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

Location: WebEx Webinar: Link

Date: May 28, 2025

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Rod / Justin
New Rule 103 – child protective orders transferred to district court (*Discussion*)	Tab 2	Judge Conklin
Rule 102 – review (b) and (c) (*Discussion / Motion for public comment*)	Tab 3	Stacy / Justin
Rule 35 – recording physical and medical examinations (*Discussion*)	Tab 4	Rachel Sykes
Rules 56, 26, and 26.2 – motions for summary judgement and expert witnesses (*Discussion*)	Tab 5	Michael Stahler
Return from public comment – Rules 101 and 26.4	Tab 6	Jim Hunnicutt / Rod Andreason
Rule 5 – serving parties in default	Tab 7	Laurel Hanks
Subcommittee List (*Informational*)	Tab 8	

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 – March 26, 2025
via Webex

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

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

(1) INTRODUCTIONS

The meeting began at 4:00 p.m. after forming a quorum. Mr. Rod Andreason welcomed the Committee Members and guests.

(2) APPROVAL OF MINUTES

Mr. Andreason noted he had reviewed the minutes and found only a minor typo on page four, second paragraph, regarding a word at the end of a sentence. He indicated that with Jim Hunnicutt absent, they couldn't rely on his usual editing. Mr. Justin Toth moved to approve the minutes. Mr. Tyler Lindley seconded the motion. A vote was held, and the motion to approve the minutes passed unanimously.

(3) RULES BACK FROM PUBLIC COMMENT - RULES 7, 30, 37, AND 45

Mr. Andreason introduced Rules 7, 30, 37, and 45, which were returning from public comment. He recalled from the previous month's minutes that there had been discussion on these rules. Mr. Toth confirmed that based on where the discussion left off, the rules were ready for a vote to be approved as final and sent back to the Supreme Court. Ms. Stacy Haacke affirmed this understanding, stating that a committee vote was needed to submit them to the Supreme Court as final before an effective date could be set. Mr. Andreason inquired if any committee members who participated in the previous month's discussion or reviewed the materials for the current meeting noticed anything requiring further discussion. Hearing none, he called for a motion regarding the proposed rule changes.

Mr. Trevor Lee moved to approve the rule changes as submitted in their current form. Judge Catherine Conklin seconded the motion. Mr. Andreason asked for further discussion. The motion was approved unanimously.

(4) RULE 87 – REQUEST FROM SUPREME COURT

Mr. Andreason introduced Rule 87, a request from the Supreme Court. He noted the materials included an initial statement from Ms. Haacke and some further items. Ms. Haacke explained that Rule 87, the manner of appearance rule, was worked on extensively after coming up in the previous year's legislative session and again in the current session. The justices requested the committee look at the language of the rule with the potential of making amendments to all procedural rules concerning manner of appearance, requested appearances, and the judges' considerations when setting a hearing format. Specifically, they asked the committee for suggestions or recommendations regarding a judge taking into consideration any preferences stated in statute for a particular hearing type. Ms. Haacke provided an example from the most recent legislative session where statute

articulated how certain case types, potentially guardianship cases, can or should be held, whether virtually or in person. The justices wanted to highlight in the procedural rule that judges should consider statutory requirements about hearing format, even when a specific format isn't requested by a party. Ms. Haacke explained she pulled language from sub paragraph (d)(2)(A) of the current rule and added it to a new sub paragraph (b)(11) for the committee's consideration, noting this was her adaptation, not a suggestion from the court, to initiate discussion. Ms. Haacke confirmed the focus was on whether a particular hearing format articulated in statute should be considered by the court when setting a hearing.

Chair Andreason questioned if the articulation in the statute meant the court was considering inviting parties to articulate the statutory requirement. Ms. Haacke clarified that it refers to existing statutory provisions, citing a potential example in guardianship cases. Ms.Keri Sargent raised her hand to provide insight regarding SB 199, the severe intellectual disability guardianship bill. She stated that the bill, mentions a preference for remote appearance via WebEx for the respondent, which should be considered by the judge. However, She questioned if "statutory right" in Ms. Haacke's proposed language might be too strong a term, given the legislative intent seemed to lean towards preference. Mr. Andreason wondered if a more general term than "right," such as "directive," was needed to encompass preferences. Ms. Haacke clarified that the proposed language is currently within the motion aspect of the rule, where parties cite constitutional or statutory rights as a factor in their request for a particular appearance format. The Supreme Court's request is whether this factor should also be considered by the court when initially setting the hearing format, independent of a party's motion. Judge Conklin reminded the committee that Rule 87 was changed in September, and parties can now request remote appearance via email, although some judges still require a motion. She noted the court website no longer offers a specific motion form for this.

The committee discussed the conceptual merit of the court considering constitutional or statutory requirements when initially setting hearings. There was general agreement that the concept was good and fair, as sought by the Supreme Court. Discussion turned to the specific statutory reference. Mr. Andreason asked if the statute in question was specifically about guardianship cases and where it could be found. Ms. Sargent confirmed it was Utah Senate Bill 199 regarding severe intellectual disability guardianship. The discussion returned to the specific language proposed, which copied phrasing from (d)(2)(A). Mr. Andreason suggested modifying the language from "constitutional or statutory right" to something like "constitutional or statutory directive" or "provision". He

reasoned this broader language would allow the court to consider legislative intent expressed as preferences or other forms, not just declared rights.

Judge Conklin expressed concern that the second clause in the proposed (b)(11) language seemed more applicable to constitutional rights than statutory provisions and might not sound right when applied to infringing on a statutory provision. She agreed with removing that second part. Mr. Andreason concurred, suggesting the first clause was sufficient to alert courts and parties to consider applicable statutes without needing to define the status. He felt the latter part was unnecessary duplication or backstop. Other committee members agreed that the highlighted language (the second clause and associated phrases) could be deleted as it didn't seem to add anything.

The discussion then considered whether the revised language in (b)(11) should mirror the language in (d)(2)(a). Rod Andreason questioned whether D2A should remain restricted to only considering "constitutional or statutory rights" when finding good cause to deny a request, or if it should be broadened like B11 to include preferences and other provisions, giving the court more flexibility17. Several members felt that judges should consider statutory preferences as well, not just rights17.... Ash McMurray noted the history of Rule 87's changes, suggesting they were possibly a compromise to prevent the legislature from imposing a rule via joint resolution18. Stacy Haacke confirmed the Supreme Court acted with its committees to craft the rule instead of letting the legislature impose it18. She wasn't sure if any statutory provisions on hearing format existed when the original language was drafted, suggesting the recent bills might be the first19. She noted the criminal rules committees particularly wanted a right to appear in a certain way, which may have influenced the language19.

It was suggested that the committee could propose the (b)(11) language to the justices and ask if (d)(2)(A) should mirror it, letting the justices decide. Mr. Andreason felt a recommendation from the committee would carry more weight. Mr. Tyler Lindley and Judge Rawson agreed that the provisions should probably mirror each other due to the similarity of the terminology and concepts. Mr. Ash McMurray played devil's advocate, questioning if broadening from "right" to "provision" might lead to lazy legislative drafting and make it harder for courts to determine how much weight to give such provisions. Rod Andreason responded that if the court can permissively look at legislative intent based on the statute, even if it's not a defined right, it expands the potential grounds for the court's ruling, which he did not mind. Ash McMurray conceded that "provision" might be better, especially if statutes include factors for courts to consider rather than just strict rights.

Judge Conklin also found the second clause problematic, suggesting it was superfluous or perhaps intended to refer to a separate right not adequately protected by remote appearance. She also noted the language "by appearing remotely" in (d)(2)(A) was too narrow, as any format could potentially diminish or infringe rights. She suggested removing the word "remotely".

Mr. McMurray moved to change both (b)(11) and (d)(2)(A) to mirror each other using the revised language discussed. Judge Corum seconded. Chair Rod Andreason asked for discussion. The motion passed unanimously.

(5) RULE 42 CONSOLIDATION OF CASES

Ms. Page provided an overview, explaining the committee had reviewed Rule 42 multiple times since late 2023. A decision was made to use a single case number for consolidated cases instead of a new one, which the committee approved and the Supreme Court found acceptable. The Supreme Court sent the rule back with requests for additional amendments, specifically wanting clarity that parties did not need to file a motion to intervene before moving to consolidate. Concurrently, the committee discussed inherent problems with consolidating cases of differing case types, which might have different access levels under the code of judicial administration. A subcommittee was formed to address the Supreme Court's suggested language regarding motions to consolidate or intervene and the issues judges faced with differing case access. Ms. Page mentioned the subcommittee, which included Judge Stone initially (explaining his redlines), Judge Scott, Ms. Sargent, and Mr. Chambers, also reviewed the rule for conformity with plain language, the style guide, and other rules. She noted the packet included a cleaned-up version to aid review of the numerous revisions.

Mr. Andreason asked for clarification on which redlines represented new changes versus those previously approved. Ms. Page clarified that only the change from "new" to "single" case number on line 37 had been approved by the committee at large. Most of paragraph (a)(2) (starting line 22) had been reviewed, but the Supreme Court provided alternative language (starting line 27) that the subcommittee considered. The blue markings indicated new subcommittee work, while redlining (strikeouts) might represent changes seen before.

Ms. Page noted the change on line 9 from "transferee court" to "receiving court" was a plain language update, as "transferee" was not plain language. Mr. Andreason questioned if "transferee" had legal significance from case law or other rules that warranted keeping it despite the plain language preference. Loni Page found it mentioned in Rule 65B regarding a person's identity, not a court. She noted "transfer of proceedings" also appears

earlier in the rule, suggesting some merit to keeping "transferee". Plain language was the primary reason for the proposed change. The committee did not object to this change.

Ms. Page explained a new factor was added to the list of considerations for the court when deciding on a motion to consolidate: "whether the cases have differing public access levels or records classifications". This addition was intended to prompt the court to consider potential administrative issues related to differing case access. She described it as a gentle, informative change that adds a meaningful factor. No committee members objected to adding this factor.

Ms. Page explained that most of subsection A2 had been in the rule since 2021. The Supreme Court offered two alternatives for the language: the existing version (lines 22-23) and an alternative (starting line 27). The subcommittee recommended the existing language (lines 22-23) as simpler to understand. Rod Andreason raised the issue of more than two cases being consolidated. Judge Laura Scott stated it happens very infrequently. She said the more common concern the committee addressed was consolidating different case types that can't be consolidated but could be reassigned to the same judge. In her 10 years on the bench, she could not recall a request to consolidate more than two cases. Judge Corum recalled it happening perhaps once, finding it very unusual.

The committee returned to comparing the subcommittee's preferred language (lines 22-27 with blue text) and the Supreme Court's alternative (lines 27-31). Rod Andreason leaned towards the subcommittee's version. Judge Conklin suggested the alternative language on lines 28-29 ("The movement must file in each other action notice of the motion and notice of the order denying or granting the motion") seemed more streamlined as it combined the notice requirements for the motion and the order. She also found the phrase "and any party may file" on line 26 superfluous, arguing any party can file whatever they want. Ms. Page explained the phrase meant another attorney could file the notice if the movant did not, and it was present in the current rule47. Rod Andreason acknowledged it was legacy language and might not be meaningful enough to keep. Judge Conklin felt it undermined the requirement that the movant must file the notice.

Ms. Page mentioned prior committee discussion considered simply filing a copy of the motion or order in the other cases, but this was administratively confusing for clerks and the record. She felt having a proper notice specific to each case number was preferable for clerical purposes. Rod Andreason suggested a hybrid approach: keep the first part of the subcommittee's preferred language (lines 22 through the first half of 25) and then use the alternative language's structure for the notice requirements, excluding the word "other". This would result in language similar to: "The movement must file in each action notice of the motion and notice of the order denying or granting the motion.".

Ms. Page reviewed the next amended paragraph containing Judge Stone's draft language and subsequent subcommittee revisions. She noted the existing rule states that upon consolidation, a new case number is used. The proposed change is to use a single case number instead of a new one. She clarified that in practice, this typically means using the lower or first-filed case number.

The committee reviewed the default language (lines 33-35): "If the court orders consolidation, the consolidated case will be heard by the judge assigned at the first action filed, unless otherwise ordered by the presiding judge or agreed upon by the originally assigned judges." Mr. Andreason preferred "first action filed" as more plain language than "first filed action." He asked about the provision allowing the presiding judge or originally assigned judges to deviate from the default. Judge Scott explained this language embodies the current practice where judges often communicate when cases are consolidated, and the judge with the later-filed case might take it if, for example, their case is further progressed. She felt this flexibility was necessary and reflected what they already do. The remaining sentences in the paragraph were discussed for clarity and deletion.

Next Ms. Page stated all of subsection (b) and the addition of a new sub paragraph (b)(2) came from Judge Stone and aimed to address circumstances like separate trials and severing cases. The introductory phrase "to provide convenience or to avoid prejudice" was discussed. Judge Conklin preferred "for convenience or to avoid prejudice." Ms. Tonya Wright commented in the chat about "judicial economy" as a factor focusing on the judge's side, noting "convenience" is broader. Mr. Andreason did not mind giving judges broad discretion with "convenience" and noted it might be more understandable to pro se litigants than "judicial economy." The committee agreed on "for convenience or to avoid prejudice" as the start of subsection .

Judge Conklin suggested deleting the first "or" on line 45 and "of any" on line 46 to make the structure parallel between singular claims/issues and plural claims or issues. She then suggested consolidating both clauses by saying "a separate trial be held on one or more claims, cross claims, counter claims, third party claims, or separate issues." The committee appeared to agree with this revised phrasing for (b)(1). The committee agreed the word "may" in the introductory sentence of (b) meant "or" fit between the subsequent options.

The new sub paragraph in (b) proposed the court could "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." Ms. Page explained this addresses the practice of severing cases after consolidation, which wasn't previously contemplated in the rule, providing clarity for clerks. Mr. Andreason suggested changing the title of

subsection (b) to "Consolidation; Severance" if this subsection were kept. He questioned if (b)(1) was needed if (b)(2) allowed severance at any point, potentially making severance the means to achieve separate trials. Ms. Page believed that consolidation did not automatically mean trying cases together; cases maintain their separate character. Judge Corum confirmed that even if consolidated under one number, cases keep their separate procedural and legal identities, especially with different case types (e.g., eviction and divorce) with different governing rules. He felt (b)(1) had value because trying cases together is not the default.

Ms. Page stated this proposed sub paragraph (c) was new and contributed by Judge Scott. It addresses situations where consolidation would be appropriate conceptually but is administratively impossible due to differing case types or record classifications (e.g., private vs. public access). In such cases, it proposes that the judge assigned to the first action, with consent of the parties and other originally assigned judges, could order reassignment of the other actions to the first judge. This keeps the cases with the same judge even if they can't be formally consolidated under one number. Judge Scott added this scenario also covers retention issues, like probate matters that must be retained indefinitely.

Mr. Andreason asked if the committee was ready to vote. Judge Corum moved to accept the language for Rule 42 as set forth with the agreed-upon amendments during the discussion. Judge Conklin seconded. The motion passed unanimously.

(6) ADJOURNMENT

The meeting was adjourned at 6:03 p.m. The next meeting will be May 28, 2025, at 4:00 p.m.

Tab 2

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 3

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 court will order ~~shall must specify~~ the costs and fees to be paid within 30 days of entry of the order unless~~or~~ the court ~~shall will enter~~ finds~~ings 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 court~~order~~ will ~~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:

Commented [1]: I suggest these changes for readability. It makes sense to use a colon in (b); I'm not sure it reads quite right with a colon in (a).

Commented [2]: I also found this provision to be a bit confusing. I hope my attempt to simplify captured its intent.

Tab 4

Rule 35. Physical and mental examination of persons.

Effective: 5/1/2017

(a) Order for examination. When the mental or physical condition or attribute of a party or of a person in the custody or control of a party is in controversy, the court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or control. The order may be made only on motion for good cause shown. All papers related to the motion and notice of any hearing must be served on a nonparty to be examined. The order must specify the time, place, manner, conditions, and scope of the examination and the person by whom the examination is to be made. The person being examined may record the examination by audio or video means unless the party requesting the examination shows that the recording would unduly interfere with the examination.

(b) Report. The party requesting the examination must disclose a detailed written report of the examiner within the shorter of 60 days after the examination or 7 days prior to the close of fact discovery, setting out the examiner's findings, including results of all tests performed, diagnoses, and other matters that would routinely be included in an examination record generated by a medical professional. If the party requesting the examination wishes to call the examiner as an expert witness, the party must disclose the examiner as an expert in the time and manner as required by Rule 26(a)(4), but need not provide a separate Rule 26(a)(4) report if the report under this rule contains all the information required by Rule 26(a)(4).

(c) Sanctions. If a party or a person in the custody or under the legal control of a party fails to obey an order entered under paragraph (a), the court on motion may take any action authorized by Rule 37(b), except that the failure cannot be treated as contempt of court.

Advisory Committee Notes

Rule 35 has been substantially revised. A medical examination is not a matter of right, but should only be permitted by the trial court upon a showing of good cause. Rule 35 has always provided, and still provides, that the proponent of an examination must demonstrate good cause for the examination. And, as before, the motion and order should detail the specifics of the proposed examination.

The parties and the trial court should refrain from the use of the phrase "independent medical examiner," using instead the neutral appellation "medical examiner," "Rule 35 examiner," or the like.

The committee has determined that the benefits of recording generally outweigh the downsides in a typical case. The amended rule therefore provides that recording shall be permitted as a matter of course unless the person moving for the examination demonstrates the recording would unduly interfere with the examination.

Nothing in the rule requires that the recording be conducted by a professional, and it is not the intent of the committee that this extra cost should be necessary. The committee also recognizes that recording may require the presence of a third party to manage the recording equipment, but this must be done without interference and as unobtrusively as possible.

The former requirement of Rule 35(c) providing for the production of prior reports on other examinees by the examiner was a source of great confusion and controversy. It is the committee's view that this provision is better eliminated, and in the amended rule there is no longer an automatic requirement for the production of prior reports of other examinations.

A report must be provided for all examinations under this rule. The Rule 35 report is expected to include the same type of content and observations that would be included in a medical record generated by a competent medical professional following an examination of a patient, but need not otherwise include the matters required to be included in a Rule 26(a)(4) expert report. If the examiner is going to be called as an expert

witness at trial, then the designation and disclosures under Rule 26(a)(4) are also required, and the opposing party has the option of requiring, in addition to the Rule 35(b) report, the expert's report or deposition under Rule 26(a)(4)(C). The rule permits a party who furnishes a report under Rule 35 to include within it the expert disclosures required under Rule 26(a)(4) in order to avoid the potential need to generate a separate Rule 26(a)(4) report later if the opposing party elects a report rather than a deposition. But submitting such a combined report will not limit the opposing party's ability to elect a deposition if the Rule 35 examiner is designated as an expert.

Tab 5

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

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

(c) Procedures.

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

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

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

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

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

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

(d) When facts are unavailable to the nonmoving party. If a nonmoving party shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to 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.

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

Advisory Committee Notes

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

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

Rule 26. General provisions governing disclosure and discovery.

Effective: 5/4/2022

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

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

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

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

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

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

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

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

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

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

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

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

(3) Exemptions.

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

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

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

(iii) to enforce an arbitration award;

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

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

(4) Expert testimony.

(A) Disclosure of retained expert testimony. A party must, without waiting for a discovery request, serve on the other parties the following information regarding any person who may be used at trial to present evidence under Rule702 of the Utah Rules of Evidence including non-retained experts as describe in paragraph (a)(4)(E). ~~and who is~~For those who a party has retained or is specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, the party must disclose: (i) the expert's name and qualifications, including a list of all publications authored within the preceding 10 years, and a list of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years, (ii) a brief summary of the opinions to which the witness is expected to testify, (iii) the facts, data, and other information specific to the case that will be relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for the witness's study and testimony.

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

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

(C) Timing for expert discovery.

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

(ii) The party who does not bear the burden of proof on the issue for which expert testimony is offered must serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the later of (A) the date on which the disclosure under paragraph (a)(4)(C)(i) is due, or (B) service of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(i). Within 14 days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The notice must also identify any disclosed non-retained experts, as defined in paragraph (a)(4)(E), who are to be deposed. The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If the party who does not bear the burden of proof does not designate any expert witnesses within 14 days after (A) the date on which the disclosure under paragraph (a)(4)(C)(i) is due, or (B) service of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(i), expert discovery is closed as of the date the designation by the party not bearing the burden of proof was due. If the party who does not bear the burden of proof designates expert witnesses, but no election is served on the other parties, then no further discovery of the expert must be permitted.

(iii) If the party who bears the burden of proof on an issue wants to designate rebuttal expert witnesses, it must serve on the other parties the information required by paragraph (a)(4)(A)

within 14 days after the later of (A) the date on which the election under paragraph (a)(4)(C)(ii) is due or (B) service of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(ii). Within 14 days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The notice must also identify any disclosed non-retained experts, as defined in paragraph (a)(4)(E), who are to be deposed. -The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If the party who bears the burden of proof does not designate any rebuttal expert witnesses within 14 days after (A) the date on which the disclosure under paragraph (a)(4)(C)(ii) is due, or (B) service of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(ii), expert discovery is closed as of the date the designation by the party bearing the burden of proof was due. If the party who bears the burden of proof designates rebuttal expert witnesses, but no election is served on the other parties, then no further discovery of the expert must be permitted. The court may preclude an expert disclosed only as a rebuttal expert from testifying in the case in chief.

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

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

(E) Summary of non-retained expert testimony. If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party must serve on the

other parties a written summary of the facts and opinions to which the witness is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). Such a witness cannot be required to provide a report pursuant to paragraph (a)(4)(B). A deposition of such a witness may not exceed four hours and, unless manifest injustice would result, the party taking the deposition must pay the expert's reasonable hourly fees for attendance at the deposition.

(5) Pretrial disclosures.

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

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

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

(iii) designations of the proposed deposition testimony; and

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

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

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

(b) Discovery scope.

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

(2) Privileged matters.

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

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

(ii) except as provided in paragraph (b)(2)(C), (D), or (E), all communications, materials, and information in any form specifically created for or during a medical candor process under Utah Code Title 78B, Chapter 3, Part 4a, Utah Medical Candor Act, including any findings or conclusions from the investigation and any offer of compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Trial preparation; experts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
1	$50,000 or less	3	0	5	5	120

2	More than $50,000 and less than $300,000 or non-monetary relief	15	10	10	10	180
3	$300,00 or more	30	20	20	20	210
4	Domestic relations actions	4	10	10	10	90

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

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

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

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

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

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

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

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

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

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

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

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

Advisory Committee Notes

Note Adopted 2011

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

Not all information will be known at the outset of a case. If discovery is serving its proper purpose, additional witnesses, documents, and other information will be identified. The scope and the level of detail required in the initial Rule 26(a)(1) disclosures should be viewed in light of this reality. A party is not required to interview every witness it ultimately may call at trial in

order to provide a summary of the witness's expected testimony. As the information becomes known, it should be disclosed. No summaries are required for adverse parties, including management level employees of business entities, because opposing lawyers are unable to interview them and their testimony is available to their own counsel. For uncooperative or hostile witnesses any summary of expected testimony would necessarily be limited to the subject areas the witness is reasonably expected to testify about. For example, defense counsel may be unable to interview a treating physician, so the initial summary may only disclose that the witness will be questioned concerning the plaintiff's diagnosis, treatment and prognosis. After medical records have been obtained, the summary may be expanded or refined.

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

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

Early disclosure of damages information is important. Among other things, it is a critical factor in determining proportionality. The committee recognizes that damages often require additional discovery, and typically are the subject of expert testimony. The Rule is not intended to require expert disclosures at the outset of a case. At the same time, the subject of damages should not simply be deferred until expert discovery. Parties should make a good faith attempt to compute

damages to the extent it is possible to do so and must in any event provide all discoverable information on the subject, including materials related to the nature and extent of the damages.

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

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

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

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

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

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

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

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

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

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

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

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

Consequences of failure to disclose. Rule 26(d). If a party fails to disclose or to supplement timely its discovery responses, that party cannot use the undisclosed witness, document, or material at any hearing or trial, absent proof that non-disclosure was harmless or justified by good cause. More complete disclosures increase the likelihood that the case will be resolved justly, speedily, and inexpensively. Not being able to use evidence that a party fails properly to

disclose provides a powerful incentive to make complete disclosures. This is true only if trial courts hold parties to this standard. Accordingly, although a trial court retains discretion to determine how properly to address this issue in a given case, the usual and expected result should be exclusion of the evidence.

Legislative Note

Note adopted 2012

S.J.R. 15

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

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

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

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

Rule 26.2. Disclosures in personal injury actions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c)(4) Except as protected by Rule 26(b)(65), copies of all written or recorded statements of individuals, in the possession of defendant, defendant's insurers, or counsel, regarding the event giving rise to the claim or the nature or extent of the injury.

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

Effective:

Advisory Committee Note

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

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

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

Tab 6

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: March 11, 2025

Utah Courts

Utah Rules of Civil Procedure – Comment Period Closed April 25, 2025

URCP026.4. Provisions governing disclosure and discovery in contested proceedings under titles 75, 75A, or 75B of the Utah Code. AMEND. This rule was previously amended 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. These additional amendments clarify the information that needs to be provided regarding any less restrictive alternatives to guardianship or conservatorship.

URCP101. Motion practice before court commissioners. AMEND. Proposed amendments to clarify scope, content, oral motions, service on unrepresented parties, exhibits and admissible evidence, page limits, hearings and orders.

This entry was posted in Uncategorized, URCP026.04, URCP101.

« Rules of Professional Conduct – Comment Period Closed April 25, 2025

Utah Rules of Appellate Procedure – Comment Period Closed April 20, 2025 »

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

UTAH COURTS

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14 thoughts on "Utah Rules of Civil Procedure – Comment Period Closed April 25, 2025"

Geniel M. Ashcraft
March 11, 2025 at 3:39 pm

URCP 101. Exhibits should be unlimited in length and not be counted as part of the page limits, like Rule 7. Also, it should be clear that signature pages, bilingual notices, and certificates of service, and summary charts are not included in the page limits.

JB
March 12, 2025 at 2:14 pm

"Exhibits should be unlimited in length and not be counted as part of the page limits, like Rule 7." AGREED. Why is this different under Rule 101 than 7?

JB
March 12, 2025 at 2:09 pm

I am writing to provide comments regarding the proposed modification of Utah Rule of Civil Procedure 101(b): and requesting that the committee also readdress: "Any evidence necessary to support the moving party's position must be presented by affidavit, declaration, or other admissible evidence. The motion may also include a supporting memorandum."

While the committee's revisions in Rule 101 clarify that evidence must be presented in a proper form, the rule still leaves ambiguity regarding the growing practice of filing

- -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 A
- Appendix B
- Appendix F
- CJA 1-101
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
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- CJA010-1-020
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"verified" motions—motions that include factual statements within the body of the motion itself, followed by a client's declaration or verification statement at the end, so as to avoid a separate declaration or affidavit.

Concerns with the Rule wording-

1. Unclear Whether Verified Motions Are Permissible
o The rule does not explicitly state whether a party may submit a verified motion instead of attaching a separate affidavit or declaration.
o If verified motions are acceptable, the rule should state so explicitly to avoid inconsistent application among commissioners.
o If verified motions are not acceptable, the rule should make clear that the motion itself should only request relief, and that all factual allegations must be contained in separate affidavits or declarations.
2. Confusion Stemming From the Phrase "The Motion May Also Include a Supporting Memorandum"
o Because the rule allows a memorandum to be included in the motion, attorneys have blended factual assertions into motions rather than keeping them in separate supporting documents. While this practice has allowed attorneys to reduce the number of pages, it has also led to sloppier motion practice and inconsistencies in formatting, with requested relief intermingled with factual assertions and spread throughout the motion.
o If the intended structure is for a motion to only request relief and for factual content to be separately submitted, the rule should state so and prohibit this practice.

Proposed Solutions: If we are going to follow Rule 7 formatting, then let's do it, but if not, then more direction is required, like Rule 7 has.
1. If Verified Motions Are Permissible:
o The rule should state explicitly that a motion may contain verified factual statements.
o This would codify current practice and prevent unnecessary disputes about whether a separate affidavit or declaration is required.
2. If Verified Motions Are Not Permissible:
o The rule should explicitly require that a motion contain only the requested relief, and that:
 All factual statements must be contained in separate affidavits or declarations.
 The memorandum is a separate document from the motion and cannot be merged into it.
o This would eliminate loopholes that allow attorneys to introduce factual assertions directly in motions under the guise of a combined memorandum.

Conclusion:
Because current practice has allowed verified motions to be used inconsistently, Rule 101(b) should be further clarified to either:
1. Explicitly allow verified motions as an alternative to separate affidavits/declarations, or

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2. Require that all factual assertions be presented separately, making clear that the motion itself is limited to requested relief and that memoranda cannot be merged into the motion.

For these reasons, I recommend that Rule 101(b) be further refined to eliminate ambiguity and ensure uniform application.

Thank you for your time and consideration.

JB
March 12, 2025 at 3:08 pm

I would like to add one more comment regarding my earlier point about "inconsistencies in formatting, with requested relief intermingled with factual assertions and spread throughout the motion." This lack of structure makes it difficult to clearly identify all the relief being requested.

Unlike Rule 7(c)(6)—which requires that a motion clearly state the relief requested under an appropriate heading and in a specific order—there is no similar requirement in Rule 101 if verified motions are going to be allowed. As a result, when attorneys intermingle facts with requested relief throughout a verified motion, it can be difficult to determine exactly what relief is being sought, particularly at a glance.

In practice, this often forces opposing counsel (and likely commissioners as well) to hunt through the verified motion, sometimes even using different-colored highlighters, just to identify all the relief being requested. This lack of structural clarity can lead to confusion, delays, and inefficiencies in motion practice.

JM
March 17, 2025 at 5:27 pm

I would like to add to JB's comment about formatting issues and lack of headings. I have a very similar concern:

1. The Lack of a Designation Assigning the Document to the Party is confounding the confusion of what is and what is not properly before the court. Motions are being heard out of order. Motions are being filed and propelled through court process prior to motions that are properly before the court and which have a direct effect on the motions missed.

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a. This confusion has perpetuated the abuse and intentional misleading of Commissioners by unethical parties that do not bring the error to the attention of the court. Even then, Commissioners so greatly rely on the record and the short heading on the docket, they disregard and ignore the honest party.

b.The designation of Petitioner/Plaintiff and Defendant/Respondent must be provided in front of the pleading that belongs to that party. i.e. Petitioner's Petition to Modify Divorce Decree, Respondent's Motion to Dismiss Petitioner's Petition to Modify Divorce Decree.

The confusion due to the lack thereof, is insurmountable. It is a simple requirement and would greatly ease the confusion to the court and to the parties on how to respond, who is the moving party and who is not, what will actually be heard and at what hearing. More often that not, there are Petitions to Modify submitted by both parties and Motions to Enforce by both parties, but there is no easy way to determine what is what and whose is whose.

REAL EXAMPLE: Respondent filed a Motion for Temporary Orders. Petitioner Filed a Motion to Dismiss the Motion for Temporary Orders. Petitioner files a Motion to Enforce. Respondent files a Motion to Dismiss the Motion to Enforce. the court is so confused by the motions that Petitioner voluntarily withdraws her Motion to Enforce and Respondent stipulates so. Respondent then files an Opposition to Petitioner's WITHDRAWN motions and the court is hearing them PRIOR to the Motion for Temporary Orders OR the Motion to Dismiss! Why? Because both parties have submitted Petitions to Modify and the court is Mistitling Motions.

Now, before the court, Petitioner has had to file a Motion to Correct the Record.

The lack of clarity has gotten way out of hand. It has done more than just lead to confusion, delays and inefficiences. It has perpetuated abusive practices by unethical parties, has increased expenses and resources exponentially and effectively made Commissioners incapable of performing their duties effectively and efficiently.

JB
March 12, 2025 at 2:10 pm

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I am writing to provide comments regarding the proposed modification of Utah Rule of Civil Procedure 101(d). I strongly oppose the proposed change requiring that, if the nonmoving party is unrepresented and has not filed or served a document within the last 120 days, service must be made under Rule 4 instead of Rule 5. The amendment would have significant negative consequences for litigants, attorneys, and the Court. Below are only a few of the several reasons why this rule should not be changed:

1. Increased Costs – Rule 4 mandates personal service, which is significantly more expensive than service permitted under Rule 5 (e.g., email or mail). Parties will be forced to hire process servers or take additional steps to comply with formal service requirements, increasing the financial burden on litigants. If personal service cannot be effectuated, alternative service motions will be required, further driving up costs.
2. Procedural Delays – The stricter service requirements will likely result in substantial delays, particularly when personal service proves difficult. The need to file motions for alternative service and obtain Court approval will create unnecessary procedural hurdles, slowing down case resolution.
3. Burden on the Courts – The increased volume of motions for alternative service will place an additional burden on court resources. Instead of focusing on substantive legal issues, the courts will see increased litigation over service-related motions that were previously unnecessary under Rule 5.
4. Creates an Arbitrary and Unworkable Cutoff – The proposed 120-day threshold is an arbitrary limitation that does not account for practical realities. Many parties may still be actively engaged in a case despite not filing a document within that timeframe. In complex cases, particularly those involving extensive fact discovery and/or expert discovery, or long periods between hearings, it is not uncommon for 120 days to pass without a filing—especially if a custody evaluation is ongoing with a Rule 4-903 conference scheduled thereafter. The rule unfairly presumes that a party is unreachable based on an arbitrary period of inactivity.
Furthermore, this rule places an unworkable burden on attorneys and the courts by requiring constant tracking of whether 120 days have passed since the opposing party last filed something. Pro se litigants rarely file or serve documents, meaning that every four months, the "reset button" would be triggered, forcing service under Rule 4 again. This is not only costly but creates an administrative nightmare for attorneys who must repeatedly monitor the clock and seek expensive personal service when unnecessary. This places an unfair financial burden on represented parties, forcing them to pay more in fees simply because the opposing party has chosen to remain inactive. It also increases the court's burden in enforcing this tracking requirement across filings.
Additionally, if service under Rule 5 is deemed unreliable after 120 days for attorneys and litigants, it raises the question of why the same reasoning would not apply to the Court's own notices. Consistency in procedural requirements should be a guiding principle in rule amendments.
5. Encourages Gamesmanship – The rule change may incentivize

parties to strategically avoid filing anything for 120 days to force their opponent into the more costly and cumbersome Rule 4 service process. This could be exploited to create unnecessary expense and delay in litigation.
6. Disrupts Established Practice – For years, attorneys and parties have relied on the efficiency of Rule 5 service in post-judgment proceedings and motion practice. This proposed change would unnecessarily disrupt well-established legal procedures without a compelling justification.
7. Unnecessary in Light of Electronic Filing – With the widespread use of electronic case filing and management systems, there is no reasonable justification for requiring such formalistic, time consuming, and costly service requirements. The judiciary has made significant progress in modernizing service methods, and this change would represent a step backward.
A more appropriate and fair solution would be to require pro se litigants to maintain an e-filing account or, at minimum, provide and keep an active email address on record for service. In fact, their attorney, when filing their notice of withdraw as legal counsel, they should be required to not only provide the client's latest mailing address, but also their email address. Attorneys are already required to e-file and maintain a valid email for service—there is no compelling reason why pro se litigants should not have similar obligations.
If the concern behind this amendment is ensuring litigants receive notice, requiring pro se parties to maintain and monitor an email address would be a far more efficient and cost-effective approach than unfairly shifting the burden onto the represented party to serve under Rule 4. This would allow unrepresented parties to continue benefiting from the simplicity of Rule 5 service while ensuring that represented litigants are not forced into costly, cumbersome personal service simply because the opposing party has not recently filed a document.
8. Existing Rules Already Require Parties to Keep Contact Information Updated – Under the Utah Rules of Civil Procedure, litigants are already required to keep their addresses (and in many cases, their email addresses) up to date with the court. This ensures that service under Rule 5 remains effective. If a party fails to update their contact information, that is their responsibility. The existing requirement eliminates the need for this burdensome amendment.
9. The Amendment Contradicts Access to Justice Goals – There has been ongoing discussion among policymakers and the judiciary about the high cost of legal services, particularly in family law cases. However, rule changes such as this one contradict efforts to improve access to justice. If adopted, this rule will unnecessarily increase costs and complexity for litigants.
10. No Clear Justification for the Change – The proposed amendment appears to solve a problem that does not exist. What evidence is there that service under Rule 5 is failing? If data exists demonstrating a pattern of service failures, it would be beneficial for that information to be made available for review. As a practicing attorney for over 22 years, I cannot recall the last time someone claimed they did not receive a motion. If a

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service issue ever arises, Rule 60(b) is the appropriate remedy—something all attorneys understand, and thus, they are already careful to ensure that their motions are properly served.
Furthermore, if the premise of this amendment is that service under Rule 5 becomes unreliable after 120 days, a broader review of related rules, such as Rule 7 and Rule 5 itself, may be necessary to ensure consistency. Should those rules also be amended to comport with this new philosophy? If not, why does this logic apply to Rule 101(d) but not to other procedural rules?
11. Disparate Treatment of Represented and Unrepresented Parties – The proposed amendment creates an unfair discrepancy between represented and unrepresented parties regarding service methods. Under this rule, an unrepresented party must be served under Rule 4 unless they have recently participated in the case, while a represented party may still be served through their attorney under Rule 5. This introduces unnecessary confusion and, more importantly, an imbalance in procedural fairness.
Again, rather than imposing Rule 4 service requirements on represented parties, a more logical and consistent approach would be to require pro se litigants to maintain an e-filing account or an active email for service. Attorneys have long been subject to electronic service requirements, and it is reasonable to expect unrepresented litigants to take similar steps to ensure they receive notices. If a party should elect to receive notice via mail instead of email, that is fine, but again, they should be held accountable for their choice and maintain an up-to-date mailing address with the court.
12. Unrepresented parties will benefit from more efficient service under Rule 5, while represented litigants will face costly, cumbersome personal service requirements if the unrepresented party becomes inactive in the case. If the justification for this rule is that service under Rule 5 is unreliable after 120 days, then why should represented parties be subject to different standards? This creates a fundamental fairness issue that the Court and Committee should carefully consider.
13. Post-Decree Matters Such as QDROs Will Be Unnecessarily Burdened – This amendment would have a significant impact on routine post-divorce filings such as Motions for Entry of a Qualified Domestic Relations Order (QDRO) (as well as other motions, such as motions to relocate, motions to challenge decision-making authority in parenting plans, etc.). Many QDROs are filed months after a divorce is finalized, and there could have easily been more than 120 days from the date the pro se litigant last filed anything with the court. As such, this rule would dramatically increase the cost of obtaining QDROs (and similar post-decree relief). The Court should not impose an additional financial and procedural hurdle on litigants attempting to complete a necessary step in their case.

For the above reasons, I strongly urge the Court to reject the proposed amendment to Rule 101(d) and retain the existing language allowing for service under Rule 5.

Thank you for your consideration.

- LPP15.0528
- LPP15.0529
- LPP15.0530
- LPP15.0531
- LPP15.0532
- LPP15.0533
- LPP15.0601
- LPP15.0602
- LPP15.0603
- LPP15.0604
- LPP15.0605
- LPP15.0606
- LPP15.0607
- LPP15.0901
- LPP15.0901
- LPP15.0902
- LPP15.0903
- LPP15.0904
- LPP15.0904
- LPP15.0905
- LPP15.0906
- LPP15.0908
- LPP15.0909
- LPP15.0910
- LPP15.0911
- LPP15.0912
- LPP15.0913
- LPP15.0914
- LPP15.0915
- LPP15.0916
- LPP2.01
- LPP2.03
- LPP3.01
- LPP3.03
- LPP3.04
- LPP3.05
- LPP4.01
- LPP4.02
- LPP4.03
- LPP5.01
- LPP5.02
- LPP5.03
- LPP5.04
- LPP5.05
- LPP5.06
- LPP6.01
- LPP6.03
- LPP6.04
- LPP6.05
- LPP7.01
- LPP7.02
- LPP7.03
- LPP7.04
- LPP7.05
- LPP8.01
- LPP8.02
- LPP8.03

Jesse A Majors
March 17, 2025 at 4:18 pm

As a pro se litigant, I completely agree.

JB
March 12, 2025 at 2:11 pm

I am writing to provide comments regarding the proposed modification of Utah Rule of Civil Procedure 101(g) and to request that the committee also address related concerns within the rule that: "A counter motion need not be limited to the subject matter of the original motion… A separate notice of hearing on a counter motion is not required."

While this provision may have been intended to promote efficiency, in practice, it creates serious procedural and fairness concerns that should be addressed.

Concerns With Allowing Unrelated Countermotions in the Same Hearing Slot –
1. Unrelated Countermotions Can Create Procedural Chaos
o Allowing a party to file any counter motion—regardless of its subject matter—within the same hearing slot can undermine the fairness of motion practice. Example: A party files a motion to appoint a custody evaluator, and the opposing party counters with a motion for temporary orders—a vastly broader and more complex issue.
o These unrelated matters should not be forced into the same hearing, as they involve different legal and factual analyses.
2. Unfair Impact of the 25-Page Limitation
o Under the proposed rules, the 25-page limit applies to all motions heard within the same hearing slot, including counter motions. This creates a severe disadvantage for the original moving party, who may have already used a substantial portion of the 25-page limit addressing their original motion. If the opposing party files a complex counter motion, such as a motion for temporary orders, the moving party may be severely restricted in their ability to respond due to the page limit. This is procedurally unfair and could prevent the court from receiving the full scope of information needed to make a well-informed decision.
3. Potential for Strategic Abuse of Countermotions
o As written, the rule invites gamesmanship, where a party could intentionally file a broad counter motion in response to a narrowly focused motion, knowing that the original moving party will be limited in their response.
o This tactic could be used to overwhelm an opposing party, limit their ability to respond, and shift the focus away from the original motion.

o The result could be one-sided hearings where one party is effectively denied a fair opportunity to argue their case.

Proposed Solutions:
1. Require Countermotions to Be Related to the Subject Matter of the Original Motion
o The rule should state that a counter motion must relate to the same general subject matter as the original motion.
o This would prevent unrelated motions from being forced into the same hearing slot without proper notice or preparation.
2. Allow Separate Notices of Hearing for Certain Countermotions
o If a counter motion raises a substantially different issue than the original motion, a separate notice of hearing should be required unless both parties stipulate to have them heard together.
o This would allow the court to schedule hearings more effectively and ensure that both parties have sufficient time and page space to address the issues properly.
3. Adjust the 25-Page Limit to Account for Countermotions
o If counter motions are to remain unrestricted in subject matter, then the 25-page limit must be adjusted to prevent unfair restrictions on responses.
o Possible solutions include:
 Allowing each party 25 pages per motion (rather than per hearing).
 Requiring the responding party to allocate additional pages for counter motion responses.

4. Prevent Strategic Abuse of Countermotions
o The rule should include language to prevent bad-faith counter motions that are designed to sideline or overwhelm the original motion.
o Commissioners should have discretion to defer unrelated counter motions to separate hearings if they determine that combining them would be unfair or inefficient.

For these reasons, I request that the committee modify Rule 101(g) to close these procedural loopholes and ensure fair motion practice.

Thank you for your time and consideration.

JM
March 17, 2025 at 5:03 pm

I am writing to provide comments regarding the proposed modification of Utah Rule of Civil Procedure 101(g) and to request that the committee also address related concerns within the rule that: "A counter motion need not be limited to the subject matter of the original motion… A separate notice of hearing on a counter motion is not required."

While this provision may have been intended to promote efficiency, in practice, it creates serious procedural and

- RPC01.16
- RPC01.17
- RPC01.18
- RPC02.01
- RPC02.02
- RPC02.03
- RPC02.04
- RPC03.01
- RPC03.02
- RPC03.03
- RPC03.04
- RPC03.05
- RPC03.06
- RPC03.07
- RPC03.08
- RPC03.09
- RPC04.01
- RPC04.02
- RPC04.03
- RPC04.04
- RPC05.01
- RPC05.02
- RPC05.03
- RPC05.04
- RPC05.04A
- RPC05.04B
- RPC05.05
- RPC05.06
- RPC05.07
- RPC06.01
- RPC06.02
- RPC06.03
- RPC06.04
- RPC06.05
- RPC07.01
- RPC07.02
- RPC07.02A
- RPC07.02B
- RPC07.03
- RPC07.04
- RPC07.05
- RPC08.01
- RPC08.02
- RPC08.03
- RPC08.04
- RPC08.05
- RPP014.515
- RPP11-0101
- RPP11-0107
- RPP11-0581
- RPP11-0582
- RPP11-0583
- RPP11-0584
- RPP11-0585
- RPP11-0586
- Rules of Business and Chancery Court

fairness concerns that should be addressed.

1. Allowing Pleading of New Matters In Countermotions Prejudices Parties – when new matters are submitted via Countermotion within a Reply Memo or Response, the hearing that was originally scheduled to hear only those matters plead in the original motion is now not enough time for a full opportunity to be heard on the new matters.

It also allows parties to sideline the original motion, overshadow the serious matters with less serious ones and overwhelm the last responding party in the process to have less time to prepare for the upcoming hearing, sometimes leaving only 3 days before the hearing to respond to the countermotion and permitting more rampant strategic abuse of the system by attorneys well versed in the law at the expense of unrepresented parties.

i.e. Real Example: Petitioner files a very simple Motion to Compel Production of Documents on 03-03-25. Hearing was set for 03-17-25. Respondent answers in Opposition to Petitioner's Motion on 03-10-25 and includes a Countermotion to Deem Litigant Vexatious. An answer to the Countermotion AND ANY reply to Respondent's Opposition is due IN LESS THAN 7 DAYS because that's when the hearing is scheduled and both matters are allowed to be heard at the hearing. In addition, Respondent has performed the same for two other Motions scheduled for hearing on 03-17-25 and 03-19-25. They were all served on Petitioner on 03-10-25.

How is this not an instruction manual on how to harass the opposing party?

2. Furthermore, if "bad faith" is the determining factor whether a party is filing frivolous motions or pleadings, because of this loophole, bad faith can be rebutted by simply saying procedure was followed.
For this reason, I request that countermotions must be filed separately, treated separately procedurally if they contain separate matters, that they should be Titled as a new motion because they really aren't "countering" anything.

3. The 25-page limit Impermissibly Restricts Responses and Original Motions
a. While restricting the response of the body of the motions to a 25-page limit does not seem possible in complex cases, but even in simple cases that involve only one issue, it is nearly impossible to constrain to the page limit. If there has to be a section for Relief Sought, Statement of Facts, Argument, Prayer for Relief and the only issue covers a substantial part of calendar years, 25-pages is factually and mathematically impossible.
b. The inability to present the entire history or relevant, important and admissible facts violates due process and inhibits the ability for a party to adequately represent

- Standing Order 15
- StandingOrder08
- Uncategorized
- URAP 21A
- URAP001
- URAP002
- URAP003
- URAP004
- URAP005
- URAP008
- URAP008A
- URAP009
- URAP010
- URAP011
- URAP012
- URAP013
- URAP014
- URAP015
- URAP016
- URAP017
- URAP019
- URAP019
- URAP020
- URAP021
- URAP021
- URAP022
- URAP023
- URAP023B
- URAP023C
- URAP023C
- URAP024
- URAP024A
- URAP025
- URAP025A
- URAP026
- URAP027
- URAP028A
- URAP029
- URAP029
- URAP030
- URAP031
- URAP033
- URAP034
- URAP035
- URAP036
- URAP037
- URAP038
- URAP038A
- URAP038B
- URAP039
- URAP040
- URAP040.A
- URAP041
- URAP042
- URAP043
- URAP044
- URAP045

themselves. In addition, by requiring only summaries of the voluminous exhibits may not be feasible is some situations.
REAL EXAMPLE: Petitioner has been advised by Commissioners and Judges to bring Motions to Enforce contradictorily by one of them wanting Petitioner to file more often and one of them wanting Petitioner to file less often. Petitioner restricts her Motion to Enforce for Unreimbursed Expenses to one year of unreimbursed receipts and it exceeds the 25-page limit. A motion to submit an Overlength Memorandum was not allowed, so Petitioner compressed photos of receipts so more could fit on a page and then Respondent made an Objection to the Overlength Memorandum and Countermotion in Objection to the Exhibits themselves.

A page limit in any form violates Due Process policies. If counter motions are to remain unrestricted in subject matter, then the 25-page limit must be adjusted to prevent unfair restrictions on responses.

I agree wholeheartedly to JB's suggestions.

JB
March 12, 2025 at 2:12 pm

I am writing to provide comments regarding the proposed modification of Utah Rule of Civil Procedure 101(k): "Each party may submit no more than 25 total pages per hearing regardless of the number of motions to be heard."

I believe this change is necessary and beneficial, as some commissioners have interpreted the current rule to mean 25 pages per day, while others have applied it per motion. The per-day interpretation has caused unnecessary problems and inconsistencies, making scheduling more difficult than it needs to be. For example, if a party has at least one complex or highly contested motion, they are forced to schedule each motion on different days, even when the motions are interdependent. This means that a party may have to artificially separate their filings, dividing the 25-page limit across different motions, even though all the motions should be heard in sequential order, one after the other, in the same day. This disrupts efficiency, increases delays, and forces courts to hear related motions piecemeal rather than resolving them efficiently.

Furthermore, this increases costs for the parties, as they are required to return to court on separate days when their motions could have been heard back-to-back in the same day. This places an unnecessary financial and logistical burden on litigants.

If the court has multiple hearing slots available in a day, and each slot allows 25 pages per hearing, then why should it matter if the same parties take up two slots for their own motions? The total number of pages submitted to the court remains the same,

- URAP046
- URAP047
- URAP048
- URAP049
- URAP050
- URAP051
- URAP052
- URAP053
- URAP054
- URAP055
- URAP056
- URAP057
- URAP058
- URAP059
- URAP060
- URBCP001
- URBCP008
- URBCP010
- URBCP013
- URBCP014
- URBCP016
- URBCP018
- URBCP019
- URBCP020
- URBCP022
- URBCP024
- URBCP026
- URBCP038
- URBCP042
- URBCP063
- URBCP065A
- URBCP065B
- URBCP077
- URBCP085
- URBCP086
- URCP001
- URCP004
- URCP005
- URCP006
- URCP007
- URCP007A
- URCP007B
- URCP008
- URCP009
- URCP010
- URCP011
- URCP012
- URCP013
- URCP015
- URCP016
- URCP016A
- URCP017
- URCP018
- URCP023A
- URCP024
- URCP025
- URCP026

regardless of whether different parties fill the slots or the same parties do. If a party is entitled to 25 pages per motion hearing, then they should be able to file accordingly, without being penalized simply because they have multiple motions set for the same day.
By clarifying that the 25-page limit applies per hearing, the rule promotes efficiency and ensures fairness in scheduling.

However, I am concerned that a commissioner may again interpret the rule in such a way as to force parties back to the "per day" idea and/or require that all motions filed by a party be contained within a single hearing. To prevent future misinterpretation, the rule should explicitly state that a party may schedule multiple motions on the same day, in different hearing slots, and that the 25-page limit applies separately to each hearing slot.

To eliminate ambiguity, I suggest that the rule explicitly state: "A party may schedule multiple motions for separate hearings, even on the same day, and the 25-page limit applies separately to each hearing."

Adding this clarification would remove any doubt and ensure that the rule is applied consistently across all commissioners.

For these reasons, I support the amendment to Rule 101(k), with a further clarification to avoid potential misinterpretation.

Thank you for your time and consideration.

JB
March 12, 2025 at 2:13 pm

I am writing to provide comments regarding the proposed modification of Utah Rule of Civil Procedure 101(o): "The following motions must be submitted to the judge to whom the case is assigned:"

I believe this list should also include any motion filed after the case has been certified for trial. It is inconsistent and inefficient for a commissioner to continue ruling on motions once a case has been certified for trial and assigned to a judge.

Concerns With Allowing Commissioners to Rule on Post-Certification Motions:

1. Lack of Judicial Consistency
o Once a case is certified for trial, the assigned judge is responsible for conducting the trial and managing all pretrial proceedings.
o While motions in limine are already included in the list, other motions filed after certification—such as motions to continue trial, discovery-related motions, or case management motions—may, under this rule, still go before a commissioner instead of the judge.

- URCP026.01
- URCP026.02
- URCP026.03
- URCP026.04
- URCP029
- URCP030
- URCP031
- URCP032
- URCP033
- URCP034
- URCP035
- URCP036
- URCP037
- URCP040
- URCP041
- URCP042
- URCP043
- URCP045
- URCP047
- URCP050
- URCP051
- URCP052
- URCP053A
- URCP054
- URCP055
- URCP056
- URCP058A
- URCP058B
- URCP058C
- URCP059
- URCP060
- URCP062
- URCP063
- URCP063A
- URCP064
- URCP064A
- URCP064B
- URCP064C
- URCP064D
- URCP064E
- URCP064F
- URCP065C
- URCP066
- URCP068
- URCP069
- URCP069A
- URCP069B
- URCP069C
- URCP071
- URCP073
- URCP074
- URCP075
- URCP076
- URCP081
- URCP083
- URCP084
- URCP086

o If the judge is handling the trial, they should also be the one handling all pretrial motions after certification to ensure consistency.
2. Inefficiency & Potential for Duplicative Litigation
o If a commissioner issues a ruling that a party objects to, the motion may ultimately be reviewed by the judge anyway—resulting in unnecessary delays and duplicative litigation.
o This inefficiency could be avoided by requiring that all motions after certification be decided by the trial judge from the outset.
3. Post-Certification Case Management Should Be Handled by the Judge
o Motions filed after certification for trial often involve case management, scheduling, discovery disputes, and procedural issues that directly impact how the judge will conduct trial.
o If a judge is responsible for overseeing the trial, they should also have full control over all pretrial rulings to ensure smooth trial preparation.
4. Certification for Trial Should Be the Clear Dividing Line
o Once a case is certified for trial, all motions should be handled by the judge who will conduct the trial.
o This ensures judicial efficiency, avoids conflicting rulings, and allows for consistent case management.
Proposed Solution:
To address these concerns, Rule 101(m) should be modified to explicitly state that any motion filed after the case has been certified for trial must be submitted to the assigned judge.
For these reasons, I support modifying Rule 101(m) to clarify that all motions filed after certification for trial must be heard by the trial judge.

Thank you for your time and consideration.

Tracy Olson
March 17, 2025 at 2:10 pm

Rule 26.4
Lines 38-41 should only apply to cases where capacity is at issue or the level of capacity is at issue. This information is unnecessary if 2 children are fighting over who should be appointed, but agree on all issues related to incapacity. This will only increase costs, which in most cases will ultimately be borne by the incapacitated person's estate.

GJ
April 17, 2025 at 12:41 pm

Rule 101(j)(3) – Exhibits

If we are going to keep the 25 page limit – then we should allow more evidence to be summarized. I support those who

previously commented that we should remove the 25 page limit for motions and follow Rule 7. However, if we keep the 25 page limit then the committee should remove this language in 101(j)(3): "Affidavits and declarations may not be summarized."

A party's affidavit and declaration may not be summarized, but affidavits and declarations from third parties should be allowed to be summarized.

KP
April 19, 2025 at 4:16 pm

I think with the technology of WebEx hearings now there needs to be some specificity on providing voluminous exhibits in the form of a binder for those hearings.

- URE0404
- URE0407
- URE0408
- URE0412
- URE0416
- URE0504
- URE0506
- URE0507
- URE0507.01
- URE0509
- URE0510
- URE0511
- URE0512
- URE0608
- URE0613
- URE0615
- URE0615
- URE0616
- URE0617
- URE0701
- URE0702
- URE0703
- URE0803
- URE0804
- URE0807
- URE0902
- URE1101
- URE1102
- URJP002
- URJP003
- URJP004
- URJP005
- URJP007
- URJP007A
- URJP008
- URJP009
- URJP010
- URJP011
- URJP013A
- URJP014
- URJP015
- URJP016
- URJP017
- URJP018
- URJP019
- URJP019A
- URJP019B
- URJP019C
- URJP020
- URJP020A
- URJP021
- URJP022
- URJP023
- URJP023A
- URJP025
- URJP025A
- URJP026

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 the~~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 ~~c~~~~Court~~ commissioner might make a decision against you without your input. Y~~I~~n addition, y~~ou may file a written response to the motion. Any response must be filed at least 14 days before the hearing.**

(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 excusable neglect to set aside any resulting order or judgment~~.

(c)~~(c)~~ ~~(6)~~ **Oral motion.** ~~Oral m~~MAn 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, any 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, service must be made as provided in Rule 4 unless the nonmoving party has filed or served a document in the case within the last 120 days.

(e~~e~~) 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.

(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.

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

(j~~h~~) **Exhibits~~; objection to failure to attach~~**.

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

(2) Copies of ~~court papers~~documents that are already ~~included~~ filed~~such as decrees, orders, minute entries, motions, or affidavits, already~~ filed with the~~in or included~~ in the ~~court's docket's~~ case ~~file,~~ may not be filed as exhibits. Court papers from other cases ~~other than the case~~at before the court, such as protective orders, prior divorce decrees, criminal orders, information or dockets, and juvenile court orders (to the extent the law does not prohibit their filing), may be submitted as exhibits.

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

(3) **Voluminous exhibits**. ~~Voluminous exhibits which cannot conveniently be examined in court~~ Exhibits beyond the page limits set forth below may not be filed ~~as exhibits~~, but the contents of such documents may be presented in the form of a summary, chart, or calculation under Rule 1006 of the Utah Rules of Evidence. A summary is a statement describing the content of each voluminous exhibit and is not simply a list identifying exhibits. Affidavits and declarations may not be summarized. Collections of documents, such as bank statements, checks, receipts, medical records, photographs, e-mails, text messages, calendars, and journal entries that collectively exceed ten pages in length must be presented in summary form. ~~Individual documents with specific legal significance, such as tax returns, appraisals, financial statements and reports prepared by an accountant, wills, trust documents, contracts, or settlement agreements must be submitted in their entirety.~~

(A) ~~Unless they have been previously supplied through discovery or otherwise and are readily identifiable, c~~Copies of any such ~~voluminous~~ documents beyond

the page limits must be supplied to the other parties at the time of the filing of the summary, chart, or calculation.

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

(k~~i~~) Length. ~~Initial and responding memoranda may not exceed 10 pages of argument without leave of the court. Reply memoranda may not exceed 5 pages of argument without leave of the court.~~ Except as provided below, ~~The total number of pages submitted to the court by~~ each party may submit no more than ~~not exceed~~ 25 total pages per hearing regardless of the number of motions to be heard. This page limit applies to the total of all motions, responses, counter-motions, replies, memoranda, ~~including~~ affidavits, declarations, exhibits, attachments, and summaries submitted by each party for a hearing. ~~, but excluding financial declarations and income verification.~~

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

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

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

(B) income verification;~~,~~

(C) tax returns;~~,~~

(D) appraisals;~~,~~

(E) financial statements and reports prepared by an accountant;~~,~~

(F) wills;~~,~~

(G) trust documents;~~,~~

(H) contracts;~~,~~

(I) settlement agreements;~~,~~

(J) reports from the Division of Child and Family Services or equivalent agencies;~~,~~

(K) relevant court orders from other cases or jurisdictions;~~,~~ and

(L) other documents at the commissioner's discretion.

(2) The page limits in this rule exclude the following:

(A) caption;~~,~~

(B) table of contents;~~,~~

(C) table of authorities;~~,~~

(D) signature block;~~,~~

(E) certificate of service;~~,~~

(F) verification;~~,~~

(G) bilingual notice~~,~~; and

(H) other notice required by these rules.

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

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

(m~~k~~) Limit on motion to enforce ~~order~~ and for sanctions ~~order to show cause~~. ~~An application to the court for~~ A motion to enforce ~~order~~ and for sanctions ~~an order to show cause~~ may be made only for enforcement of ~~an existing order~~ or ~~for sanctions for~~ violating an existing order. ~~An application for~~ A motion to enforce order and for

~~sanctions an order to show cause must be supported by affidavit or other evidence sufficient to show cause to believe a party has violated a court order.~~

(n~~l~~) Hearings.

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

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

(o~~m~~) Motions to judge. The following motions must be submitted to the judge to whom the case is assigned:

(1) motion for alternative service;

(2) motion to waive 30-day waiting period for divorce~~s~~;

(3) motion to waive a ~~divorce~~ parenting education ~~class~~course~~s~~;

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

(5) motion~~s~~ in limine; and

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

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

(p~~n~~) ~~Objection to court commissioner's recommendation~~Orders. Rule 7(j) applies to preparing a proposed order after a hearing before a court commissioner unless the commissioner directs otherwise. A recommendation of a court commissioner is the

order of the court ~~until~~ unless modified by the court. A party may object to the recommendation by filing an objection under Rule 108.

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 description ~~a list~~ of less restrictive alternatives to guardianship or conservatorship that have been explored, their applicability, and the ways ~~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).

~~(c)(4)~~(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 Titles 75, 75A, or 75B of the Utah Code.

~~(c)(4)~~(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 the contesting party within 14 days of the date of referral to mediation unless the parties agree to a different date.

~~(c)(4)~~(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)~~(5) **Discovery once a probate dispute arises**. Except as provided in this rule or as otherwise ordered by the court, once a probate dispute arises, discovery will proceed pursuant to the Rules of Civil Procedure, including the other provisions of Rule 26.

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

Tab 7

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

(a) When service is required.

(1) Documents that must be served. Unless otherwise permitted by statute, rule, or court order, every document filed with the court after the original complaint must be served by the party filing it on every party to the case. Ex parte motions may be filed without serving if permitted under Rule 7.

(2) Serving parties in default. No service is required on a party against whom ~~is in~~ default judgment has been entered, except that a party in default must be served:

~~(A) a party in default must be served as ordered by the court;~~

~~(B) a party in default for any reason other than for failure to file and serve a responsive pleading or otherwise appear must be served as provided in paragraph (a)(1);~~

(A) ~~(C) a party in default for any reason must be served~~ with notice of any hearing to determine the amount of damages to be entered against the defaulting party;

(B) ~~(D) a party in default for any reason must be served~~ with notice of entry of judgment as provided in Rule 58A and

(C) ~~(E) a party in default for any reason must be served~~ as provided in Rule 4 with pleadings asserting new or additional claims for relief against the party or ~~.~~ motions to modify or augment the default judgment.

(D) if represented by an attorney, with notice to the attorney, even if that attorney has not formally appeared in the action.

(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required before the filing of an answer, claim, or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(1) Whom to serve. If a party is self-represented, service must be made upon the self-represented party. If a party is represented by an attorney, a document served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(A) an attorney has filed a Notice of Limited Appearance as provided in Rule 75 and the documents being served relate to a matter within the scope of the Notice; or

(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a document was last served on the attorney.

(2) When to serve. If a hearing is scheduled seven days or less from the date of service, a party must serve a document related to the hearing by the method most likely to be promptly received. Otherwise, a document that is filed with the court must be served before or on the same day that it is filed.

(3) Methods of service. A document is served under this rule by:

(A) **Electronic filing.** Except in the juvenile court, a document is served by submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account;

(B) **Email.** If the party serving or being served a document does not have an electronic filing account, emailing it to:

(i) the most recent email address the person being served has provided to the court as provided in Rule 10 or Rule 76; or

(ii) if service is to an attorney licensed in Utah, to the email address on the attorney's most recent filing or on file with the Utah State Bar; or

(iii) if service is to an attorney not licensed in Utah, to the email address on the attorney's most recent filing or on file with the attorney licensing entity in the state where the attorney is licensed.

(C) **Mail and other methods.** If the party serving or being served with a document does not have an electronic filing account or email, a document may be served under this paragraph by:

(i) mailing it to the most recent address the person being served has provided to the court as provided in Rule 10 or Rule 76, or, if none, the person's last known address; and if unknown, the address at which they were served with the complaint and summons.

(ii) handing it to the person;

(iii) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(iv) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(v) any other method agreed to in writing by the parties.

(4) When service is effective. Service by mail or electronic means is complete upon sending.

(5) Who serves. Unless otherwise directed by the court or these rules:

(A) every document required to be served must be served by the party preparing it, including subsequently signed orders and judgments; and

(B) every document initially prepared by the court must be served by the court;

(C) every document signed by the court that was initially prepared and filed by a party or attorney must be served on the other parties by the party or attorney who prepared it; and

(D) service under this rule does not alter the effectiveness of the document.

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(1) a defendant's pleadings and replies to those pleadings do not need to be served on the other defendants;

(2) any cross-claim, counterclaim avoidance, or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(4) a copy of the order must be served upon the parties.

(d) Certificate of service. No certificate of service is required when a document is served through an electronic filing account under paragraph (b)(3)(A). When a document that is required to be served is served by email, mail, or other methods of service:

(1) if the document is filed with the court, a certificate of service showing the date and method of service, including the email or mailing address used, unless safeguarded, must be filed with it or within a reasonable time after service; and

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

(e) Filing. Except as provided in Rule 7 and Rule 26, all documents after the complaint that are required to be served must be filed with the court. Attorneys with an electronic filing account must file a document electronically. A self-represented party who is not an attorney may file a document with the court using any of the following methods:

(1) email;

(2) mail;

(3) the court's MyCase interface, where applicable; or

(4) in person.

Filing is complete upon the earliest of acceptance by the electronic filing system or by the court.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code section 46-1-16;

(2) electronically file a scanned image of the affidavit or declaration;

(3) electronically file the affidavit or declaration with a conformed signature; or

(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the court clerk, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

Effective November 1, 2024

Advisory Committee Notes

Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the document on parties who have an e-filing account. (Attorneys representing parties in the district court are required to have an account and electronically file documents. Code of Judicial Administration Rule 4-503.) The 2015 amendment excepts from this provision documents electronically filed in juvenile court.

Although electronic filing in the juvenile court presents to the parties the documents that have been filed, the juvenile court e-filing application (CARE), unlike that in the district court, does not deliver an email alerting the party to that fact. The Board of Juvenile Court Judges and the Advisory Committee on the Rules of Juvenile Procedure believe this difference renders electronic filing alone insufficient notice of a document having been filed. So in the juvenile court, a party electronically filing a document must serve that document by one of the other permitted methods.

Note adopted 2015

Tab 8