1   **Rule 12. Motions.**

2   (a) **Motions**. An application to the court for an order shall be by motion, which,

3   unless made during a trial or hearing, shall be in writing and in accordance with this

4   rule. A motion shall state succinctly and with particularity the grounds upon which it

5   is made and the relief sought. A motion need not be accompanied by a memorandum

6   unless required by the court.

7   (b) **Request to Submit for Decision**. If neither party has advised the court of the

8   filing nor requested a hearing, when the time for filing a response to a motion and the

9   reply has passed, either party may file a request to submit the motion for decision. If a

10   written Request to Submit is filed it shall be a separate pleading so captioned. The

11   Request to Submit for Decision shall state the date on which the motion was served,

12   the date the opposing memorandum, if any, was served, the date the reply

13   memorandum, if any, was served, and whether a hearing has been requested. The

14   notification shall contain a certificate of mailing to all parties. If no party files a

15   written Request to Submit, or the motion has not otherwise been brought to the

16   attention of the court, the motion will not be considered submitted for decision.

17   (c) **Time for filing specified motions**. Any defense, objection or request,

18   including request for rulings on the admissibility of evidence, which is capable of

19   determination without the trial of the general issue may be raised prior to trial by

20   written motion.

21   (c)(1) The following shall be raised at least 7 days prior to the trial:

22   (c)(1)(A) defenses and objections based on defects in the indictment or

23   information ;

24   (c)(1)(B) motions to suppress evidence;

25   (c)(1)(C) requests for discovery where allowed;

26   (c)(1)(D) requests for severance of charges or defendants;

27   (c)(1)(E) motions to dismiss on the ground of double jeopardy ; or

28   (c)(1)(F) motions challenging jurisdiction, unless good cause is shown why the

29   issue could not have been raised at least 7 days prior to trial.

30   (c)(2) Motions for a reduction of criminal offense at sentencing pursuant to Utah

31   Code Section 76-3-402(1) shall be in writing and filed at least 14 days prior to the

32   date of sentencing unless the court sets the date for sentencing within ten days of the

33   entry of conviction. Motions for a reduction of criminal offense pursuant to Utah

34   Code Section 76-3-402(2) may be raised at any time after sentencing upon proper

35   service of the motion on the appropriate prosecuting entity.

36   (d) **Motions to Suppress**. A motion to suppress evidence shall:

37   (d)(1) describe the evidence sought to be suppressed;

38   (d)(2) set forth the standing of the movant to make the application; and

39   (d)(3) specify sufficient legal and factual grounds for the motion to give the

40   opposing party reasonable notice of the issues and to enable the court to determine

41   what proceedings are appropriate to address them.

42   If an evidentiary hearing is requested, no written response to the motion by the

43   non-moving party is required, unless the court orders otherwise. At the conclusion of

44   the evidentiary hearing, the court may provide a reasonable time for all parties to

45   respond to the issues of fact and law raised in the motion and at the hearing.

46   (e) **Motions made before trial.** A motion made before trial shall be determined

47   before trial unless the court for good cause orders that the ruling be deferred for later

48   determination. Where factual issues are involved in determining a motion, the court

49   shall state its findings on the record.

50   (f) **Failure to timely raise defenses or objections.** Failure of the defendant to

51   timely raise defenses or objections or to make requests which must be made prior to

52   trial or at the time set by the court shall constitute waiver thereof, but the court for

53   cause shown may grant relief from such waiver.

54   (g) A verbatim record shall be made of all proceedings at the hearing on motions,

55   including such findings of fact and conclusions of law as are made orally.

56   (h) **Defects in the institution of the prosecution or indictment or information.**

57   If the court grants a motion based on a defect in the institution of the prosecution or in

58   the indictment or information, it may also order that bail be continued for a reasonable

59   and specified time pending the filing of a new indictment or information. Nothing in

60   this rule shall be deemed to affect provisions of law relating to a statute of limitations.

61   (i) **Motions challenging the constitutionality of Utah statutes, ordinances, and**

62   **other governmental enactments**.

63   (i)(1) **Challenges to a statute.** If a party in a court of record challenges the

64   constitutionality of a statute in an action in which the Attorney General has not

65   appeared, the party raising the question of constitutionality shall notify the

66   Attorney General of such fact by serving the notice on the Attorney General by

67   email or, if circumstances prevent service by email, by mail at the address below.

68   The party shall then file proof of service with the court.

69   Email: notices@agutah.gov

70   Mail:

71   Office of the Utah Attorney General

72   Attn: Utah Solicitor General

73   350 North State Street, Suite 230

74   P.O. Box 142320

75   Salt Lake City, Utah 84114-2320

76   (i)(2) **Challenges to an ordinance or other governmental enactment.** If a

77   party challenges the constitutionality of a governmental entity's ordinance, rule, or

78   other administrative or legislative enactment in an action in which the

79   governmental entity has not appeared, the party raising the question of

80   constitutionality shall notify the governmental entity of such fact by serving the

81   person identified in Rule 4(d)(1) of the Utah Rules of Civil Procedure. The party

82   shall then file proof of service with the court.

83   (i)(3) **Notification procedures.**

84   (i)(3)(A) **Form and content**. The notice shall (i) be in writing, (ii) be

85   titled "Notice of Constitutional Challenge Under URCrP 12(i)," (iii)

86   concisely describe the nature of the challenge, and (iv) include, as an

87   attachment, the pleading, motion, or other paper challenging the

88   constitutionality of the statute.

89   (i)(3)(B) **Timing**. The party shall serve the notice on the Attorney

90   General or other governmental entity on or before the date the party files the

91   paper challenging the constitutionality of the statute.

92 (i)(4) **Attorney General's or other governmental entity's response to notice.**

93   (i)(4)(A)Within 14 days after the deadline for the parties to file all papers in

94 response to the constitutional challenge, the Attorney General or other

95 governmental entity ("responding entity") shall file a notice of intent to respond

96 unless the responding entity determines that a response is unnecessary. The

97 responding entity may seek up to an additional 7 days' extension of time to file

98 a notice of intent to respond.

99   (i)(4)(B) If the responding entity files a notice of intent to respond within

100 the time permitted by this rule, the court will allow the responding entity to file

101 a response to the constitutional challenge and participate at oral argument when

102 it is heard.

103   (i)(4)(C) Unless the parties stipulate to or the court grants additional time,

104 the responding entity's response to the constitutional challenge shall be filed

105 within 14 days after filing the notice of intent to respond.

106   (i)(4)(D) The responding entity's right to respond to a constitutional

107 challenge under Rule 25A of the Utah Rules of Appellate Procedure is

108 unaffected by the responding entity's decision not to respond under this rule.

109   (i)(5) **Failure to provide notice.** Failure of a party to provide notice as required

110 by this rule is not a waiver of any constitutional challenge otherwise timely

111   asserted. If a party does not serve a notice as required by this rule, the court may

112   postpone the hearing until the party serves the notice.