineness of the
100 document or the truth of the matter, the party requesting the admissions_s may file a
101 motion for an order requiring the other party to pay the reasonable costs, expenses_z and

102 attorney fees incurred in making that proof. The court must enter the order unless it
103 finds that:

104 (1) the request was held objectionable pursuant to Rule [36\(a\)](#);

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

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

108 (4) that the request was not proportional under Rule [26\(b\)\(2\)](#); or

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

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

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

124

125 **Advisory Committee Notes**

126 The 2011 amendments to Rule 37 make two principal changes. First, the amended Rule
127 37 consolidates provisions for motions for a protective order (formerly set forth in Rule
128 26(c)) with provisions for motions to compel.

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

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

136

1 **Rule 45. Subpoena.**

2 **(a) Form; issuance.**

3 (1) Every subpoena ~~must~~shall:

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

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

8 (C) command each person to whom it is directed

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

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

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

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

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

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

25 (2) The clerk ~~shall~~must issue a subpoena, signed but otherwise in blank, to a
26 party requesting it, who must~~shall~~ complete it before service. An attorney
27 admitted to practice in Utah may issue and sign a subpoena as an officer of
28 the court.

29 **(b) Service; fees; prior notice.**

30 (1) A subpoena may be served by any person who is at least 18 years of age
31 and not a party to the case. Service of a subpoena upon the person to whom it

32 is directed ~~shall~~must be made as provided in Rule 4(d).

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

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

45 **(c) Appearance; resident; non-resident.**

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

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

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

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

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

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

59 (d) Payment of production or copying costs. The party or attorney responsible for
60 issuing the subpoena ~~shall~~must pay the reasonable cost of producing or copying
61 documents, electronically stored information, or tangible things. Upon the
62 request of any other party and the payment of reasonable costs, the party or
63 attorney responsible for issuing the subpoena ~~shall~~must provide to the

64 requesting party copies of all documents, electronically stored information, or
65 tangible things obtained in response to the subpoena or ~~shall~~ must make the
66 tangible things available for inspection.

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

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

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

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

81 (A) fails to allow reasonable time for compliance;

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

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

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

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

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

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

95 (H) requires the person to provide electronically stored information

- 96 from sources that the person identifies as not reasonably accessible
97 because of undue burden or cost; or
- 98 (I) requires the person to disclose an unretained expert's opinion or
99 information not describing specific events or occurrences in dispute and
100 resulting from the expert's study that was not made at the request of a
101 party.
- 102 **(4) Timing and form of objections.**
- 103 (A) If the person subject to the subpoena or a non-party affected by the
104 subpoena objects, the objection must be ~~made~~ in writing and made
105 before the date for compliance.
- 106 (B) The objection ~~shall~~ must be stated in a concise, non-conclusory manner.
- 107 (C) If the objection is that the information commanded by the subpoena is
108 privileged or protected and no exception or waiver applies, or requires
109 the person to disclose a trade secret or other confidential research,
110 development, or commercial information, the objection ~~shall~~ must
111 sufficiently describe the nature of the documents, communications, or
112 things not produced to enable the party or attorney responsible for
113 issuing the subpoena to contest the objection.
- 114 (D) If the objection is that the electronically stored information is from
115 sources that are not reasonably accessible because of undue burden or
116 cost, the person from whom discovery is sought must show that the
117 information sought is not reasonably accessible because of undue burden
118 or cost.
- 119 (E) The objection ~~shall~~ must be served on the party or attorney responsible
120 for issuing the subpoena. The party or attorney responsible for issuing the
121 subpoena ~~shall~~ must promptly serve a copy of the objection on the other
122 parties.
- 123 **(5) Response to objections and compliance.**
- 124 (A) If an objection is made under rule 45(e)(4), or if a party requests a
125 protective order, the party issuing the subpoena is not entitled to
126 compliance on any topic for which an objection has been made but may
127 request an order to compel compliance under Rule 37(a).

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128 (B) ~~The objection or request~~ If a party requests ~~for~~ a protective order, the
 129 party ~~shall~~ must serve the request for a protective order on the other
 130 parties and on the person subject to the subpoena.

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131 (C) If the party issuing the subpoena seeks to obtain compliance with the
 132 subpoena through Rule 37(a), the person subject to the subpoena or a
 133 non-party affected by the subpoena ~~must~~ may respond as
 134 ~~required~~ provided by Rule 37(a)(3).

135 (D) An order compelling compliance must ~~shall~~ protect the person
 136 subject to or affected by the subpoena from significant expense or harm.
 137 The court may quash or modify the subpoena. If the party shows a
 138 substantial need for the information sought by the subpoena that cannot
 139 be met without undue hardship, the court may order compliance upon
 140 specified conditions.

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141 ~~(5) If objection is made, or if a party requests a protective order, the party or~~
 142 ~~attorney responsible for issuing the subpoena is not entitled to compliance~~
 143 ~~but may request an order to compel compliance under Rule 37(a). The~~
 144 ~~objection or request shall be served on the other parties and on the person~~
 145 ~~subject to the subpoena. An order compelling compliance shall protect the~~
 146 ~~person subject to or affected by the subpoena from significant expense or~~
 147 ~~harm. The court may quash or modify the subpoena. If the party or attorney~~
 148 ~~responsible for issuing the subpoena shows a substantial need for the~~
 149 ~~information that cannot be met without undue hardship, the court may order~~
 150 ~~compliance upon specified conditions.~~

151 **(f) Duties in responding to subpoena.**

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

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

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

160 (C) that the documents, electronically stored information, or tangible

- 161 things are the originals or that a copy is a true copy of the original; and
162 (D) the reasonable cost of copying or producing the documents,
163 electronically stored information or tangible things.
- 164 (2) A person commanded to copy and mail or deliver documents or
165 electronically stored information or to produce documents, electronically
166 stored information, or tangible things ~~shall~~must copy or produce them as
167 they are kept in the usual course of business, or ~~shall~~must organize and label
168 them to correspond with the categories in the subpoena.
- 169 (3) If a subpoena does not specify the form or forms for producing
170 electronically stored information, a person responding to a subpoena must
171 produce the information in the form or forms in which the person ordinarily
172 maintains it or in a form or forms that are reasonably usable.
- 173 (4) If the information produced in response to a subpoena is subject to a claim
174 of privilege or of protection as trial-preparation material, the person making
175 the claim may notify any party who received the information of the claim and
176 the basis for it. After being notified, the party must promptly return, sequester,
177 or destroy the specified information and any copies of it and may not use or
178 disclose the information until the claim is resolved. A receiving party may
179 promptly present the information to the court under seal for a determination of
180 the claim. If the receiving party disclosed the information before being notified,
181 it must take reasonable steps to retrieve the information. The person who
182 produced the information must preserve the information until the claim is
183 resolved.
- 184 (g) **Contempt.** Failure by any person without adequate excuse to obey a
185 subpoena served upon that person is punishable as contempt of court.
- 186 (h) **Procedure when witness evades service or fails to attend.** If a witness evades
187 service of a subpoena or fails to attend after service of a subpoena, the court may
188 issue a warrant to the sheriff of the county to arrest the witness and bring the
189 witness before the court.
- 190 (i) **Procedure when witness is an inmate.** If the witness is an inmate as defined in
191 Rule 6(e)(1), a party may move for an order to examine the witness in the
192 institution or to produce the witness before the court or officer for the purpose of
193 being orally examined.

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

197

198

199

200 Effective ~~May 1, 2021~~

Tab 3

New Rule 53A – Special Masters for parenting disputes in domestic relations cases.

This rule has been discussed by the Committee previously and was sent to the Supreme Court to go out for public comment. The Justices have met a few times with the groups who were working on this rule to discuss details concerning how special masters are used in domestic relations cases, as well as, whether special masters should be ordered on a case where the parties do not stipulate to use of a special master.

Included in the materials are a clean version of the rule that would go out for public comment, as well as, the version with redlines and comments that have been shared between the drafters of the rule and the Justices.

1 **Rule 53A. Special masters for parenting disputes in domestic relations actions.**

2 (a) **Scope.** This rule applies to domestic relations actions as defined in Rule 26.1.

3 (b) **Definitions.**

4 (1) “Special master” means an attorney or other professional appointed by the court
5 to assist the court in managing parenting disputes that may arise during or after a
6 divorce.

7 (2) “Parenting disputes” means disputes relating to any matter addressed in
8 parenting plans or other related orders of the court including, without limitation,
9 visitation or parent time, co-parenting, and child related expenses.

10 (c) **Grounds for appointment.** A court may appoint a special master after entry of a
11 parenting plan, temporary order, or final order in a case. A court may appoint a special
12 master only upon stipulation of the parties.

13 (1) If the parties stipulate the appointment of a special master, the court may select a
14 specific special master.

15 (d) **Compensation.** The court will fix the terms of the special master’s compensation,
16 including how compensation will be apportioned between the parties. The court may
17 incorporate by reference the terms of the special master’s fee agreement.

18 (e) **Term and scope of appointment.** The court will specify the length and scope of the
19 special master’s appointment at the time of appointment. The court may modify the
20 term or scope of the appointment for good cause upon its own motion or the motion of
21 a party or the special master.

22 (f) **Powers and limitations.**

23 (1) **Directives.** The court may authorize the special master to resolve parenting
24 disputes through directives. Directives are effective as orders when made and will
25 continue to be effective unless modified or set aside by the court, the special master,
26 or by written stipulation of the parties.

27 (2) **Sanctions.** A special master may issue sanctions only if specifically authorized by
28 the court in the appointment order. A special master may not make a finding of
29 contempt.

30 (3) **Existing orders.** A special master may not issue directives that are contrary to or
31 inconsistent with existing orders, judgments, decrees, or court-ordered parenting
32 plans absent express authority to do so by the court in the order appointing the
33 special master. Recognizing that the special master's role may involve creating rules,
34 clarifications, or additional requirements for the parties to follow to resolve disputes
35 pursuant to the terms of their Decree/Order, the special master shall not issue any
36 decisions or modifications of orders that would otherwise require a judicial order,
37 absent express authority to do so by the court in the order appointing the special
38 master.

39 (g) **Delivery and filing of decisions.** A special master must deliver all directives in
40 writing to the parties. A special master must also file all directives with the court.

41 (h) **Objections and court review.**

42 (1) **Objections.** A party may object to a special master's directive by filing a written
43 motion to modify or set aside a special master's directive within 14 days after the
44 date of the special master's directive. A court may consider an untimely motion
45 upon good cause shown.

46 (A) The motion must state succinctly and with particularity the directive
47 challenged, the relief sought, and the grounds for the relief sought. Any evidence
48 necessary to support the moving party's position must be presented by way of
49 one or more declarations.

50 (B) If the matter is assigned to a domestic commissioner, the requirements in
51 Rule 101 relating to motions, responsive memoranda, counter motions, and
52 documentation apply. Otherwise, the requirements in Rule 7 apply.

53 (2) **Court review.** The court will review the special master's directive de novo. In the
54 event additional evidence is needed, the court may remand the matter to the special
55 master for further proceedings.

56 (i) **Suspension or termination of special master's appointment.**

57 (1) **Suspension or termination by special master.** A special master may elect to
58 suspend or terminate the special master's appointment by delivering a notice of
59 suspension or resignation to all parties and filing the notice with the court. A special
60 master may not suspend or terminate the appointment while an issue is pending
61 before the special master.

62 (2) **Termination by the parties.** The parties may terminate the special master's
63 appointment upon written stipulation filed with the court and served on the special
64 master.

65 (3) **Termination by the court.** The court may suspend or terminate the special
66 master's appointment on its own initiative or by motion of a party for good cause
67 shown.

68 (4) Neither party may unilaterally terminate or modify the appointment of a special
69 master by withdrawal of the party's stipulation to appoint the special master.

70 (j) **Use of Special Masters for other issues.** This rule does not preclude the court
71 from appointing special masters pursuant to Rule 53 for other issues outside of those
72 listed in subparagraph (b)(2) of this rule.

73

74 *Effective Date --*

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Commented [JJP1]: Parties often refer to masters as special masters, but rule 53 refers simply to masters. Was there a discussion about whether it makes sense to keep the same lingo (i.e., master vs. special master) used in Rule 53?

Commented [BH2R1]: While the term Master is distinct in Rule 53, the committee believes that practice and case law is consistent with the term special master for these cases in several states, including Utah and the AFCC.

Commented [JJP3]: It's unclear to me what the intended scope of the rule is. The title suggests it's limited to child-related issues, and the definition in subsection (b) suggests the same. But the scope defined in subsection (a) is arguably broader, as it includes divorce, temporary separation, and separate maintenance. Depending on the intention for this rule, I think one or more of these parts should be modified.

Commented [JJP4]: I recommend defining parenting disputes and using that term consistently.

Commented [JJP5]: This edit is intended to mirror the title in rule 7B.

Commented [BH6R5]: Accepted changes

Commented [JJP7]: I suggest simply referring to Rule 26.1 here. We do that frequently in the civil rules.

Commented [DLE(SL8): For consistency with Rule 7B

Commented [BH9R8]: Accepted

Commented [BH10R8]: Additional issue: There are several places in the rules where the term Domestic Relations Actions are used, including Rule 10, the language in the body of 7B(i), 12(a), 26(c), 26.1, 100A, 106, and 109. The term domestic law matters only appears to be used in the title of 7B.

Commented [JJP11]: For consistency.

Commented [BH12R11]: Accepted

Commented [JJP13]: These two sections seem to cover similar and yet not entirely consistent ground. I wonder if we can eliminate one of them. Maybe even adopt the definition of master from rule 53 but then note the more specific application of this rule.

Commented [BH14R13]: The committee believes that the scope section is critical to differentiate this rule from Rule 53 in application similar to the differentiation of Rule 26.1 in relation to 26. The definition section is critical to specify the limitations (... [1])

Commented [BH15R13]: There are several places in th (... [2])

Commented [JDH16]: The Performance Audit recomm (... [3])

Commented [BH17R16]: The committee recognizes th (... [4])

Commented [JJP18]: This seems to be another definiti (... [5])

Commented [BH19R18]: The purpose was for timing o (... [6])

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Commented [JJMP20]: I'd suggest moving this section (... [7])

Commented [JJMP21]: I made these suggested change (... [8])

Commented [JJP22]: Is it intentional not to allow the c (... [9])

Commented [BH23R22]: It was not. We revised the la (... [10])

Commented [JJP24]: Is this consistent with and/or du (... [11])

Commented [BH25R24]: The committee believes tha (... [12])

26 continue to be effective unless modified or set aside by the court, the special master,
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30 contempt.

31 (3) **Existing orders.** A special master may not issue directives that are contrary to or
32 inconsistent with existing orders, judgments, decrees, or court-ordered parenting
33 plans absent express authority to do so by the court in the order appointing the
34 special master. Recognizing that the special master's role may involve creating rules,
35 clarifications, or additional requirements for the parties to follow to resolve disputes
36 pursuant to the terms of their Decree/Order, the special master shall not issue any
37 decisions or modifications of orders that would otherwise require a judicial order,
38 absent express authority to do so by the court in the order appointing the special
39 master.

40 (g) **Delivery and filing of decisions.** A special master must deliver all directives in
41 writing to the parties. A special master must also file all directives with the court.

42 (h) **Objections and court review.**

43 (1) **Objections.** A party may object to a special master's directive by filing a written
44 motion to modify or set aside a special master's directive within 14 days after the
45 date of the special master's directive. A court may consider an untimely motion
46 upon good cause shown.

47 (A) The motion must state succinctly and with particularity the directive
48 challenged, the relief sought, and the grounds for the relief sought. Any evidence
49 necessary to support the moving party's position must be presented by way of
50 one or more declaration.

Commented [JJMP26]: Is there ever any concern that the parents might stipulate to something that the master orders in the interest of the child? If so, maybe we should omit this.

Commented [JJP27]: Maybe we should label this "Powers" as in Rule 53.

Commented [BH28R27]: We agree

Commented [JJMP29]: I understand why we might want a special master to temporarily alter a parenting plan, but I don't like leaving the suggestion that a special master could alter a judgment or decree (or even an order) -- even w/ court authorization. That seems to go beyond what authority a special master could have. Help me see why this is needed -- or why we shouldn't limit it to the parenting plan.

Commented [JDH30]: Throughout this rule, we refer to the Special Master's "decisions" rather than orders.

Commented [BH31R30]: We agree

Commented [JDH32]: The first part of (e) says that the Special Master cannot make a decision inconsistent with an existing order, but here is talks about not modifying orders "absent express authority." Does the first sentence also need the qualifier "Absent express authority"?

Commented [BH33R32]: We agree.

Commented [JDH34]: I'm not entirely sure what this means. Are we just talking about things that are required to be in a written divorce decree?

Commented [BH35R34]: We added this to avoid a constitutional issue mentioned in the audit and your decision in Taylor v Taylor 2022 UT 35.

Commented [BH36R34]: Specifically, best interests determinations.

Commented [JJP37]: Like Justice Hagen, I'm not sure I understand this paragraph in its entirety. Among other things, I don't know that the court can give the master authority to modify orders. This suggests that it can, but I'm not sure that's right. Maybe it would be best to explain that the master can imp... [13]

Commented [BH38R37]: There were several concerns we discussed along those lines when drafting this paragraph. V... [14]

Commented [JJMP39]: If I had to interpret this provision, I'm not sure what it would mean exactly. It seems to leave a lot... [15]

Commented [JJMP40]: I captured this in new paragraph (f)(1).

Commented [JJP41]: I'm not sure what this envisions. Do we just mean directly to the parties (i.e., not filing with the court)?

Commented [BH42R41]: We had contemplated emailing decisions to the parties based on practice information from... [16]

Commented [JJMP43R41]: Two thoughts: The word issue has meaning when it's attached to the court, but maybe we can... [17]

Commented [JJP44]: Will we end up with disputes about when parties are notified? Should this be tied to service?

Commented [BH45R44]: Agreed and modified.

Commented [JJP46]: This probably should also include a requirement for some argument/analysis. Maybe borrow... [18]

Commented [BH47R46]: We took this language directly from URCP 108 (b), objection to a court commissioner's recomm... [19]

51 (B) If the matter is assigned to a domestic, the requirements in Rule 101 relating
 52 to motions, responsive memoranda, counter motions, and documentation apply.
 53 Otherwise, the requirements in Rule 7 apply.

54 (2) **Court review.** The court will review the special master’s directive de novo. In the
 55 event additional evidence is needed, the court will remand the matter to the special
 56 master for further proceedings.

57 (i) **Suspension or termination of special master’s appointment.**

58 (1) **Suspension or termination by special master.** A special master may elect to
 59 suspend or terminate the special master’s appointment by delivering a notice of
 60 suspension or resignation to all parties and filing the notice with the court. A special
 61 master may not suspend or terminate the appointment while an issue is pending
 62 before the special master.

63 (2) **Termination by the parties.** Unless the appointment of the special master was
 64 made upon the court’s own initiative, the parties may terminate the special master’s
 65 appointment upon written stipulation filed with the court and served on the special
 66 master.

67 (3) **Termination by the court.** The court may suspend or terminate the special
 68 master’s appointment on its own initiative or by motion of a party for good cause
 69 shown.

70 (4) Neither party may unilaterally terminate or modify the appointment of a special
 71 master by withdrawal of the party’s stipulation to appoint the special master.

72 (j) **Use of Special Masters for other issues.** This rule does not preclude the court
 73 from appointing special masters pursuant to Rule 53 for other issues outside of those
 74 listed in subparagraph (b)(2) of this rule.

75

76 *Effective Date --*

Commented [JJP48]: Consider revising this to same something like, "Except as provided herein, the motion and memoranda must comply with the timing and other requirements of rule 7." Just to simplify and to ensure you capture everything.

As far as the court commissioner goes, do you anticipate people making motions to modify or vacate to the court commissioner? Is that adding in another layer of complication? Just curious about whether that is the intention.

And if that is the intention, this section may need other modifications as it has several references to "the court" without any mention of a commissioner.

Commented [BH49R48]: We specified this language to address the inconsistencies of cases assigned to a Commissioner or Judge. Not all jurisdictions statewide have commissioners, but those that do would indeed be the appropriate judicial officer to file a motion before under Rule 101 (unless the judges in that jurisdiction instruct parties to file those motions directly to the judge as that can vary from district to district).

Commented [JJMP50]: Just an idea. Feel free to take or leave.

Commented [JJP51]: We should eliminate this here or add in an "Except as provided herein ..." or something along those lines. I've proposed an edit that eliminates "at any time" in the first sentence, but there are other ways to go about it.

Commented [BH52R51]: Agreed. We like your language.

Commented [JJP53]: Just wondering if we should require the master to file the notice with the court and serve it on the parties and/or counsel?

Commented [BH54R53]: We edited the language to match the above edits in (j).

Commented [JJMP55]: Or motion, if we change it above.

Commented [JJP56]: Just terminate? Or suspend or terminate?

Commented [BH57R56]: Suspension usually is for non-payment of fees. We do not see parties moving to suspend the special master, but could move to terminate.

Commented [JDH58]: If we give the court the option to appoint a special master on its own motion without a stipulation or a motion from either party, does it make sense to allow the parties to stipulate to termination?

Commented [JJP59R58]: I had the same question.

Commented [BH60R58]: We added a qualifier. Good point.

Commented [JJP61]: Just terminate? Or suspend or terminate?

Commented [BH62R61]: We added suspend to allow more judicial discretion.

Commented [JJMP63]: Or motion?

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Commented [JJP64]: A final and global thought:

I'm a little unsure how this rule and rule 53 are supposed to work together. If rule 53 is to have no application to matters ider ... [20]

Commented [BH65R64]: The distinction is for custody issues. Rule 53A is limited to parent-time disputes in subsection (b) ... [21]

Tab 4

Subcommittee/Subject	Members	Rules	Subcommittee Chair	Progress
ACTIVE:				
Probate	Judge Scott, <i>Allison Barger, Brant Christiansen, David Parkinson, Judge Kelly, Kathie Brown Roberts, Keri Sargent, Russ Mitchell, Shonna Thomas, Sarah Box</i>	New rules	Judge Scott	Ongoing work on new set of probate rules
Plain language/Terminology	Ash McMurray, Trevor Lee, Loni Page, Heather Lester, Giovanna Speiss, Crystal Powell	104 14, 18, 19, 20, 22, 23, 26.1, 38, 46, 49, 53, 67	Ash McMurray	Subcommittee continues to review rules as they come up.
Omnibus	Justin Toth, Tonya Wright, Commissioner Conklin	30, 45, 37, 7	Justin Toth	Rules went to SC in July and came back with a few more comments.
Rule 3(a)(2)	Trevor Lee, Keri Sargeant, Tonya Wright; Heather Lester; Giovanna Speiss; Judge Cornish	3	Trevor Lee	Rule went to SC in July and the judges are going to take time to consider the proposal.
Eviction Expungements	Tonya Wright, Heather Lester; Crystal Powell; Keri Sargent	?	Heather Lester	Awaiting further update from subcommittee.
Rule 101	Jim Hunnicutt, Commissioner Conklin, Tonya Wright, Keri Sergeant, <i>Samantha Parmley</i>	101 7 26.1	Jim Hunnicutt	Agenda item October 2024

MSJ Deadline	Michael Stahler, Tonya Wright	56	Michael Stahler	Rule went to SC and came back with comments for the subcommittee to review
Affidavit/Declaration	Ash McMurray, Giovanna Speiss, Bryan Pattison	4, 5, 6, 7A, 7B, 11, 23A, 27, 26.1, 26.2, 43, 45, 47, 54, 55, 56, 58A, 58C, 59, 62, 63, 64, 64A, 64D, 64E, 65A, 65C, 69A, 69C, 73, 83, 101, 102, 104, 105, 108	Ash McMurray	Ash presented on this issue at length and the subcommittee is continuing to work on these rules.
Rule 53A - Special Masters	<i>Brent Salazar-Hall; Nicole Salazar-Hall; Jim Hunnicutt</i>	New rule 53A	Jim Hunnicutt	This rule went to the SC in October 2024 with two memos for the Justices to consider and they will get back to us.
Rule 62 (COA opinion)	Jim Hunnicutt, Commissioner Conklin, Laurel Hanks	62	Commissioner Conklin	Jim and Leslie presented on this rule Sept. 2024 and it will return for discussion later.

Standard POs	<i>Judge Oliver</i> , Bryan Pattison	26(g)	TBD	Subcommittee reorganized and will wait to hear from them.
Rule 5(a)(2) and (b)(3)	Judge Cornish, Commissioner Conklin, Judge Scott, Michael Stahler; Laurel Hanks	5	Laurel Hanks	Awaiting update from subcommittee. Questions regarding Standard 16 sent to RPC Committee and they sent the issue to the Justices.
Rule 74	Michael Stahler, Rachel, Crystal, Keri, Heather, Loni	74	Michael Stahler	Subcommittee continues to work on this rule
Rule 4	Rachel Sykes, Ash McMurray; Tonya Wright	4	Rachel Sykes	Subcommittee continues to work on this rule
Rule 42	Loni Page; Keri Sargent; Judge Scott; Brett Chambers	42	Loni Page	Subcommittee continues to work on this rule
New rules 65D & E	Michael Stahler, Loni Page, Brett Chambers, <i>Bret Randall</i>	New	Michael Stahler	Subcommittee continues to work on this rule
Rule 65C	Loni Page; Keri Sargent; Trevor Lee	65C	Page	Subcommittee continues to work on this rule
Rule 73	Tonya, Bryan, Heather	73	Heather Lester	Subcommittee continues to work on this rule