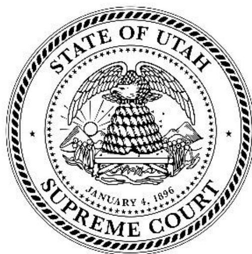


Utah Supreme Court
Advisory Committee on the Utah Rules of Civil Procedure
Meeting Agenda
Rod Andreason, Chair

Location: WebEx Webinar: Link

Date: December 18, 2024

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Rod Andreason
Rule 101 Motion practice before court commissioners – Revisions by Justices	Tab 2	Rod Andreason
Rule 62 Stay of proceedings to enforce a judgment or order (*Cont. Discussion*)	Tab 3	Commissioner Conklin
Rules 26.4 and 107 - back from public comment (*Discussion*)	Tab 4	Rod Andreason / Judge Kelly
Rules 102 and 106 - Statutory renumbering	Tab 5	Jim Hunnicutt
Rules 56, 26, 26.2, and 16 - Motions for Summary Judgment (*Cont. Discussion*)	Tab 6	Michael Stahler

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

Upcoming Items:
- Subcommittees!

URCP Committee Website: Link

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 – November 20, 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		Jacqueline Carlton
Ash McMurray	X		Keri Sargent
Michael Stahler	X		Brent Salazar-Hall
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		
Tyler Lindley	x		
Judge Laura Scott, *Emeritus*	X		
James Hunnicutt, *Emeritus*	X		

(1) INTRODUCTIONS

The meeting began at 4:02 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 October 2024 Minutes subject to amendments noted by Mr. Jim Hunnicutt. Judge Rita Cornish moved. Mr. Justin Toth seconded. The Minutes were unanimously approved.

(3) Rules 7, 37, 30, 45 OMNIBUS SUBCOMMITTEE

Mr. Rod Andreason noted that the Omnibus Subcommittee which includes Rules 7, 30, 37, and 45 is on the agenda from the last session that the Committee had with the Supreme Court Justices after they reviewed the amendments the Committee proposed. Mr. Justin Toth reviewed the procedural history of the Omnibus Subcommittee. The subcommittee began with a discussion of Rule 45, aiming to resolve issues related to how parties and non-parties object to subpoenas and the procedural mechanisms to enforce and/or respond to an objection. As a result of those discussions, there were revisions to Rule 7, 30, and 37. All the revisions were sent to the Supreme Court for review. The Supreme Court had suggestions for revisions for Rules 30 and 45 and Mr. Toth gave a summary of proposed amendments to each as follows:

Revisions under Rule 30:

a. Rule 30(b)(6), while the Supreme Court approved the substance of the language, they thought the placement disrupted the flow of the rule. Mr. Justin Toth recommends moving the language over and adding it with the subsections under rule 30(b)(6).

b. Language was added to 30(b)(6)(A) to include how a party can raise an objection, addressing the Supreme Court's concern about the process for objections. While the Committee is not going to impose the time restrictions that federal rules do, there still needs to be a deadline on when the objection should be raised. And the objection should be in writing. If there are no objections, then the parties don't have to do anything, but if there are objections, the parties will have to meet and confer. Under part (c), if they are not able to resolve issues, either party can raise it with the court or under 45(e) for a nonparty. Under (d) the deposition may proceed but not on the objections.

c. Mr. Rod Andreason questioned whether (6)(C) and (D) are identical and if so, if they could be combined. The Committee agreed that they could be combined and made edits.

d. Ms. Tonya Wright asked about objections during the deposition. The Committee discussed that lawyers would address objections and topics early on and get them on the record.

e. The new subsections under (c) were renumbered according to the style guide.

f. The Committee discussed adding language about an objection during depositions to clarify and questioned whether the repetition is worth it for clarity. Mr. Bryan Pattison recommended changing the word to questioning, which makes it more specific.

g. The Committee questioned the 7-day objection and whether it provided sufficient time for parties to prepare a response and whether it was too rigid. The Committee discussed that 14 days might be more reasonable and consistent with Rule 45.

Mr. Michael Stahler moves that the changes provided by Mr. Justin Toth and as amended by the committee be accepted as the new proposed rule to the submit to the Utah Supreme Court. Mr. J. Brett Chambers seconds the motion. Motion passes unanimously.

Revisions under Rule 45

a. The Justices had a clarifying question on (e)(5)(B) and how it differs from the process that is described in (e)(4). The Committee realized it wasn't as clear as it could be and clarifies the language. It is more appropriate that Rule (e)(4) objections to a subpoena by a nonparty and (e)(5) includes objections to a subpoena being made by a party via a protective order through rule 37. If a party receives a Rule 30(b)(6) notice and they meet and confer and they cannot resolve it, they would move under Rule 37 for a statement of discovery issues for some type of protective order. The party must serve that request for protective order on all other parties, and this puts the burden on the requesting party. The subject of the subpoena may not be a party and wouldn't otherwise receive notice of it. Taking the language out of (e) above provides the nonparty a method of objecting to a 30(b)(6) notice. It also clarifies that the party issuing the subpoena serves the objection on the other parties.

b. Mr. James Hunnicutt notes that there is a stylistic goal of not referencing subparts in other rules and questions whether the Committee should reference Rule 45 instead of Rule 45(e)(4) not only a style issue but a discipline issue because when the rules are edited sometimes items are moved around. Mr. Justin Toth notes that it isn't absolutely necessary to reference the subpart here, but it is helpful because there is so much confusion around non party and party rights. By making it precise, we are making it clear we are talking about objections under Rule 45(e). Ms. Stacy Haacke states we can send it with a note that the precision gives a lot more clarity. The Committee reviewed the style guide and decided to keep the precise reference for clarity.

c. Mr. Michael Stahler suggested amendments to line 124 to include language of an objection under this rule. Mr. Rod Andreason asked if there were any other objections that could be made under this rule. Mr. Justin Toth explained that there would be no other objections because the rules carve out relevance, proportionality and any of those are objections owned by a party to litigation under Rule 26 which are ultimately vindicated through Rule 37. The objections that can be made as a non-party are far narrower. Mr. Toth further explained that they wanted to make clear that we were not expanding the rights of a nonparty.

Mr. Michael Stahler moves to send the changes to Rule 45 as they were presented and as edited by the Committee to the Utah Supreme Court. Mr. Tyler Lindsey seconds. Motion passes unanimously.

(4) RULE 53A SPECIAL MASTERS FOR PARENTING DISPUTES IN DOMESTIC RELATIONS ACTIONS

Mr. Brent Salazar-Hall reviews the history of the new rule. About 3 years ago the rule was brought to the Committee and then it was sent to the Supreme Court to go out for public comment. The Supreme Court sent it back with questions and has met several times with the groups working on the rule. The latest version comes from the Standing Committee on Children and Family Law, of which Mr. Brent Salazar-Hall is a member.

Commissioner Conklin had a question about the status of a previously discussed corollary rule in the Code of Judicial Administration that would address the qualifications the special master needed for appointment. Mr. Salazar-Hall noted that is a separate subcommittee being chaired by Ms. Aubrey Staples and they have progressed with the rule, but it is on its own path. Mr. Salazar-Hall can report that an appointed special master is only going to be an attorney, and the forms committee is working on a form so it would be a standardized appointment form.

The Committee made some edits to incorporate (c)(1) sentence into (c) because the subparagraph is no longer needed.

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

(5) INTRODUCTION FROM NEW MEMBER

Mr. Tyler Lindley introduces himself to the committee. Mr. Lindley recently started as an associate professor at BYU law school and in two years will be leaving to clerk for Justice Gorsuch.

(6) SUBCOMMITTEE ASSIGNMENT

There are a few folks who are still on the subcommittee list that have left the Committee. The Committee is in the process of editing the subcommittee list. Mr. Andreason states that anyone who has a subcommittee assignment that can prepare to bring the Committee back a report next month that would help us move things along.

(6) ADJOURNMENT

Mr. Andreason noted that the next meeting will need to be adjusted due to the holiday. The standard meeting schedule for 2025 was briefly reviewed and it was noted that there will probably be a need to amend the November and December 2025 dates as well.

Judge Russell mentions one issue that has come to his attention recently is the Statement of Discovery Issues in Rule 26.2(b)(8). This rule is specific to a personal injury action. The problem is 26(b)(5) was renumbered and the refence needs to be updated to 26(b)(6). Ms. Stacy Haacke noted that the Committee had some amendments to Rule 26 already started. Ms. Tonya Wright noted that there is already a subcommittee for Rule 56 which in a roundabout way is affecting Rule 26 and offered to shuffle that issue into the already formed subcommittee. Mr. Tyler Lindley will join the subcommittee.

Mr. Rod Andreason thanked everyone for their work on the Committee. With no more agenda items, the meeting was adjourned at 5:35 p.m. The next meeting will be December 18, 2024, at 4:00 p.m.

Tab 2

Rule 101. Motion practice before court commissioners.

Effective: 5/1/2021

(a) Scope. A request to a court commissioner for an order must be made by motion in accordance with this rule, except ~~for the following~~:

(1) A request under Rule 26 for extraordinary discovery must follow Rule 37(a);~~.~~

(2) A request under Rule 37 for a protective order or an order compelling disclosure or discovery–but not a motion for sanctions–must follow Rule 37(a);~~.~~

(3) A request under Rule 45 to quash a subpoena must follow Rule 37(a);~~.~~

(4) A stipulated motion must follow Rule 7(k); and

(5) An ex parte motion must follow Rule 7(m).

(b~~a~~) Written motion content ~~required~~. ~~An application request to a court commissioner for an order must be made by motion which, unless made during a hearing, must be made in accordance with this rule.~~

(1) A motion must be in writing and state succinctly and with particularity the relief sought and the grounds for th~~e~~at relief ~~sought~~. Any evidence necessary to support the moving party'~~'~~s position must be presented by ~~way of~~ affidavit, ~~one or more affidavits or~~ declaration,~~s~~ or other admissible evidence. The motion may also include a supporting memorandum.

(2) A~~ll~~ motions must include or attach~~provide~~ the bilingual Notice to Responding Party approved by the Judicial Council.

(3) A~~Each~~ motion ~~to a court commissioner~~ must include the following caution ~~language~~ statement at the top right corner of the first page, in bold type: **This motion will be decided by the court commissioner at an upcoming hearing. If you do not appear at the hearing, the ~~cCourt~~ commissioner might make a decision against you without your input. Y~~In addition, y~~ou may file a written response to the motion. Any response must be filed at least 14 days before the hearing.**

Commented [1]: There will likely need to be revisions to the subparagraph numbering/lettering (i.e., (a), (i), (2), etc). The numbering/lettering is inserting automatically. Please revise as appropriate.

Commented [SH2R1]: Tried to make sure all of the numbering was accurate and formatted.

Commented [3]: I've taken what was in the beginning of subparagraph (b) and moved it here.

Commented [SH4R3]: To make sure all amendments were tracked with the currently effective rule I started this as a new paragraph and left the deletion as part of the new subparagraph (b) - which was subparagraph (a) - and then tracked all the new numbering

Formatted: Font: Book Antiqua, Bold

Commented [RA5]: Our rules typically appear to use semicolons at the end of these types of lists (see, e.g., URCP 7 and FRCP 7), especially where they are essentially punctuated sentences with an "and" right before the last clause. I haven't researched this in depth, but for analogous treatment of bullet points, see https://www.instructionalsolutions.com/blog/bulleted-list-punctuation. See also subsection (m), infra.

Formatted: Font: Book Antiqua, Font color: Auto

(4) Failure to provide the bilingual Notice to Responding Party or to include the caution language may provide the non-moving party with a basis under Rule 60(b) to seek to set aside any resulting order or judgment ~~for~~ due to excusable neglect ~~to set aside any resulting order or judgment~~.

~~(5) Stipulated motions under Rule 7(k), motions that may be acted on without waiting for a response under Rule 7(l), ex parte motions under Rule 7(m), and statements of discovery issues under Rule 37(a) must be made by motion in accordance with their respective rules rather than this Rule 101. Otherwise, Rule 101 should be followed rather than Rule 7 respecting motions before court commissioners.~~

(c)~~(c)~~ ~~(6)~~ **Oral motion.** ~~Oral mM~~An oral motion~~s~~ made before a court commissioner ~~in court~~ during a hearing is~~are~~ disfavored, but the court commissioner ~~shall~~ has~~ve~~ discretion to consider an ~~such~~ oral motion~~s~~ for ~~based on~~ good cause shown.

(d~~b~~) Time to file and serve. The moving party must file the motion and any supporting papers with the court clerk ~~of the court~~ and obtain a hearing date and time. The moving party must serve on all other parties the motion, ~~and~~ any~~ll~~ supporting papers, and ~~serve the responding party with the motion and supporting papers, together with the~~ notice of the hearing at least 28 days before the hearing. ~~If service is more than 90 days after the date of entry of the most recent appealable order, service may not be made through counsel.~~ If the nonmoving party is not represented by counsel in the case, s~~S~~ervice must be made ~~in a manner~~ as provided in Rule 4 ~~if the nonmoving party is not represented by counsel in the case,~~ unless the nonmoving party has filed or served a document in the case within the last 120 days.

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

Commented [SH6]: I could not tell if this was meant to be a new subparagraph (c) or (b)(6) but made a judgment call as (b) is about written motions. Also, this is entirely new language and will need to be cleaned up without tracked changes to just read as a newly proposed paragraph before posted for public comment.

Commented [SH7]: This language is not in the currently effective rule and was moved up to be the new subparagraph (a) - it should be removed before posted for public comment to avoid confusion.

Formatted: Indent: Left: 0"

Commented [SH8]: The new language in this paragraph needs to be cleaned of redlines before posting.

(**f~~d~~) Reply**. The moving party may file a reply, ~~consisting of any reply memorandum,~~ and attach any affidavit,~~(s)~~ ~~or~~ declaration~~(~~, or other admissible evidence~~s)~~. The reply must be filed and served on the responding party at least seven~~7~~ days before the hearing. The ~~contents of the~~ reply must be limited to rebuttal of new matters raised in the response to the motion.

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

(**h~~f~~) Necessary documentation**. Motions and responses regarding temporary orders concerning alimony, child support, division of debts, possession or disposition of assets, ~~or~~ litigation expenses, or appointment of a court-annexed professional (including, but not limited to, a guardian ad litem, custody evaluator, special master, or parenting coordinator) must be accompanied by verified financial declarations with documentary income verification attached as exhibits, unless financial declarations and documentation are already in the court's file and remain current. Attachments for motions and responses regarding child support and child custody must also include a child support worksheet.

80 (ig) **No other papers**. No other moving or responding papers other than those specified
81 in this rule are permitted.

82 (jh) **Exhibits; objection to failure to attach**.

83 (1) Except as provided in paragraph (h)(3) of this rule, Each exhibit must be attached
84 to an affidavit, declaration, verified motion, or verified memorandum any
85 documents such as tax returns, bank statements, receipts, photographs,
86 correspondence, calendars, medical records, forms, or photographs must be
87 supplied to the court as exhibits to one or more affidavits (as appropriate)
88 establishing the exhibit'!s necessary foundation for the exhibital requirements.

89 (2) Copies of court papersdocuments that are already included filedsuch as decrees,
90 orders, minute entries, motions, or affidavits, already filed with thein or included in
91 the court's docket's case file, may not be filed as exhibits. Court papers from other
92 cases other than the caseat before the court, such as protective orders, prior divorce
93 decrees from different cases, criminal orders, information or dockets, and juvenile
94 court orders (to the extent the law does not prohibit their filing), may be submitted
95 as exhibits.

96 (2) If papers or exhibits referred to in a motion or necessary to support the moving
97 party's position are not served with the motion, the responding party may file and
98 serve an objection to the defect with the response. If papers or exhibits referred to in
99 the response or necessary to support the responding party's position are not served
100 with the response, the moving party may file and serve an objection to the defect
101 with the reply. The defect must be cured within two2 business days after notice of
102 the defect or at least three3 business days before the hearing, whichever is earlier.

103 (3) **Voluminous exhibits.** Voluminous exhibits which cannot conveniently be
104 examined in court Exhibits beyond the page limits set forth below may not be filed
105 as exhibits, but the contents of such documents may be presented in the form of a
106 summary, chart, or calculation under Rule 1006 of the Utah Rules of Evidence. A

Commented [SH9]: This will need to be removed for posting.

107 summary is a statement describing the content of each voluminous exhibit and is not
108 simply a list identifying exhibits. Affidavits and declarations may not be
109 summarized. Collections of documents, such as bank statements, checks, receipts,
110 medical records, photographs, e-mails, text messages, calendars, and journal entries
111 that collectively exceed ten pages in length must be presented in summary form.
112 Individual documents with specific legal significance, such as tax returns,
113 appraisals, financial statements and reports prepared by an accountant, wills, trust
114 documents, contracts, or settlement agreements must be submitted in their entirety.

115 (A) Unless they have been previously supplied through discovery or otherwise
116 and are readily identifiable, cCopies of any such voluminous documents beyond
117 the page limits must be supplied to the other parties at the time of the filing of
118 the summary, chart, or calculation.

119 (B) The originals or duplicates of the documents must be available at the hearing
120 for examination by the parties and the commissioner.

Commented [SH10]: These two subparagraphs were previously part of paragraph (3) but were pulled out and given their own subparagraphs for clarity.

121 **(ki) Length**. Initial and responding memoranda may not exceed ten10 pages of
122 argument without leave of the court. Reply memoranda may not exceed five5 pages of
123 argument without leave of the court. Except as provided below, tThe total number of
124 pages submitted to the court by each party may not exceed 25 total pages per hearing
125 regardless of the number of motions to be heard. This page limit applies to the total of
126 all motions, responses, counter-motions, replies, memoranda, including affidavits,
127 declarations, exhibits, attachments, and summaries submitted by each party for a
128 hearing., but excluding financial declarations and income verification.

129 The court commissioner may permit the party to file an over-length memorandum
130 upon ex parte application and showing of good cause.

131 (1) The following documents are excluded from the page limit and must be
132 submitted in their entirety:

133 (A) financial declarations and their required attachments;,

134 (B) income verification;,
135 (C) tax returns;,
136 (D) appraisals;,
137 (E) financial statements and reports prepared by an accountant;,
138 (F) wills;,
139 (G) trust documents;,
140 (H) contracts;,
141 (I) settlement agreements;,
142 (J) reports from the Division of Child and Family Services or equivalent
143 agencies;,
144 (K) relevant court orders from other cases or jurisdictions;, and
145 (L) other documents at the commissioner''s discretion.
146 (2) The page limits in this rule exclude the following:
147 (A) caption;,
148 (B) table of contents;,
149 (C) table of authorities;,
150 (D) signature block;,
151 (E) certificate of service;,
152 (F) verification;,
153 (G) bilingual notice;, and
154 (H) other notice required by these rules.

155 (3) A party may file a motion under Rule 7(l), asking the court commissioner for
156 permission to exceed the 25-page limit based on a and on a showing of good
157 cause.

158 **(lj) Late filings; sanctions.** If a party files or serves papers beyond the time required
159 deadlines stated in this rule, the court commissioner may hold or continue the hearing,
160 reject the papers, impose costs and attorney fees caused by the failure and by theor
161 continuance, and impose other sanctions as appropriate.

162 **(mk) Limit on motion to enforce order and for sanctions order to show cause**. An
163 application to the court for A motion to enforce order and for sanctions an order to
164 show cause may be made only for enforcement of an existing order or for sanctions for
165 violating an existing order. An application for A motion to enforce order and for
166 sanctions an order to show cause must be supported by affidavit or other evidence
167 sufficient to show cause to believe a party has violated a court order.

168 **(nl) Hearings**.

169 (1) A hearing may be scheduled but may not be held The court commissioner may
170 not hold a hearing on a motion for temporary orders before the deadline for an
171 appearance by the respondent under Rule 12.

172 (2) Unless the court commissioner specifically requires otherwise, when the
173 statement of a person is set forth in an affidavit, declaration, or other document
174 accepted by the commissioner, that person need not be present at the hearing. The
175 statements of any person not set forth in an affidavit, declaration, or other acceptable
176 document may not be presented by proffer unless the person is present at the
177 hearing and the commissioner finds that fairness requires its admission.

178 **(om) Motions to judge**. The following motions must be submitted to the judge to whom
179 the case is assigned:

180 (1) motion for alternative service;

181 (2) motion to waive 30-day waiting period for divorces;

182 (3) motion to waive a divorce parenting education classcourses;

183 (4)-motion for leave to withdraw after a case has been certified as ready for trial;

184 and

185 (5) motions in limine; and

186 (6) post-trial motion under Rules 58A, 58B, 58C or 59 for those trials held before

187 the judge.

188 A court may provide that other motions be considered by the judge.

189 **(pn) Objection to court commissioner's recommendationOrders**. Rule 7(j) applies to

190 preparing a proposed order after a hearing before a court commissioner unless the

191 commissioner directs otherwise. A recommendation of a court commissioner is the

192 order of the court until unless modified by the court. A party may object to the

193 recommendation by filing an objection under Rule 108.

194

Tab 3

Rule 62
Two requests for amendments.

FIRST REQUEST – Utah Court of Appeals
In *Rothwell v. Rothwell*, 2023 UT App 51, the Utah Court of Appeals invited this committee to review Rule 62. In this divorce, the husband appealed alimony, attorney fees, and certain aspects regarding how the court valued different marital assets. The court filed a motion with the district court requesting a stay of the property distribution. The court granted his motion, which had the effect of the wife being deprived of the use, possession, and enjoyment of essentially all marital assets. Meanwhile, the husband was barred from disposing of any assets, and had to continue paying over $22,000/month in alimony.

Footnote 1 of *Rothwell* reads:

> 1. [Wife] also argues that a stay of property distribution is inappropriate in a divorce action because a divorce judgment differs from an ordinary judgment. She explains that unlike a typical judgment for compensatory damages addressed by rule 62, a divorce judgment awards assets that already belonged to the party before the divorce. She argues that because the "status quo" during marriage was that "each party already legally owned half the assets and could use them as they wished," staying a property distribution where one party has possession of the majority of the marital assets does not maintain the "status quo" because it "puts at least one party in a worse position than they would otherwise have been" in. While we acknowledge that the impact of staying a divorce decree is somewhat different from the impact of staying a judgment for compensatory damages and recognize the unfortunate impact that a stay in this situation has in delaying at least one of the parties from moving on from the divorce with no—or at least reduced—financial ties to their ex-spouse, there is nothing in the plain language of rule 62 that limits its application to matters involving compensatory damages. In fact, the language suggests that a judgment for compensatory damages is only one of any number of judgments that may be subject to a stay. *See* Utah R. Civ. P. 62(h) (outlining a presumptive formula for determining the amount of a bond for compensatory damages as an exception to the general rule that security should be "in an amount that adequately protects the adverse party against loss or damage occasioned by the stay and assures payment after the stay ends"). Nevertheless, we observe that it may be desirable for the Supreme Court's Advisory Committee on the Rules of Civil Procedure to consider amending rule 62 to address the unique circumstance of staying a divorce distribution pending appeal and attempt to at least mitigate the potential inequity of such a stay.

In other words, Rule 62 is more suited to money judgments for damages, not matters such as alimony, child support, and division of marital assets.

SECOND REQUEST – Leslie Slaugh
Rule 62(b) of the Federal Rules of Civil Procedure states, "At any time after judgment is entered, a party may obtain a stay by providing a bond or other security." I recommend that Utah adopt a similar provision.

The federal rule allows a stay of any judgment at any time. No similar right exists under the Utah rule.

Rule 62(b) allows a stay of a money judgment but has no provision of a stay of a non-money judgment.

Rule 62(c) is limited to injunctions pending appeal and seems to imply that an appeal must have been filed. Especially in cases involving multiple parties where a judgment is not yet final, the stay often needs to be in place before the appeal is filed, to preserve appeal rights and prevent mootness.

The automatic stay of Rule 62(a) is very limited and only prevents execution or other writs. It does not stay a judgment that requires a party to take some action.

I also suggest that Rule 62(c) state the grounds upon which an injunction may issue, and clarify that a party need not show probable success on appeal. Asking a trial judge to rule that the losing party will probably win on appeal is logically impossible. A better, but still too high, standard is, "[i]t will ordinarily be enough that the movant has raised serious legal questions going to the merits, so serious, substantial, difficult as to make them a fair ground of litigation and thus for more deliberative investigation." *Akiachak Native Cmty. v. Jewell*, 995 F. Supp. 2d 7, 13 (D.D.C. 2014) (citation and brackets omitted). A better standard would be to require that the party have a good faith, non-frivolous basis for the appeal, with discretion for the trial judge to weigh the probable success in considering what security should be required.

Rule 62. Stay of proceedings to enforce a judgment or order.

(a) **Delay in execution.** No execution or other writ to enforce a judgment or an order to pay money under Rule 7(j)(8) may issue until the expiration of 28 days after entry of the judgment or order, unless the court in its discretion otherwise directs.

(b) **Stay by bond or other security; duration of stay.** At any time after judgment is entered, a party may obtain a stay by providing a bond or other security. ~~A party may obtain a stay of the enforcement of a judgment or order to pay money by providing a bond or other security, unless a stay is otherwise prohibited by law or these rules.~~

(1) The stay takes affect when the court approves the bond or other security and remains in effect for the time specified in the order that approves the bond or other security.

(2) In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay:

(A) an order that is certified as final under Rule 54(b) until the entry of a final judgment under Rule 58A;

(B) an order to pay money under Rule 7(j)(8) until the entry of a judgment under Rule 58A;

(C) a judgment until resolution of any motion made pursuant to Rule 50(b), Rule 52(b), Rule 59, Rule 60, or Rule 73; and

(D) a judgment until resolution of a motion made under this rule.

(c) **Injunction pending appeal.** When a party seeks an appeal from an interlocutory order, or takes an appeal from a judgment, granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of appellate proceedings upon such conditions for the security of the rights of the adverse party as are just.

Formatted: Font: Bold

26 (d) **Stay in favor of the United States, the State of Utah, or political subdivision.** When
27 an appeal is taken by the United States, the State of Utah, a political subdivision, or an
28 officer of agency of any of those entities, or by direction of any department of any of those
29 entities, and the operation or enforcement of the judgment is stayed, no bond, obligation,
30 or other security is required from the appellant.

31 (e) **Stay in quo warranto proceedings.** Where the defendant is adjudged guilty of
32 usurping, intruding into or unlawfully holding public office, civil or military, within this
33 state, the execution of the judgment shall not be stayed on an appeal.

34 (f) **Power of appellate court not limited.** The provisions in this rule do not limit any
35 power of an appellate court or of a judge or justice of an appellate court.

36 (g) **Form of bond; deposit in lieu of bond; stipulation on security; jurisdiction over**
37 **sureties to be set forth in undertaking.**

38 (1) A bond given under Subdivision (b) may be either a commercial bond having a
39 surety authorized to transact insurance business under Title 31A, or a personal bond
40 having one or more sureties who are residents of Utah having a collective net worth
41 of at least twice the amount of the bond, exclusive of property exempt form execution.
42 Sureties on personal bonds shall make and file a declaration setting forth in reasonable
43 detail the assets and liabilities of the surety.

44 (2) The court may permit a deposit of money in court or other security to be given in
45 lieu of giving a bond.

46 (3) The parties may by written stipulation agree to the form and amount of security.

47 (4) A bond shall provide that each surety submits to the jurisdiction of the court and
48 irrevocably appoints the clerk of the court as the surety's agent upon whom any
49 papers affecting the surety's liability on the bond may be served, and that the surety's
50 liability may be enforced on motion and upon such notice as the court may require
51 without the necessity of an independent action.

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

Formatted: Font: Bold

52 (h) **Amount of bond or other security.**

53 (1) Except as provided in subsection (h)(2), a court shall set the bond or other security
54 in an amount that adequately protects the adverse party against loss or damage
55 occasioned by the stay and assures payment after the stay ends. In setting the amount,
56 the court may consider any relevant factor including:

57 (A) the debtor's ability to pay the judgment or order to pay money;

58 (B) the existence and value of other security;

59 (C) the debtor's opportunity to dissipate assets;

60 (D) the debtor's likelihood of success on appeal; and

61 (E) the respective harm to the parties from setting a higher or lower amount.

62 (2) Notwithstanding subsection (h)(1):

63 (A) the presumptive amount of a bond or other security for compensatory
64 damages is the amount of the compensatory damages plus costs and attorney fees;
65 as applicable, plus 3 years of interest at the applicable interest rate;

66 (B) the bond or other security for compensatory damages shall not exceed $25
67 million in an action by the plaintiffs certified as a class under Rule 23 or in an action
68 by multiple plaintiffs in which compensatory damages are not proved for each
69 plaintiff individually; and

70 (C) no bond or other security shall be required for punitive damages.

71 (3) If the court permits a bond or other security that is less than the presumptive
72 amount in subsection (h)(2)(A), the court may enter such orders as are necessary to
73 protect the adverse party during the stay.

74 (4) If the court finds that the party seeking the stay has violated an order or has
75 otherwise dissipated assets, the court may set the amount of the bond or other security

76 without regard to the presumptive amount under subsection (h)(1) and limits in
77 subsection (h)(2).

78 (i) **Objecting to sufficiency or amount of security**. Any party whose judgment or order
79 to pay money is stayed or sought to be stayed pursuant to Subdivision (b) may object to
80 the sufficiency of the sureties on a bond or the amount thereof, or to the sufficiency of
81 amount of other security given to stay the judgment by filing and giving notice of such
82 objection. Either party shall be entitled to a hearing on the objection upon five days notice
83 or such shorter time as the court may order. The burden of justifying the sufficiency of
84 the sureties or other security and the amount of the bond of other security, shall be borne
85 by the party seeking the stay, unless the objecting party seeks a bond or other security in
86 an amount greater than the presumed amount in subsection (h)(2)(A). The fact that a
87 bond, its surety or other security is generally permitted under this rule shall not be
88 conclusive as to its sufficiency or amount.

89 (j) **Domestic relations actions**. Notwithstanding the above, nothing in this rule shall be
90 construed to limit the equitable powers of the courts in domestic relations actions. Courts
91 should apply equitable principles in establishing fair circumstances for all parties for the
92 duration of any appeal.

93 (1) Child custody and parent-time orders may not be stayed during an appeal.

94 (2) Ongoing alimony and child support obligations may not be stayed during an
95 appeal, but collection of alimony and child support arrearages may be stayed
96 provided the appellant provide a bond or other security.

97 (3) Property distributions in a divorce may only be stayed to the extent necessary to
98 protect those marital assets and debts from dissipation during the appeal.

99 (4) If the court stays division of marital wealth, courts may:

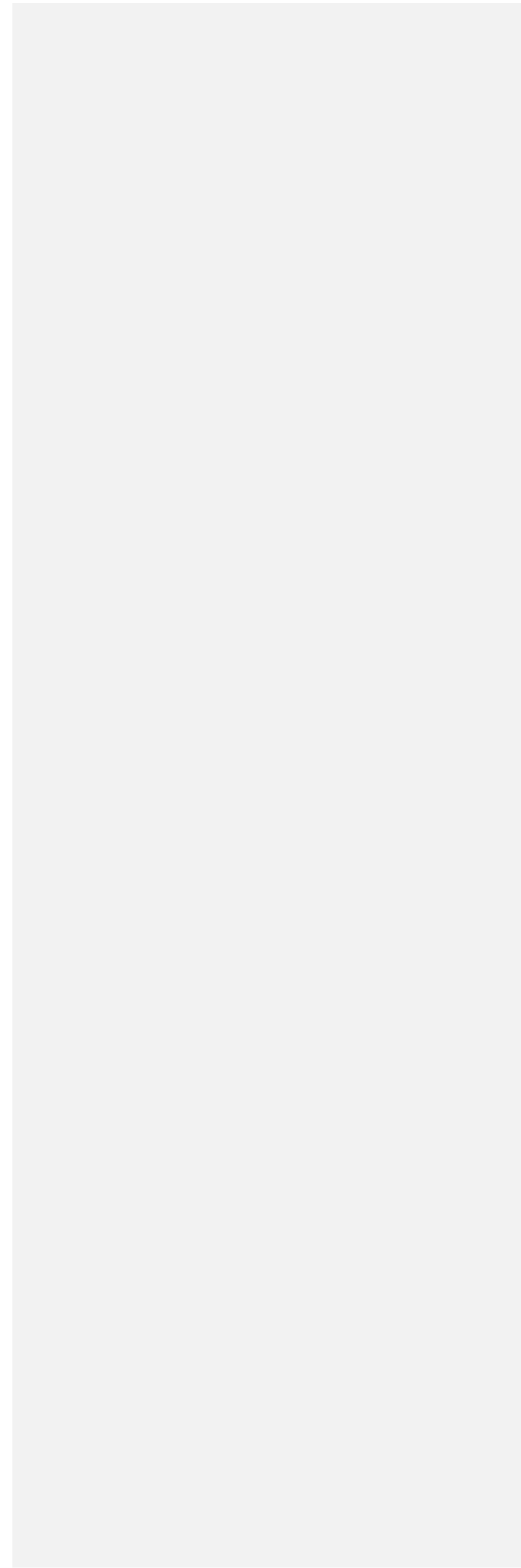
100 (A) order the transfer of assets between the parties provided both parties have fair
101 use, possession, and enjoyment of an equitable share of the marital assets;

102 (B) enjoin the parties from selling, transferring, collateralizing, or otherwise
103 encumbering any such assets; and

104 (C) require the appellant to provide a bond or other security.

105 ***Effective: 11/1/2021***

106



Tab 4

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

HOME LINKS

Posted: October 10, 2024

Utah Courts

Rules of Civil Procedure – Comment Period Closed November 24, 2024

URCP0107. Decree of adoption; Petition to open adoption records. AMEND. Proposed amendments are made to reflect the requirements found in Utah Code section 78A-6-141 and Utah Code of Judicial Administration Rule 4-202.03, as well as, to conform to the style guide for the rules.

URCP026.4. Provisions governing disclosure and discovery in contested proceedings under Title 75 of the Utah Code. AMEND. Proposed amendments are made to reflect the recodification of the probate code to reference additional Utah Code titles, as well as, to conform to the style guide for the rules.

This entry was posted in -Rules of Civil Procedure, URCP026.04, URCP107.

« Rules of Professional Conduct – Comment Period

Notice of Approved Amendments and Public Comment Period for Utah

Search... SEARCH

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- -Alternate Dispute Resolution
- -Code of Judicial Administration
- -Code of Judicial Conduct
- -Fourth District Court Local Rules
- -Licensed Paralegal Practitioners Rules of Professional Conduct
- -Rules Governing Licensed Paralegal Practitioner
- -Rules Governing the State Bar

Ends December 9, 2024

Code of Judicial Administration – Comment Period Closed October 20, 2024 »

UTAH COURTS

View more posts from this author

3 thoughts on "Rules of Civil Procedure – Comment Period Closed November 24, 2024"

Jason Barnes
October 10, 2024 at 1:13 pm

Respectfully, limiting an adoptive parent's ability to obtain a copy of their Decree of Adoption after the adoption is finalized by requiring them to file a Petition to Reopen, rather than simply presenting a government-issued ID, is just wrong. The explanation given is that this rule is being modified to reflect the requirements in Utah Code § 78A-6-141 and Utah Code of Judicial Administration Rule 4-202.03. However, the existing rule should remain in place, and Section 141 and the aforementioned rule should be amended, if necessary. Often, many years later, when an adoptive parent cannot locate their original or needs an extra copy, they come to the court for that copy and have historically been able to show their ID to obtain it. Now, this process will cost them hundreds of dollars and waste the judiciary's time. Why should this be necessary just for the adoptive parent to obtain a copy? This is unreasonable, especially when a clerk can easily make that decision on the spot. An adoptive parent should always be able to obtain a copy of their Decree of Adoption by showing they were the petitioner in the case.

Dan Farnsworth
October 10, 2024 at 2:08 pm

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0302
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA014-0701
- CJA014-0704
- CJA014-0705
- CJA014-0719
- CJA02-0101
- CJA02-0102
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0211
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0103
- CJA03-0103
- CJA03-0104
- CJA03-0105
- CJA03-0106
- CJA03-0106

URCP0107 – Please do not remove the ability for Adoptive Parent or Adult Adoptee to obtain a certified copy of the Adoption Decree with proof of ID. It saves so much time as a court clerk when assisting individuals who only need that one document. The court processes are already confusing enough for pro se parties that even with the resources available on the court's website it's still murky enough that it creates more questions than answers. This is the webpage I'm referring to **https://www.utcourts.gov/en/self-help/case-categories/family/adoption/records.html**
Please keep the current paragraph (a) as is and do not remove it.

Shonna Thomas, on behalf of the WINGS Committee
November 22, 2024 at 11:34 am

Dear Civil Procedure Advisory Committee,
This comment about the proposed amendments to Civil Rule 26.4 is submitted by the Working Interdisciplinary Network of Guardianship Stakeholders ("WINGS"), a Judicial Council Committee under CJA Rule 1-205(1)(A)(xv). We recommend a modification to the language of the rule, as follows:

Amend (c)(3)(A)(ii) at Line 38 to read –
"a description of less restrictive alternatives to guardianship or conservatorship that have been explored, their applicability, and a list of ways in which a guardianship or conservatorship of the respondent may be limited."

The proposed language above emphasizes the statutory requirement found in Utah Code 75-5-304, that a limited guardianship is preferred and only when no other alternative exists for the care and supervision of a incapacitated person is a full guardianship granted. It serves as a reminder to counsel that gathering and sharing this information is an important step in discovery. Additionally, it better positions the court to prompt discussion or request information needed to make the best decision possible about the necessity for or scope of a guardianship or conservatorship.

If your committee would like further input, we would be happy to appear at a committee meeting to discuss the importance of these suggested changes.

Thank you for your consideration.

WINGS Executive Committee – Judge Keith Kelly, Brant Christiansen, Nels Holmgren, Nan Mendenhall, Andrew Riggle, Keri Sargent, Shonna Thomas, and Michelle Wilkes

- CJA03-0107
- CJA03-0108
- CJA03-0109
- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02
- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
- CJA03-0113
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0301.01
- CJA03-0302
- CJA03-0303
- CJA03-0304
- CJA03-0304.01
- CJA03-0305
- CJA03-0306
- CJA03-0306.01
- CJA03-0306.02
- CJA03-0306.03
- CJA03-0306.04
- CJA03-0306.05
- CJA03-0401
- CJA03-0402
- CJA03-0403
- CJA03-0404
- CJA03-0406
- CJA03-0407
- CJA03-0408
- CJA03-0410
- CJA03-0411
- CJA03-0412
- CJA03-0413
- CJA03-0414
- CJA03-0415
- CJA03-0418
- CJA03-0419
- CJA03-0420
- CJA03-0421
- CJA03-0422
- CJA03-0501
- CJA03-0501
- CJA04-0101
- CJA04-0103
- CJA04-0106
- CJA04-0110
- CJA04-0201

Rule 26.4. Provisions governing disclosure and discovery in contested proceedings under Titles 75, 75A, or 75B of the Utah Code.

Effective: 1/1/2020

(a) **Scope.** This rule applies to all contested actions arising under Titles 75, 75A, or 75B of the Utah Code.

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

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

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

~~(c)~~(2) **Objection to the petition**.

~~(c)(2)~~(A) Any oral objection made at a hearing on the petition must then be put into writing and filed with the court within seven~~7~~ days, unless the written objection has been previously filed with the court. The court may for good cause, including in order to accommodate a person with a disability, waive the requirement of a writing and document the objection in the court record.

~~(c)(2)~~(B) A written objection must set forth the grounds for the objection and any supporting authority, must be filed with the court, and must be mailed to the parties named in the petition and any "interested persons," as that term is defined in Utah Code section~~§~~ 75-1-201, unless the written objection has been previously filed with the court.

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

~~(c)(2)~~(D) The court may modify the timing for making an objection in accordance with Rule 6(b).

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

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

~~(c)(3)~~(A) In addition to the disclosures required by Rule 26(a), and unless included in the petition, the following documents must be served by the party in possession or control of the documents within 14 days after a written objection has been filed:

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

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

This paragraph supersedes Rule 26(a)(2).

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

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

~~(c)(3)~~(D) The court may for good cause modify the content and timing of the disclosures required in this rule or in Rule 26(a) in accordance with Rule 6(b).

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

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

57 ~~(c)(4)~~(B) The initial disclosure documents must be served on the parties named in the
58 probate petition and the objection and anyone who has requested notice under Titles 75,
59 75A, or 75B of the Utah Code.

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

64 ~~(c)(4)~~(D)The court may for good cause modify the content and timing of the disclosures
65 required in this rule or in Rule 26(a) in accordance with Rule 6(b).

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

69 (d) **Pretrial disclosures under Rule 26(a)(5).** The term "trial" in Rule 26(a)(5)(B) also refers to
70 evidentiary hearings for purposes of this rule.

Rule 107. ~~Decree of adoption;~~ Petition to open adoption records.

~~(a) An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification.~~

(a~~b~~) A person may petition the court to open adoption records. A petition ~~to open the court's adoption records shall~~ must identify the type of information sought and ~~shall~~ state good cause for access, and, in the following circumstances, ~~shall~~ must provide the information indicated below:

~~(b)~~(1) If the petition seeks health, genetic, or social information, the petition ~~shall~~ must state why the health history, genetic history, or social history of the Bureau of Vital Statistics is insufficient for the purpose.

~~(b)~~(2) If the petition seeks identifying information, the petition ~~shall~~ must state why the voluntary adoption registry of the Bureau of Vital Statistics is insufficient for the purpose.

(b~~c~~) The court may order the petition served on any person having an interest in the petition, including the placement agency, the attorney handling a private placement, or the birth parents. If the court orders the petition served on any person whose identity is confidential, the court ~~shall~~ will proceed in a manner that gives that person notice and the opportunity to be heard without revealing that person's identity or location.

(c~~d~~) The court ~~shall~~ will determine whether the petitioner has shown good cause and whether the reasons for disclosure outweigh the reasons for non-disclosure.

(d~~e~~) If the court grants the petition, the court ~~shall~~ will permit the petitioner to inspect and copy only those records that serve the purpose of the petition. The order ~~shall~~ will expressly permit the petitioner to inspect and copy such records.

(e~~f~~) The court clerk ~~of the court~~ ~~shall~~ must reseal the records after the petitioner has inspected and copied them.

Effective date:

Effective 11/1/2021

78B-6-141 Court hearings may be closed -- Petition and documents sealed -- Exceptions.

(1)

(a) Notwithstanding Section 80-4-106, court hearings in adoption cases may be closed to the public upon request of a party to the adoption petition and upon court approval.

(b) In a closed hearing, only the following individuals may be admitted:

(i) a party to the proceeding;

(ii) the adoptee;

(iii) a representative of an agency having custody of the adoptee;

(iv) in a hearing to relinquish parental rights, the individual whose rights are to be relinquished and invitees of that individual to provide emotional support;

(v) in a hearing on the termination of parental rights, the individual whose rights may be terminated;

(vi) in a hearing on a petition to intervene, the proposed intervenor;

(vii) in a hearing to finalize an adoption, invitees of the petitioner; and

(viii) other individuals for good cause, upon order of the court.

(2) An adoption document and any other documents filed in connection with a petition for adoption are sealed.

(3) The documents described in Subsection (2) may only be open to inspection and copying:

(a) in accordance with Subsection (5)(a), by a party to the adoption proceeding:

(i) while the proceeding is pending; or

(ii) within six months after the day on which the adoption decree is entered;

(b) subject to Subsection (5)(b), if a court enters an order permitting access to the documents by an individual who has appealed the denial of that individual's motion to intervene;

(c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;

(d) as provided under Section 78B-6-144;

(e) when the adoption document becomes public on the one hundredth anniversary of the date the final decree of adoption was entered;

(f) when the birth certificate becomes public on the one hundredth anniversary of the date of birth;

(g) to a mature adoptee or a parent who adopted the mature adoptee, without a court order, unless the final decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b); or

(h) to an adult adoptee, to the extent permitted under Subsection (4).

(4)

(a) An adult adoptee that was born in the state may access an adoption document associated with the adult adoptee's adoption without a court order:

(i) to the extent that a birth parent consents under Subsection (4)(b); or

(ii) if the birth parents listed on the original birth certificate are deceased.

(b) A birth parent may:

(i) provide consent to allow the access described in Subsection (4)(a) by electing, electronically or on a written form provided by the office, allowing the birth parent to elect to:

(A) allow the office to provide the adult adoptee with the contact information of the birth parent that the birth parent indicates;

(B) allow the office to provide the adult adoptee with the contact information of an intermediary that the birth parent indicates;

(C) prohibit the office from providing any contact information to the adult adoptee;

(D) allow the office to provide the adult adoptee with a noncertified copy of the original birth certificate; and

(ii) at any time, file, electronically or on a written document with the office, to:

(A) change the election described in Subsection (4)(b); or

(B) elect to make other information about the birth parent, including an updated medical history, available for inspection by an adult adoptee.

(c) A birth parent may not access any identifying information or an adoption document under this Subsection (4).

(d) If two birth parents are listed on the original birth certificate and only one birth parent consents under Subsection (4)(b) or is deceased, the office may redact the name of the other birth parent.

(5)

(a) An individual who files a motion to intervene in an adoption proceeding:

(i) is not a party to the adoption proceeding, unless the motion to intervene is granted; and

(ii) may not be granted access to the documents described in Subsection (2), unless the motion to intervene is granted.

(b) An order described in Subsection (3)(b) shall:

(i) prohibit the individual described in Subsection (3)(b) from inspecting a document described in Subsection (2) that contains identifying information of the adoptive or prospective adoptive parent; and

(ii) permit the individual described in Subsection (5)(b)(i) to review a copy of a document described in Subsection (5)(b)(i) after the identifying information described in Subsection (5)(b)(i) is redacted from the document.

Amended by Chapter 262, 2021 General Session

Tab 5

Rule 102. Motion and order for payment of costs and fees.

(a) In an action under Utah Code ~~S~~section ~~30-3-3(1)~~81-1-203, either party may move the court for an order requiring the other party to provide costs, attorney fees, and witness fees, including expert witness fees, to enable the moving party to prosecute or defend the action. The motion ~~shall~~ must be accompanied by an affidavit setting forth the factual basis for the motion and the amount requested. The motion may include a request for costs or fees incurred:

~~(a)~~(1) prior to the commencement of the action;

~~(a)~~(2) during the action; or

~~(a)~~(3) after entry of judgment for the costs of enforcement of the judgment.

(b) The court may grant the motion if the court finds that:

~~(b)~~(1) the moving party lacks the financial resources to pay the costs and fees;

~~(b)~~(2) the non moving party has the financial resources to pay the costs and fees;

~~(b)~~(3) the costs and fees are necessary for the proper prosecution or defense of the action; and

~~(b)~~(4) the amount of the costs and fees are reasonable.

(c) The court may deny the motion or award limited payment of costs and fees if the court finds that one or more of the grounds in paragraph (b) is missing, or enters in the record the reason for denial of the motion.

(d) The order ~~shall~~ must specify the costs and fees to be paid within 30 days of entry of the order or the court ~~shall~~ will enter findings of fact that a delay in payment will not create an undue hardship to the moving party and will not impair the ability of the moving party to prosecute or defend the action. The order ~~shall~~ must specify the amount to be paid. The court may order the amount to be paid in a lump sum or in periodic payments. The court may order the fees to be paid to the moving party or to the provider of the services for which the fees are awarded.

Effective:

Rule 106. Modification of final domestic relations order.

Effective: 11/1/2021

(a) Commencement; service; answer. Except as provided in Utah Code ~~S~~section ~~30-3-37~~81-9-209, proceedings to modify a divorce decree or other final domestic relations order must be commenced by filing a petition to modify. Service of the petition, or motion under ~~S~~section ~~30-3-37~~81-9-209, and summons upon the other party must be in accordance with Rule 4. The responding party must serve the answer within the time permitted by Rule 12.

(b) Temporary orders.

(1) The judgment, order, or decree sought to be modified remains in effect during the pendency of the petition. The court may make the modification retroactive to the date on which the petition was served. During the pendency of a petition to modify, the court:

(A) may order a temporary modification of child support as part of a temporary modification of custody or parent-time; and

(B) may order a temporary modification of custody or parent-time to address an immediate and irreparable harm or to ratify changes made by the parties, provided that the modification serves the best interests of the child.

(2) Nothing in this rule limits the court’s authority to enter temporary orders under Utah Code ~~S~~section ~~30-3-3~~81-1-203.

Tab 6

Rule 56. Summary judgment.

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

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

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

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

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

(b) Time to file a motion. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may move for summary judgment at any time after service of a motion for summary judgment by the adverse party or after

28 21 days from the commencement of the action. A party against whom a claim,
29 counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move
30 for summary judgment at any time. Unless the court orders otherwise, a party may file
31 a motion for summary judgment at any time no later than 28 days after the close of all
32 discovery as defined by Rule 26.

33 **(c) Procedures.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

79 The court may also hold an offending party or attorney in contempt or order other
80 appropriate sanctions.

81

---

82 **Advisory Committee Notes**

83 The objective of the 2015 amendments is to adopt the class of Federal Rule of Civil
84 Procedure 56 without changing the substantive Utah law. The 2015 amendments also
85 move to this rule the special briefing requirements of motions for summary judgment
86 formerly found in Rule 7. Nothing in these changes should be interpreted as changing
87 the line of Utah cases regarding the burden of proof in motions for summary judgment.

88

89 *Effective: ~~November 2015~~ May/Nov. 1, 20__*

1 **Rule 26. General provisions governing disclosure and discovery.**

2 ***Effective: 5/4/2022***

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

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

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

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

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

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

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

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

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

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

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

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

28 **(3) Exemptions.**

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

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

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

34 (iii) to enforce an arbitration award;

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

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

39 **(4) Expert testimony.**

40 **(A) Disclosure of retained expert testimony.** A party must, without waiting for a discovery
41 request, serve on the other parties the following information regarding any person who may be
42 used at trial to present evidence under Rule702 of the Utah Rules of Evidence and who is
43 retained or specially employed to provide expert testimony in the case or whose duties as an
44 employee of the party regularly involve giving expert testimony: (i) the expert's name and
45 qualifications, including a list of all publications authored within the preceding 10 years, and a
46 list of any other cases in which the expert has testified as an expert at trial or by deposition
47 within the preceding four years, (ii) a brief summary of the opinions to which the witness is
48 expected to testify, (iii) the facts, data, and other information specific to the case that will be
49 relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for
50 the witness's study and testimony.

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

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

58 **(C) Timing for expert discovery.**

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

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

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

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

87 (iv) Unless otherwise stipulated by the parties or ordered by the court, to calculate any remaining
88 deadlines in the case that are based on the close of all discovery, expert discovery is complete on
89 the first date that either (1) the last rebuttal expert report is served or rebuttal expert deposition is
90 taken; (2) any party fails to designate an expert pursuant to Rule 26 (a)(4)(C)(ii) or (a)(4)(C)(iii);
91 or (3) if a party fails to elect discovery on a rebuttal expert disclosed pursuant to Rule 26
92 (a)(4)(C)(iii). Any party may, and the plaintiff shall, file a certificate for trial readiness pursuant
93 to Rule 16 at the close of all discovery.

Formatted: Font: 12 pt

Formatted: Font: 12 pt

Formatted: Font: 12 pt

Formatted: Font: 12 pt

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

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

107 **(5) Pretrial disclosures.**

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

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

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

114 (iii) designations of the proposed deposition testimony; and

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

118 (B) Disclosure required by paragraph (a)(5)(A) must be served on the other parties at least 28
119 days before trial. Disclosures required by paragraph (a)(5)(A)(i) and (a)(5)(A)(ii) must also be
120 filed on the date that they are served. At least 14 days before trial, a party must serve any counter
121 designations of deposition testimony and any objections and grounds for the objections to the use
122 of any deposition, witness, or exhibit if the grounds for the objection are apparent before trial.
123 Other than objections under Rules 402 and 403 of the Utah Rules of Evidence, other objections
124 not listed are waived unless excused by the court for good cause.

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

128 **(b) Discovery scope.**

129 **(1) In general.** Parties may discover any matter, not privileged, which is relevant to the claim or
130 defense of any party if the discovery satisfies the standards of proportionality set forth below.

131 **(2) Privileged matters.**

132 (A)Privileged matters that are not discoverable or admissible in any proceeding of any kind or
133 character include:

134 (i) all information in any form provided during and created specifically as part of a request for an
135 investigation, the investigation, findings, or conclusions of peer review, care review, or quality
136 assurance processes of any organization of health care providers as defined in Utah Code Title
137 78B, Chapter 3, Part 4, Utah Health Care Malpractice Act, for the purpose of evaluating care
138 provided to reduce morbidity and mortality or to improve the quality of medical care, or for the
139 purpose of peer review of the ethics, competence, or professional conduct of any health care
140 provider; and

141 (ii) except as provided in paragraph (b)(2)(C), (D), or (E), all communications, materials, and
142 information in any form specifically created for or during a medical candor process under Utah

143 Code Title 78B, Chapter 3, Part 4a, Utah Medical Candor Act, including any findings or
144 conclusions from the investigation and any offer of compensation.

145 (B) Disclosure or use in a medical candor process of any communication, material, or
146 information in any form that contains any information described in paragraph (b)(2)(A)(i) does
147 not waive any privilege or protection against admissibility or discovery of the information under
148 paragraph (b)(2)(A)(i).

149 (C) Any communication, material, or information in any form that is made or provided in the
150 ordinary course of business, including a medical record or a business record, that is otherwise
151 discoverable or admissible and is not created for or during a medical candor process is not
152 privileged by the use or disclosure of the communication, material or information during a
153 medical candor process.

154 (D) (i) Any information that is required to be documented in a patient's medical record under
155 state or federal law is not privileged by the use or disclosure of the information during a medical
156 candor process.

157 (ii) Information described in paragraph (b)(2)(D)(i) does not include an individual's mental
158 impressions, conclusions, or opinions that are formed outside the course and scope of the
159 patient's care and treatment and are used or disclosed in a medial candor process.

160 (E) (i) Any communication, material or information in any form that is provided to an affected
161 party before the affected party's written agreement to participate in a medical candor process is
162 not privileged by the use or disclosure of the communication, material, or information during a
163 medical candor process.

164 (ii) Any communication, material, or information described in paragraph (b)(2)(E)(i) does not
165 include a written notice described in Utah Code section 78B-3-452.

166 (F) The terms defined in Utah Code section 78B-3-450 apply to paragraphs (b)(2)(A)(ii), (B),
167 (C), (D), and (E).

168 (G) Nothing in this paragraph (b)(2) shall prevent a party from raising any other privileges
169 provided by law or rule as to the admissibility or discovery of any communication, information,
170 or material described in paragraph (b)(2)(A), (B), (C), (D), or (E).

171 **(3) Proportionality.** Discovery and discovery requests are proportional if:

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

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

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

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

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

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

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

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

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

198 **(7) Statement previously made about the action.** A party may obtain without the showing
199 required in paragraph (b)(6~~5~~) a statement concerning the action or its subject matter previously
200 made by that party. Upon request, a person not a party may obtain without the required showing

201 a statement about the action or its subject matter previously made by that person. If the request is
202 refused, the person may move for a court order under Rule 37. A statement previously made is
203 (A) a written statement signed or approved by the person making it, or (B) a stenographic,
204 mechanical, electronic, or other recording, or a transcription thereof, which is a substantially
205 verbatim recital of an oral statement by the person making it and contemporaneously recorded.

206 **(8) Trial preparation; experts.**

207 **(A) Trial-preparation protection for draft reports or disclosures.** Paragraph (b)(6) protects
208 drafts of any report or disclosure required under paragraph (a)(4), regardless of the form in which
209 the draft is recorded.

210 **(B) Trial-preparation protection for communications between a party's attorney and expert**
211 **witnesses.** Paragraph (b)(6) protects communications between the party's attorney and any
212 witness required to provide disclosures under paragraph (a)(4), regardless of the form of the
213 communications, except to the extent that the communications:

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

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

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

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

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

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

226 **(9) Claims of privilege or protection of trial preparation materials.**

227 **(A) Information withheld.** If a party withholds discoverable information by claiming that it is
228 privileged or prepared in anticipation of litigation or for trial, the party must make the claim

229 expressly and must describe the nature of the documents, communications, or things not
230 produced in a manner that, without revealing the information itself, will enable other parties to
231 evaluate the claim.

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

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

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

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

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

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

261 **(5) Limits on standard fact discovery.** Standard fact discovery per side (plaintiffs collectively,
262 defendants collectively, and third-party defendants collectively) in each tier is as follows. The
263 days to complete standard fact discovery are calculated from the date the first defendant's first
264 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

265

266

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

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

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

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

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

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

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

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

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

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

294 **(e) Signing discovery requests, responses, and objections.** Every disclosure, request for
295 discovery, response to a request for discovery, and objection to a request for discovery must be in
296 writing and signed by at least one attorney of record or by the party if the party is not
297 represented. The signature of the attorney or party is a certification under Rule11. If a request or
298 response is not signed, the receiving party does not need to take any action with respect to it. If a
299 certification is made in violation of the rule, the court, upon motion or upon its own initiative,
300 may take any action authorized by Rule11 or Rule37(b).

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

305

---

306 **Advisory Committee Notes**

307 ***Note Adopted 2011***

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

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

322 Subject to the foregoing qualifications, the summary of the witness's expected testimony should
323 be just that– a summary. The rule does not require prefiled testimony or detailed descriptions of
324 everything a witness might say at trial. On the other hand, it requires more than the broad,
325 conclusory statements that often were made under the prior version of Rule 26(a)(1)(e.g., "The
326 witness will testify about the events in question" or "The witness will testify on causation."). The
327 intent of this requirement is to give the other side basic information concerning the subjects
328 about which the witness is expected to testify at trial, so that the other side may determine the
329 witness's relative importance in the case, whether the witness should be interviewed or deposed,

330 and whether additional documents or information concerning the witness should be sought. *See*
331 *RJW Media Inc. v. Heath*, 2017 UT App 34, ¶¶ 23-25, 392 P.3d 956. This information is
332 important because of the other discovery limits contained in Rule 26.

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

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

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

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

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

356 Experts frequently will prepare demonstrative exhibits or other aids to illustrate the expert's
357 testimony at trial, and the costs for preparing these materials can be substantial. For that reason,

358 these types of demonstrative aids may be prepared and disclosed later, as part of the Rule
359 26(a)(4) pretrial disclosures when trial is imminent.

360 If a party elects a written report, the expert must provide a signed report containing a complete
361 statement of all opinions the expert will express and the basis and reasons for them. The intent is
362 not to require a verbatim transcript of exactly what the expert will say at trial; instead the expert
363 must fairly disclose the substance of and basis for each opinion the expert will offer. The expert
364 may not testify in a party's case in chief concerning any matter that is not fairly disclosed in the
365 report. To achieve the goal of making reports a reliable substitute for depositions, courts are
366 expected to enforce this requirement. If a party elects a deposition, rather than a report, it is up to
367 the party to ask the necessary questions to "lock in" the expert's testimony. But the expert is
368 expected to be fully prepared on all aspects of his/her trial testimony at the time of the deposition
369 and may not leave the door open for additional testimony by qualifying answers to deposition
370 questions.

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

389 retained experts under Rule 26(a)(4)(C) and depends on whether the party has the burden of
390 proof or is responding to another expert.

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

394 In the past, the scope of discovery was governed by "relevance" or the "likelihood to lead to
395 discovery of admissible evidence." These broad standards may have secured just results by
396 allowing a party to discover all facts relevant to the litigation. However, they did little to advance
397 two equally important objectives of the rules of civil procedure—the speedy and inexpensive
398 resolution of every action. Accordingly, the former standards governing the scope of discovery
399 have been replaced with the proportionality standards in subpart (b)(1).

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

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

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

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

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

434 **Legislative Note**

435 ***Note adopted 2012***

436 ***S.J.R. 15***

437 (1) The amended language in paragraph (b)(1) is intended to incorporate long-standing
438 protections against discovery and admission into evidence of privileged matters connected to
439 medical care review and peer review into the Utah Rules of Civil Procedure. These privileges,
440 found in both Utah common law and statute, include Sections 26-25-3, 58-13-4, and 58-13-5,
441 UCA, 1953. The language is intended to ensure the confidentiality of peer review, care review,
442 and quality assurance processes and to ensure that the privilege is limited only to documents and
443 information created specifically as part of the processes. It does not extend to knowledge gained
444 or documents created outside or independent of the processes. The language is not intended to
445 limit the court's existing ability, if it chooses, to review contested documents in camera in order
446 to determine whether the documents fall within the privilege. The language is not intended to
447 alter any existing law, rule, or regulation relating to the confidentiality, admissibility, or

448 disclosure of proceedings before the Utah Division of Occupational and Professional Licensing.
449 The Legislature intends that these privileges apply to all pending and future proceedings
450 governed by court rules, including administrative proceedings regarding licensing and
451 reimbursement.

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

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

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

460

1 **Rule 26.2. Disclosures in personal injury actions.**

2 **(a) Scope.** This rule applies to all actions seeking damages arising out of personal physical
3 injuries or physical sickness.

4 **(b) Plaintiff's additional initial disclosures.** Except to the extent that plaintiff moves for a
5 protective order, plaintiff's Rule 26(a) disclosures shall also include:

6 (b)(1) A list of all health care providers who have treated or examined the plaintiff for the
7 injury at issue, including the name, address, approximate dates of treatment, and a general
8 description of the reason for the treatment.

9 (b)(2) A list of all other health care providers who treated or examined the plaintiff for any
10 reason in the 5 years before the event giving rise to the claim, including the name, address,
11 approximate dates of treatment, and a general description of the reason for the treatment.

12 (b)(3) Plaintiff's Social Security number (SSN) or Medicare health insurance claim number
13 (HICN), full name, and date of birth. The SSN and HICN may be used only for the purposes
14 of the action, including compliance with the Medicare, Medicaid, and SCHIP Extension Act
15 of 2007, unless otherwise ordered by the court.

16 (b)(4) A description of all disability or income-replacement benefits received if loss of wages
17 or loss of earning capacity is claimed, including the amounts,payor'sname and address, and
18 the duration of the benefits.

19 (b)(5) A list of plaintiff's employers for the 5 years preceding the event giving rise to the
20 claim if loss of wages or loss of earning capacity is claimed, including the employer's name
21 and address and plaintiff's job description, wage, and benefits.

22 (b)(6) Copies of all bills, statements, or receipts for medical care, prescriptions, or other out-
23 of-pocket expenses incurred as a result of the injury at issue.

24 (b)(7) Copies of all investigative reports prepared by any public official or agency and in the
25 possession of plaintiff or counsel that describe the event giving rise to the claim.

26 (b)(8) Except as protected by Rule 26(b)(6~~5~~), copies of all written or recorded statements of
27 individuals, in the possession of plaintiff or counsel, regarding the event giving rise to the
28 claim or the nature or extent of the injury.

29 **(c) Defendant's additional disclosures.** Defendant's Rule 26(a) disclosures shall also include:

30 (c)(1) A statement of the amount of insurance coverage applicable to the claim, including any
31 potential excess coverage, and any deductible, self-insured retention, or reservations of
32 rights, giving the name and address of the insurer.

33 (c)(2) Unless the plaintiff makes a written request for a copy of an entire insurance policy to
34 be disclosed under Rule 26(a)(1)(D), it is sufficient for the defendant to disclose a copy of the
35 declaration page or coverage sheet for any policy covering the claim.

36 (c)(3) Copies of all investigative reports, prepared by any public official or agency and in the
37 possession of defendant, defendant's insurers, or counsel, that describe the event giving rise
38 to the claim.

39 (c)(4) Except as protected by Rule 26(b)(6~~5~~), copies of all written or recorded statements of
40 individuals, in the possession of defendant, defendant's insurers, or counsel, regarding the
41 event giving rise to the claim or the nature or extent of the injury.

42 (c)(5) The information required by Rule 9(l).

43 *Effective:*

44

---

45 **Advisory Committee Note**

46 This rule requires disclosure of the key fact elements that are typically requested in initial
47 interrogatories in personal injury actions. The Medicare information disclosure, including Social
48 Security numbers, is designed to facilitate compliance with the requirements for insurers under
49 42 U.S.C. § 1395y(b)(8)(C). See, Hackley v. Garofano, 2010 WL 3025597 (Conn.Super.) and
50 Seger v. Tank Connection, 2010 WL 1665253 (D.Neb.).

51 The committee anticipates full disclosures in most cases as a matter of course. However, there
52 may be rare circumstances warranting a protective order in which a party would otherwise have
53 to disclose particularly sensitive information wholly unrelated to the injury at issue, such as a
54 particularly sensitive healthcare procedure or treatment. Information and documents not included
55 in the application for a protective order must be provided within the timeframe of this rule.

56 This rule is intended to apply to actions based on personal injury and personal sickness using the
57 broad definitions under 26 U.S.C. Sec. 104(a)(2). This includes wrongful death actions, in which
58 case the disclosures will usually be of the decedent's records rather than of the plaintiff's, and
59 emotional distress accompanied by physical injury or physical sickness.

60

Rule 16. Pretrial conferences.

(a) Pretrial conferences. The court, in its discretion or upon motion, may direct the attorneys and, when appropriate, the parties to appear for such purposes as:

~~(a)~~(1) expediting the disposition of the action;

~~(a)~~(2) establishing early and continuing control so that the case will not be protracted for lack of management;

~~(a)~~(3) discouraging wasteful pretrial activities;

~~(a)~~(4) improving the quality of the trial through more thorough preparation;

~~(a)~~(5) facilitating mediation or other ADR processes for the settlement of the case;

~~(a)~~(6) considering all matters as may aid in the disposition of the case;

~~(a)~~(7) establishing the time to join other parties and to amend the pleadings;

~~(a)~~(8) establishing the time to file motions;

~~(a)~~(9) establishing the time to complete discovery;

~~(a)~~(10) extending fact discovery;

~~(a)~~(11) setting the date for pretrial and final pretrial conferences and trial;

~~(a)~~(12) provisions providing for the preservation, disclosure or discovery of electronically stored information;

~~(a)~~(13) considering any agreements the parties reach for asserting claims of privilege or of protection as trial-preparation material after production; and

~~(a)~~(14) considering any other appropriate matters.

(b) Trial settings. Unless an order sets the trial date, any party may and the plaintiff shall, at the close of all discovery, certify to the court that discovery is complete, that any required mediation or other ADR processes have been completed or excused and that the case is ready for trial. The court shall schedule the trial as soon as mutually

25 convenient to the court and parties. The court shall notify parties of the trial date and of
26 any final pretrial conference.

27 **(c) Final pretrial conferences.** The court, in its discretion or upon motion, may direct
28 the attorneys and, when appropriate, the parties to appear for such purposes as
29 settlement and trial management. The conference shall be held as close to the time of
30 trial as reasonable under the circumstances.

31 **(d) Sanctions.** If a party or a party's attorney fails to obey an order, if a party or a party's
32 attorney fails to attend a conference, if a party or a party's attorney is substantially
33 unprepared to participate in a conference, or if a party or a party's attorney fails to
34 participate in good faith, the court, upon motion or its own initiative, may take any
35 action authorized by Rule 37(b).

36

---

37 **Advisory Committee Notes**

38 For the purposes of this rule, "ADR" is as defined in CJA Rule 4-510.01.

39

Formatted: Font: Book Antiqua

Formatted: Font: Book Antiqua

Formatted: Font: Book Antiqua

Formatted: Font: Book Antiqua

Formatted: Font: Book Antiqua