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

Location: WebEx Webinar: Link

Date: April 23, 2025

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Rod / Justin
Rules 7, 30, 37, and 45 – Back from public comment (*Vote on rules being approved as final*)	Tab 2	Justin Toth
Rule 87 – request from Supreme Court (*Discussion*)	Tab 3	Stacy Haacke
Rule 42 – consolidation of cases (*Discussion*)	Tab 4	Loni Page
New Rule 103 – child protective orders transferred to district court (*Discussion*)	Tab 5	Judge Conklin
Rule 102 – review (b) and (c) (*Discussion / Motion for public comment*)	Tab 6	Stacy / Justin
Subcommittee List (*Informational*)	Tab 7	

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

Tab 2

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.

Posted: December 17, 2024

Utah Courts

Rules of Civil Procedure – Comment Period Closed January 31, 2025

URCP007. Pleadings allowed; motions, memoranda, hearings, orders. AMEND. Proposed amendments to (b)(4) regarding orders related to subpoenas under rule 45, and adding motions that may be acted upon without waiting for a response under (l).

URCP030. Depositions upon oral questions. AMEND. Proposed amendment to subparagraph (b)(6) to add clarity regarding objections to a subpoena, and amendments to conform with the style guide for the rules.

URCP037. Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence. AMEND. Proposed amendments to add a reference to objections under rule 45(e)(4) to the statement of discovery issues in subparagraph (a)(2), as well as to subparagraph (a)(3), to add person subject to and non parties affected by subpoenas to the proposed order requirements found in (a)(5), to remove subparagraph (b)(6), and amendments to correct references to other rules as well as conform with the style guide for the rules.

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

URCP045. Subpoena. AMEND. Proposed amendments to add a written requirement to subparagraph (e)(4), to clarify the process found in subparagraph (e)(5) regarding responses to objections and compliance, and amendments to conform with the style guide for the rules.

This entry was posted in URCP007, URCP030, URCP037, URCP045.

« Rules of Juvenile Procedure – Comment Period Closed February 1, 2025

Code of Judicial Administration – Comment Period Closed January 30, 2025 »

UTAH COURTS

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4 thoughts on "Rules of Civil Procedure – Comment Period Closed January 31, 2025"

Jason McNeill
December 17, 2024 at 4:41 pm

I have comments regarding the proposed amendments to Rule 30 and Rule 37.

First, under the proposed amended Rule 30(b)(6)(C), it provides that "The deposition may proceed only on the matters to which there as been no objection". This should be changed to "The deposition may proceed only on the matters to which there as been no Statement of Discovery Issues filed by an objecting party under Rule 37" This way, the deposition seeking answers on a topic will proceed, unless a SDI process has been initiated by the objecting party, thereby placing the burden to delay or interrupt the requested topic of questioning on the objecting party – and not the deposing party.

- -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 1-101
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0302
- CJA01-0303
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- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA014-0701
- CJA014-0704
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- CJA014-0719
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- CJA02-0102
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- CJA03-0105
- CJA03-0106

This is far more appropriate and in line with the typical burden of a witness needing to make a meritorious objection or else needing to answer the question posed. As its currently drafted, the burden is improperly put on the deposing party who is handcuffed from continuing the deposition merely by the witness making an objection, whether its with or without merit, until the deposing party goes to court and gets an order allowing that category to be asked. This burden is backwards of how it should be. Don't require the deposing party go get a court order to allow questions to be asked. Instead, you need to require the objecting party to go file for a protective order under a Rule 37 process, or else answer the questions to be posed. This forces the objecting party to justify their objections to Rule 30(b)(6) topics.

Second, under the proposed amendments to Rule 37(b)(6), it strikes the court's discretion to treat a failure of a party to obey a discovery order as contempt of court. This should not occur. Disobedience with discovery orders is already problematic enough for plaintiff's enforcement of orders. We want to deter disobedience, not promote it. We want to add teeth to violation of court orders, not remove teeth. Especially because certain violations of discovery orders can be incredibly prejudicial to the party entitled to such discovery.

Clay Randle
December 17, 2024 at 6:40 pm

Rule 45(e) should also be clarified to state that a party to the lawsuit not subjected to the subpoena also has the ability to object to a subpoena. There are domestic commissioners who are denying objections to subpoenas made from named parties because they are not subjected to the subpoena and are not "non-parties"

Daniel Young
December 18, 2024 at 9:28 pm

I think the language "or those objections are waived" should be deleted from Rule 30(b)(6)(B). If a party objects to the the 30(b)(6) notice in accordance with Rule 30(b)(6)(A) and the opposing party does not initiate a meet and confer about the objections, I think the assumption should be that the opposing party agrees with the objections, not that the party now waives the objections it timely made.

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Axel Trumbo
December 19, 2024 at 10:39 am

I help a lot of non-parties respond to document subpoenas, and I have some suggested adjustments related to non-parties:

Rule 37:

It's good that the proposed amendment clarifies that the person subject to the subpoena has standing to respond to the statement of discovery issues. However, I don't like the requirement that the person must have first "filed" a timely objection under Rule 45(e)(4). This language should be stricken for two reasons.

First, Rule 45(e)(4) doesn't require a non-party to file its objection—the only requirement is that it raise its objection in writing and serve it on the subpoenaing party. There is good reason why the non-party should not be forced to file its objection in court, so Rule 45 should remain as is. Therefore, you should take out the "filed" language in Rule 37(a)(3).

Second, there are understandable reasons why a non-party may have failed to meet the subpoena deadline, so failure to timely object should not strip the non-party of standing to defend its actions before the court. In other words, the non-party should have standing to respond to a statement of discovery issues against it whether or not it timely served a written objection. Otherwise, a non-party would be treated more harshly than a litigating party who failed to timely respond to a discovery request, given that a non-responding party still has the ability to defend its actions by responding to a statement of discovery issues.

Rule 45:

I have encountered situations where the subpoenaed non-party is not raising an objection or making any privilege claim, but one of the litigating parties does raise those objections. In that situation, the subpoenaed non-party is placed in an awkward position wherein one party is demanding production and the other party is demanding the opposite. I would like language in the rule clarifying that, when any litigating party has objected to production, the subpoenaing party is not entitled to compliance by the non-party and must first resolve the other party's objection.

I acknowledge that there is already language in Rule 45 protecting the non-party when a litigating party has requested a protective order. But this language is ambiguous and does not help the non-party much. If the other litigating party has raised privilege, but it hasn't filed a statement of discovery issues, does the non-party subject to the subpoena merely ignore the privilege claim? If so, there must be language immunizing and protecting the non-party when it disregards the litigating

party's objections. The best approach would be to allow the non-party to sit tight until the objection is resolved between the litigants.

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

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

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

(4) an answer to a crossclaim;

(5) a third-party complaint;

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

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

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

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

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

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

(4) A request for an order related to a subpoena under Rule 45 must follow Rule 37(a). ~~A request under Rule 45 to quash a subpoena must follow Rule 37(a).~~

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

(c) Name and content of motion.

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

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

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

(4) **Failure to include caution language and notice**. Failure to include the caution language in paragraph (c)(2) or the bilingual notice in paragraph (c)(3) may be

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

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

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

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

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

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

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

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

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

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

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

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

(e) Name and content of reply memorandum.

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

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

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

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

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

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

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

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

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

(1) the motion;

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

(3) the reply memorandum, if any; and

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

(h) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A

request for hearing must be separately identified in the caption of the document containing the request. The court must grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided. A motion hearing may be held remotely, consistent with the safeguards in Rule 43(b).

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

(j) Orders.

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

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

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

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

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

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

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

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

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

(A) a stipulated motion;

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

(C) an ex parte motion;

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) motion to appear pro hac vice;

(D) motion for Rule 16 conference;

(E) motion to strike a document filed by a vexatious litigant in violation of rule 83(d);

(F) motion to appear remotely; and

~~(E)~~(G) other similar motions.

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

(A) be titled as a regular motion;

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) motion to continue a hearing;

(4) motion to appoint a guardian ad litem;

(5) motion to substitute parties;

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

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

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

(q) Length of Filings.

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

Type of Filing	**Page Limit**	**Word Limit**
Motion for Relief Authorized by Rule 12(b), 12(c), 56, or 65A	25	9,000
All Other Motions	15	5,400
Memorandum Opposing Motion Authorized by Rule 12(b), 12(c), 56, or 65A	25	9,000
Memorandum Opposing All Other Motions	15	5,400
Reply Memorandum Supporting Motion for Relief Authorized by Rule 12(b), 12(c), 56, or 65A	15	5,400
Reply Memorandum Supporting All Other Motions	10	3,600
Objection and Response under Rule 7(f)	3	1,100
Notice of Supplemental Authority and Response under Rule 7(i)	2	700
Statement of Discovery Issues and Objection under Rule 37(a)(2) and 37(a)(3)	4	1,500

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

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

Effective May 1, 2023

Rule 30. Depositions upon oral questions.

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

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

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

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

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

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

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

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

~~(b)~~(6) A party may name as the witness a corporation, a partnership, an association, or a governmental agency, describe with reasonable particularity the matters on which questioning is requested, and direct the organization to designate one or more officers, directors, managing agents, or other persons to testify on its behalf. The organization ~~shall~~ must state, for each person designated, the matters on which the person will testify. A subpoena ~~shall~~ must advise a nonparty organization of its duty to make such a designation. The person so designated ~~shall~~ must testify as to matters known or reasonably available to the organization.

(A) Within 14 days of being served with a notice or subpoena, the noticed organization may serve a written objection.

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

(C) If timely objections are not resolved prior to the deposition, any party may seek resolution from the court in accordance with Rule 37, or if the notice seeks a deposition of a non-party organization, the non-party organization

may seek resolution in accordance with Rule 45. The deposition may proceed only on the matters to which there has been no objection.

(c)Examination and cross-examination; objections during questioning.

~~(c)~~(1) Questioning of witnesses may proceed as permitted at the trial under the Utah Rules of Evidence, except Rules 103 and 615.

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

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

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

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

~~(f)~~(1) The officer ~~shall~~ must record the deposition or direct another person present to record the deposition. The officer ~~shall~~ must sign a certificate, to accompany the record, that the witness was under oath or affirmation and that the record is a true record of the deposition. The officer ~~shall~~ must keep a copy of the record. The officer ~~shall~~ must securely seal the record endorsed with the title of the action and marked "Deposition of (name). Do not open." and ~~shall~~ must promptly send the sealed

record to the attorney or the party who designated the recording method. An attorney or party receiving the record ~~shall~~ must store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

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

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

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

(h)Deposition in action pending in another state. Any party to an action in another state may take the deposition of any person within this state in the same manner and subject to the same conditions and limitations as if such action were pending in this state. Notice of the deposition ~~shall~~ must be filed with the ~~clerk of the~~ court clerk of the county in which the person whose deposition is to be taken resides or is to be served. Matters required to be submitted to the court ~~shall~~ must be submitted to the court in the county where the deposition is being taken.

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

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

Effective: 5/1/2021

(a) Statement of discovery issues.

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

(A) failure to disclose under Rule 26;

(B) extraordinary discovery under Rule 26;

(C) a subpoena under Rule 45;

(D) protection from discovery; or

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

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

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

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

(C) a statement regarding proportionality under Rule 26(b)(3)~~26(b)(2)~~; ~~and~~

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

(E) if objection was made under Rule 45(e)(4), a statement certifying that the statement of discovery issues has been served on the person subject to the subpoena or a non-party affected by the subpoena.

(3) Objection length and content. No more than seven~~7~~ days after the statement is filed, any other party may file an objection to the statement of discovery issues. If a person subject to a subpoena or a non-party affected by a subpoena timely filed an objection under Rule 45(e)(4), the person subject to the subpoena or the non-party affected by the subpoena may file an objection to the statement of discovery issues. The objection must be no more than four~~4~~ pages, not including permitted attachments, and must address the issues raised in the statement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(K) that a party pay the reasonable costs, expenses, and attorney fees incurred on account of the statement of discovery issues if the relief requested is granted or denied, or if a party provides discovery or withdraws a discovery request after a statement of discovery issues is filed and if the court finds that the party, witness, or attorney did not act in good faith or asserted a position that was not substantially justified.

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

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

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

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

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

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

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

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

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

(6~~7~~) instruct the jury regarding an adverse inference.

(c) Motion for costs, expenses, and attorney fees on failure to admit. If a party fails to admit the genuineness of a document or the truth of a matter as requested under Rule 36, and if the party requesting the admission~~s~~ proves the genuineness of the document or the truth of the matter, the party requesting the admission~~s~~ may file a motion for an order requiring the other party to pay the reasonable costs, expenses, and

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

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

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

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

(4) that the request was not proportional under Rule 26(b)(3)~~26(b)(2)~~; or

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

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

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

Advisory Committee Notes

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

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

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

Rule 45. Subpoena.

(a) Form; issuance.

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

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

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

(C) command each person to whom it is directed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) fails to allow reasonable time for compliance;

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

business in person;

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

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

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

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

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

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

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

(4) **Timing and form of objections.**

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

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

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

attorney responsible for issuing the subpoena to contest the objection.

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

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

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

(5) **Response to objections and compliance.**

(A) If an objection is made under this rule, or if a party requests a protective order, the party issuing the subpoena is not entitled to compliance on any topic for which an objection has been made but may request an order to compel compliance under Rule 37(a).

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

(C) If the party issuing the subpoena seeks to obtain compliance with the subpoena through Rule 37(a), the person subject to the subpoena or a non-party

affected by the subpoena may respond as provided by Rule 37(a)(3).

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

(b) Duties in responding to subpoena.

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

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

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

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

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

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

(3) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in the form or forms in which the person ordinarily

maintains it or in a form or forms that are reasonably usable.

(4) If the information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party who received the information of the claim and the basis for it. After being notified, the party must promptly return, sequester, or destroy the specified information and any copies of it and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

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

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

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

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

Effective ~~May 1, 2021~~

Tab 3

URCP Rule 87
Request from Supreme Court Justices

The Supreme Court Justices has requested this Committee review Rule 87 regarding the manner appearance and discuss amending the rule to include language in subparagraph (b) about a statutory enumerated preference. Currently the court may consider a constitutional or statutory preference under subparagraph (d)(2)(A) after a participant has made a request of the court, but this factor is not listed in subparagraph (b).

After review by this Committee, the Justices may consider amending the language in all of the procedural rules. For purposes of discussion, language similar to that found in subparagraph (d)(2)(A) has been tracked into subparagraph (b).

Rule 87. In-person, remote, and hybrid hearings; request for different format.

Effective: 9/1/2024

(a) **Definitions.**

(1) "Participant" means a party, an intervenor, a person who has objected to a subpoena, or an attorney for any such persons.

(2) "In-person" means a participant will be physically present in the courtroom.

(3) "In-person hearing" means a hearing where all participants appear in person.

(4) "Remote" or "remotely" means a participant will appear by video conference or other electronic means approved by the court.

(5) "Remote hearing" means no participants will be physically present in the courtroom and all participants will appear remotely.

(6) "Hybrid hearing" means a hearing at which some participants appear in person and others appear remotely.

(b) **Setting hearing format; factors to consider.** The court has discretion to set a hearing as an in-person hearing, a remote hearing, or a hybrid hearing. In determining which format to use for a hearing, the court will consider:

(1) the preference of the participants, if known;

(2) the anticipated hearing length;

(3) the number of participants;

(4) the burden on a participant of appearing in person compared to appearing remotely, including time and economic impacts;

(5) the complexity of issues to be addressed;

(6) whether and to what extent documentary or testimonial evidence is likely to be presented;

(7) the availability of adequate technology to accomplish the hearing's purpose;

(8) the availability of language interpretation or accommodations for communication with individuals with disabilities;

(9) the possibility that the court may order a party, who is not already in custody, into custody;

(10) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights; ~~and~~

(11) a constitutional or statutory right that requires a particular manner of appearance or a significant possibility that such a right would be impermissibly diminished or infringed by appearing in a particular format; and

(12~~1~~) any other factor, based on the specific facts and circumstances of the case or the court's calendar, that the court deems relevant.

(c) **Request to appear by a different format.**

(1) **Manner of request.** A participant may request that the court allow the participant or a witness to appear at a hearing by a different format than that set by the court. Any request must be made verbally during a hearing, by email, by letter, or by written motion, and the participant must state the reason for the request. If a participant is represented by an attorney, all requests must be made by the attorney.

(A) **Email and letter requests.**

(i) An email or letter request must be copied on all parties on the request;

(ii) An email or letter request must include in the subject line, "REQUEST TO APPEAR IN PERSON, Case _____" or "REQUEST TO APPEAR REMOTELY, Case _____;" and

(iii) An email request must be sent to the court's email address, which may be obtained from the court clerk.

(B) **Request by written motion.** If making a request by written motion, the motion must succinctly state the grounds for the request and be accompanied by

a request to submit for decision and a proposed order. The motion need not be accompanied by a supporting memorandum.

(2) **Timing.** All requests, except those made verbally during a hearing, must be sent to the court at least seven days before the hearing unless there are exigent circumstances or the hearing was set less than seven days before the hearing date, in which case the request must be made as soon as reasonably possible.

(d) **Resolution of the request.**

(1) **Timing and manner of resolution.** The court may rule on a request under paragraph (c) without awaiting a response. The court may rule on the request in open court, by email, by minute entry, or by written order. If the request is made by email, the court will make a record if the request is denied.

(2) **Court's accommodation of participant's preference; factors to consider.** The court will accommodate a timely request unless the court makes, on the record, a finding of good cause to order the participant to appear in the format originally noticed. The court may find good cause to deny a request based on:

(A) a constitutional or statutory right that requires a particular manner of appearance or a significant possibility that such a right would be impermissibly diminished or infringed by appearing remotely;

(B) a concern for a participant's or witness's safety, well-being, or specific situational needs;

(C) a prior technological challenge in the case that unreasonably contributed to delay or a compromised record;

(D) a prior failure to demonstrate appropriate court decorum, including attempting to participate from a location that is not conducive to accomplishing the purpose of the hearing;

(E) a prior failure to appear for a hearing of which the participant had notice;

(F) the possibility that the court may order a party, who is not already in custody, into custody;

(G) the preference of the incarcerating custodian where a party is incarcerated, if the hearing does not implicate significant constitutional rights;

(H) an agreement or any objection of the parties;

(I) the court's determination that the consequential nature of a specific hearing requires all participants to appear in person; or

(J) the capacity of the court, including but not limited to the required technology equipment, staff, or security, to accommodate the request.

(3) **Effect on other participants.** The preference of one participant, and the court's accommodation of that preference, does not:

(A) change the format of the hearing for any other participant unless otherwise ordered by the court; or

(B) affect any other participant's opportunity to make a timely request to appear by a different format or the court's consideration of that request.

Tab 4

Rule 42. Consolidation; separate trials; venue transfer.

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

(1) In determining whether to order consolidation and the appropriate location for the consolidated proceedings, the court may consider, among other factors: the complexity of the actions; the importance of any common question of fact or law to the determination of the actions; the risk of duplicative or inconsistent rulings, orders, or judgments; the case and records classification of each case as described in Utah Code of Judicial Administration 4-202-02; the relative procedural postures of the actions; the risk that consolidation may unreasonably delay the progress, increase the expense, or complicate the processing of any action; prejudice to any party that far outweighs the overall benefits of consolidation; the convenience of the parties, witnesses, and counsel; and the efficient utilization of judicial resources and the facilities and personnel of the court.

(2) A motion to consolidate may be filed or opposed by any party to either action to be consolidated, without seeking permission to intervene. The motion must be filed in and heard by the judge assigned to the first action filed and must be served on all parties in each action pursuant to Rule 5. ~~A~~The movant must file notice of the motion ~~must be filed~~ in each action. The movant must, and any party may, file in each action, notice of the order denying or granting the motion. ~~ALTERNATE LANGUAGE: The movant must file in each other action notice of the motion and notice of the order~~

Commented [LP1]: Suggested language and alternative language provided by Supreme Court.

Commented [LP2]: The CoCs noted that non-parties aren't typically permitted to file motions. Will eFiling allow for this? Or will we need programming to allow for interested parties to file?

Commented [LP3R2]: From IT: ***A non party can file a Motion to Consolidate and a Motion to Waive Fees without selecting a party, however the majority of filings require the selection of the party who is filing the motion. If the party doesn't exist, there is no way to enter a party. It is required in Efiling to match the CORIS entries.***

Commented [LP4R2]: Can we add an interested party to eFiling?

Commented [LP5R2]: Can a notice of motion to consolidate and a notice of order to consolidate be filed by a non-party?

~~denying or granting the motion. Once the court rules on the motion in the first action the movant must file in each other action a notice of the order denying or granting the motion.~~

(3) If the court orders consolidation~~, unless agreed by the originally assigned judges or ordered by the presiding judge~~, the consolidated case will be heard by the judge assigned to the first action filed, unless otherwise ordered by the presiding judge or agreed upon by the originally assigned judges. The court may make any order ~~respecting~~directing the ~~coordinated~~ management of the consolidated cases. If all matters will be tried together, t~~T~~he court ~~may~~will order that a ~~new~~ single case number ~~will be~~ is used for all subsequent filings in the consolidated case. ~~The court may direct that specified parties pay the expenses, if any, of consolidation.~~ ~~The presiding judge of the transferee court may assign the consolidated case to another judge for good cause.~~

(b) ~~Separate trials~~ Consolidation in whole or in part. To provide convenience or avoid prejudice, the court ~~in furtherance of convenience or to avoid prejudice~~ may:

(1) order that the consolidated matters be tried together or that a separate trial ~~of~~be held on any claim, cross-claim, counterclaim, or ~~third~~ third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, ~~third~~ third-party claims, or issues.

(2) order that the consolidated matters be severed at any point~~,~~ and provide that the matters be treated as separate actions going forward, including that the severed matters be tried by either the judge in the consolidated matter or the originally assigned judge.

(c) Reassignment. If the consolidation of actions would be otherwise appropriate but is not administratively possible because of the types of cases involved and/or their records classifications, the judge assigned to the first action, with the consent of the parties and the other originally assigned judge(s), may order the clerk of the court to reassign the

Commented [LP6]: Suggested language from Judge Stone

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Commented [LP7]: Which expenses are contemplated here? They show up under venue transfers too.

Commented [LP8]: Suggested language from Judge Stone

Commented [LP9R8]: Judge Stone: "I think the ability to sever cases or make other orders would address the ability to consolidate different types of cases. Likewise, the different types of cases could be severed for retention and reporting purposes. For example, I recently agreed to "consolidate" a guardianship with an adoption. I ordered that all discovery be conducted under the adoption case number, but that any final orders be entered in the separate respective cases. The cases aren't "consolidated" under the current rule, but would be under the proposed revision. The separate case numbers would be retained, but at the end of the case separate orders will be entered in each."

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Commented [LP10]: CoCs wonder how this might work. The "old" case is still available but will it accept new filings?

Commented [LP11R10]: *From IT: After case consolidation, outside filings (filed by attorney and/or prosecutor) are auto rejected with a message: "Case has been consolidated. Please check Xchange or contact the court to get the new case number"*

other actions to the judge assigned to the first action. Such actions will be treated for all purposes as if they have been consolidated except that the actions shall retain their separate case numbers, which should be included on all filings.

(d) Venue Transfer.

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

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

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

Advisory Committee Notes

Note adopted 2020

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

~~Effective January 1, 2020.~~ *Effective: May/Nov. 1, 20__*

Rule 42. Consolidation; separate trials; venue transfer.

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

(1) In determining whether to order consolidation and the appropriate location for the consolidated proceedings, the court may consider, among other factors: the complexity of the actions; the importance of any common question of fact or law to the determination of the actions; the risk of duplicative or inconsistent rulings, orders, or judgments; the case and records classification of each case as described in Utah Code of Judicial Administration 4-202-02; the relative procedural postures of the actions; the risk that consolidation may unreasonably delay the progress, increase the expense, or complicate the processing of any action; prejudice to any party that far outweighs the overall benefits of consolidation; the convenience of the parties, witnesses, and counsel; and the efficient utilization of judicial resources and the facilities and personnel of the court.

(2) A motion to consolidate may be filed or opposed by any party to either action to be consolidated, without seeking permission to intervene. The motion must be filed in and heard by the judge assigned to the first action filed and must be served on all parties in each action pursuant to Rule 5. The movant must file notice of the motion in each action. The movant must, and any party may, file in each action, notice of the order denying or granting the motion.

(3) If the court orders consolidation, the consolidated case will be heard by the judge assigned to the first action filed, unless otherwise ordered by the presiding judge or agreed upon by the originally assigned judges. The court may make any order directing the management of the consolidated cases. If all matters will be tried together, the court will order that a single case number is used for all subsequent filings in the consolidated case.

(b) Consolidation in whole or in part. To provide convenience or avoid prejudice, the court may:

(1) order that the consolidated matters be tried together or that a separate trial be held on any claim, crossclaim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues.

(2) order that the consolidated matters be severed at any point and provide that the matters be treated as separate actions going forward, including that the severed matters be tried by either the judge in the consolidated matter or the originally assigned judge.

(c) Reassignment. If the consolidation of actions would be otherwise appropriate but is not administratively possible because of the types of cases involved and/or their records classifications, the judge assigned to the first action, with the consent of the parties and the other originally assigned judge(s), may order the clerk of the court to reassign the other actions to the judge assigned to the first action. Such actions will be treated for all purposes as if they have been consolidated except that the actions shall retain their separate case numbers, which should be included on all filings.

(d) Venue Transfer.

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

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

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

Advisory Committee Notes

Note adopted 2020

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

Effective: May/Nov. 1, 20__

Tab 5

Child protective orders
URCP and URJP Procedural rules
New Proposed URCP Rule 103

A request came to the URCP and URJP Committees because of some questions regarding the procedure for child protective orders when they are transferred from juvenile court to district court under UC 78A-6-104(5). When this happens the URCP kicks in and some of the procedures found in the URJP for interviews or recordings with children are lost. The request was to coordinate between the two sets of rules for some URJP rules to still apply to the child protective order proceedings in district court.

The subcommittee with members from both Committees has met and is proposing a new URCP Rule 103.

Rule 103. Child protective orders.

Effective: mm/dd/yyyy

(a) This rule applies when a child protective order is transferred to district court pursuant to statute.

(b) If an ex parte order has been issued, the hearing must be held within 21 days.

(c) No party can compel a minor child to testify unless the court finds that extenuating circumstances exist that would necessitate the testimony of the minor child be heard and there is no other reasonable method to present the minor child's testimony. If a child is required to testify:

(1) Recorded Statements. An oral statement of a child may be recorded, and upon motion and for good cause shown is admissible as evidence in any court proceeding regarding the child protective order only if all of the following conditions are met:

(A) no attorney for any party is in the child's presence when the statement is recorded;

(B) the recording is visual and aural and is recorded on film or videotape or by other electronic means;

(C) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;

(D) each voice in the recording is identified;

(E) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(F) the parties and the parties' attorneys are provided an opportunity to view the recording before it is shown to the court;

(G) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence; and

(H) the child is available to testify and to be cross-examined at trial, either in person or as provided by Subsection (2) or (3), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this subsection "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.

(2) Recorded Testimony. The court may order that the testimony of any child be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the allegations if the provisions of Subsection (3) are observed, in addition to the following provisions:

(A) the recording is both visual and aural and recorded on film or videotape or by other electronic means;

(B) the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(C) each voice on the recording is identified; and

(D) each party is given an opportunity to view the recording before it is shown in the courtroom.

(E) If the court orders that the testimony of a child be taken under Subsection (3) or (3), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

(3) Live Testimony. The court may order that the testimony of any child may be taken in a room other than the courtroom. All of the following conditions must be observed:

(A) Only the judge, domestic commissioner, attorneys for each party, persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be with the child during the testimony. The parties may also be present during the child's testimony unless a party consents to be hidden from the child's view, or the court determines that the child will suffer serious emotional or mental strain if required to testify in the party's presence, or that the child's testimony will be unreliable if required to testify in the party's presence. If the court makes that determination, or if the party consents:

(i) the party may not be present during the child's testimony;

(ii) the court will ensure that the child cannot hear or see the party;

(iii) the court will advise the child prior to testifying that the party is present at the trial and may listen to the child's testimony;

(iv) the party must be permitted to observe and hear the child's testimony, and the court will ensure that the party has a means of two-way telephonic communication with counsel during the child's testimony;

(v) normal court procedures must be approximated as nearly as possible;

(B) Only the judge, domestic commissioner, and attorneys may question the child unless otherwise approved by the court;

(C) As much as possible, persons operating equipment must be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

Tab 6

URCP Rule 102 – Motion and order for payment of costs and fees.
Questions from Justices

Rule 102 was reviewed at the Supreme Court Conference with the Justices this month. The proposed amendments were stylistic and to update statutory references. Justice Pohlman also suggested some changes and included a few comments for the Committee. A question was also raised regarding how subparagraphs (b) and (c) are read together and work in practice. Subparagraph (b) outlines the required findings to grant a motion, and then (c) references the denial of a motion or awarding limited payment of costs and fees.

Therefore, is (c) stating a court may deny a motion if it enters reasons on the record even if all of the requirements of (b) are met? And also stating a court may award limited costs and fees when all of the requirements of (b) are met or when only one or more of the grounds in (b) are met? In other words, could the rule be more clear based upon what happens in practice?

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:

Tab 7

Subcommittee/Subject	Members	Rules	Subcommittee Chair	Progress
ACTIVE:				
Probate	Judge Scott, *Allison Barger, Brant Christiansen, David Parkinson, Judge Kelly, Kathie Brown Roberts*, Keri Sargent, *Russ Mitchell, Shonna Thomas, Sarah Box*	New rules	Judge Scott	Ongoing work on new set of probate procedural rules
Plain language/Terminology	Ash McMurray, Trevor Lee, Loni Page, Heather Lester, Crystal Powell	104 14, 18, 19, 20, 22, 23, 26.1, 38, 46, 49, 53, 67	Ash McMurray	Subcommittee continues to review rules as they come up.
Omnibus	Justin Toth, Tonya Wright, Judge Conklin	30, 45, 37, 7	Justin Toth	Rules back from public comment. March/April 2025 agenda item.
Rule 3(a)(2)	Trevor Lee, Keri Sargeant, Tonya Wright; Heather Lester; Judge Cornish	3	Trevor Lee	Rule went to SC in July 2024. Will need to address this with SC again.
Eviction Expungements	Tonya Wright, Heather Lester; Crystal Powell; Keri Sargent	?	Heather Lester	Subcommittee continues to work on this issue.
Rule 101	Jim Hunnicutt, Judge Conklin, Tonya Wright, Keri Sargent, *Samantha Parmley*	101 7 26.1	Jim Hunnicutt	Rule 101 out for public comment until April 25.
MSJ Deadline	Michael Stahler, Tonya Wright, Keri Sargent, Rachel Sykes, Tyler Lindley, Michael Young	56, 26, 26.2	Michael Stahler	These were discussed at the December 2024 meeting and went back to the subcommittee.
Affidavit/Declaration	Ash McMurray, Bryan Pattison	4, 5, 6, 7A, 7B, 11, 23A, 27, 26.1, 26.2, 43, 45, 47, 54, 55, 56, 58A, 58C, 59, 62, 63, 64, 64A, 64D, 64E, 65A, 65C, 69A, 69C, 73, 83, 101, 102, 104, 105, 108	Ash McMurray	March 2025 agenda and back to subcommittee after discussion.

Rule 53A - Special Masters	*Brent Salazar-Hall; Nicole Salazar-Hall;* Jim Hunnicut	New rule 53A	Jim Hunnicutt	Will be going to the next SC Conference to request finalization.
Rule 62 (COA opinion)	Jim Hunnicutt, Judge Conklin, Laurel Hanks	62	Judge Conklin	Will be going to the next SC Conference to request finalization.
Standard POs	*Judge Oliver,* Bryan Pattison, Justin Toth, Rachel Sykes, Brett Chambers, Judge Cornish	26(g)	Justin Toth	Subcommittee continues to work on this issue.
Rule 5(a)(2) and (b)(3)	Judge Cornish, Judge Conklin, Judge Scott, Michael Stahler, Laurel Hanks	5	Laurel Hanks	February 2025 agenda item. Back to subcommittee for further discussion.
Rule 74	Michael Stahler, Rachel Sykes, Crystal Powell, Keri Sargent, Heather Lester, Loni Page	74, 76	Michael Stahler	Rule went to SC in March 2025 and came back with some comments for subcommittee.
Rule 4	Rachel Sykes, Ash McMurray, Tonya Wright	4	Rachel Sykes	Subcommittee continues to work on this rule.
Rule 42	Loni Page; Keri Sargent; Judge Scott; Brett Chambers	42	Loni Page	April 2025 agenda item.
New rules 65D & E	Michael Stahler, Loni Page, Brett Chambers, Bret Randall	New	Michael Stahler	Subcommittee continues to work on this rule.
Rule 65C	Loni Page; Keri Sargent; Trevor Lee	65C	Loni Page	Subcommittee continues to work on this rule.
Rule 73	Tonya Wright, Bryan Pattison, Heather Lester	73	Heather Lester	Subcommittee continues to work on this rule.
Child Protective Order Procedures	Jim Hunnicutt, Laurel Hanks, Crystal Powell, Judge Conklin	URCP & URJP	Jim Hunnicutt / Judge Conklin	URCP and URJP have met and are working on rule drafts.