

**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) 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 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 ~~or~~ declaration~~s~~ or other admissible evidence. The motion may also include a supporting memorandum.

(2) ~~All~~ 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 court commissioner might make a decision against you without your input. In addition, you 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)(e)~~ ~~(6)~~ **Oral motion.** ~~Oral motions made before a court commissioner in court during a hearing are~~ disfavored, but the court commissioner ~~shall have~~ discretion to consider an oral motions for based on good cause shown.

~~(d)~~ **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)~~ **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)~~ **Reply.** The moving party may file a reply, ~~consisting of any reply memorandum, and attach any~~ affidavit, ~~(s) or~~ declaration, ~~(s) or~~ other admissible evidences. The reply must be filed and served on the responding party at least seven<sup>7</sup> 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)~~ **Counter-motion.** A responding 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 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 business days before the hearing. A separate notice of hearing on a counter-motions is not required.

**(hf) 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.

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

**(jh) 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 exhibital requirements.~~

(2) Copies of ~~court papers~~ documents that are already included filed ~~such as decrees, orders, minute entries, motions, or affidavits, already filed with them 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 two<sup>2</sup> business days after notice of the defect or at least three<sup>3</sup> 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, e~~ Copies of any such ~~voluminous~~ documents beyond

1107        the page limits must be supplied to the other parties at the time of the filing of the  
1108        summary, chart, or calculation.

1109        (B) The originals or duplicates of the documents must be available at the hearing  
1110        for examination by the parties and the commissioner.

1111        **(k*i*) Length.** ~~Initial and responding memoranda may not exceed 10 pages of argument~~  
1112        ~~without leave of the court. Reply memoranda may not exceed 5 pages of argument~~  
1113        ~~without leave of the court. Except as provided below, The total number of pages~~  
1114        ~~submitted to the court by each party may submit no more than not exceed 25 total pages~~  
1115        per hearing regardless of the number of motions to be heard. This page limit applies to  
1116        the total of all motions, responses, counter-motions, replies, memoranda, including  
1117        affidavits, declarations, exhibits, attachments, and summaries submitted by each party  
1118        for a hearing, but excluding financial declarations and income verification.

1119        ~~The court commissioner may permit the party to file an over-length memorandum upon~~  
1120        ~~ex parte application and showing of good cause.~~

1121        (1) The following documents are excluded from the page limit and must be submitted  
1122        in their entirety:

1123                (A) financial declarations and their required attachments;

1124                (B) income verification;

1125                (C) tax returns;

1126                (D) appraisals;

1127                (E) financial statements and reports prepared by an accountant;

1128                (F) wills;

1129                (G) trust documents;

1130                (H) contracts;

1131                (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) 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) 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) 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.

**(om) 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 divorces;

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

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

(5) motions 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.

**(pn) ~~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.