

# Agenda

## Advisory Committee on Rules of Civil Procedure

July 29, 2020

4:00 to 6:00 p.m.

*Via Webex*

|  |       |   |
|--|-------|---|
| Welcome and approval of minutes.   | Tab 1 | Jonathan Hafen, Chair   |
| <i>Legislative standing agenda item</i><br>Rule 83 <ul style="list-style-type: none"><li>Application to represented parties</li></ul>  | Tab 2 | Nancy Sylvester, Lauren DiFrancesco, Jim Hunnicutt, Michael Drechsel  |
| Rules 4, 7, 8, 36, 101: <ul style="list-style-type: none"><li>Compare and wordsmith all consequences language</li></ul>  | Tab 3 | Nancy Sylvester   |
| URCP 24, URCrP 12, and URAP 25A - <a href="#">comment period</a> closed April 12, 2020 <ul style="list-style-type: none"><li>Continue discussion of “agency” vs. “political subdivision”</li></ul> | Tab 4 | Judge Kent Holmberg   |
| Rules 43 and 4-106: <ul style="list-style-type: none"><li>Discuss moving provisions of <a href="#">4-106</a> (proposal to repeal) to Rule 43</li></ul>   | Tab 5 | Lauren DiFrancesco, Susan Vogel, Judge Clay Stucki, Judge Laura Scott |
| Rule 47: <ul style="list-style-type: none"><li>Pandemic-related request from Board of District Court Judges</li></ul>  | Tab 6 | Judge Andrew Stone  |
| <i>Other business</i> <ul style="list-style-type: none"><li>Subcommittee assignment to look at whether any rules should be amended in response to the pandemic</li></ul>                           |       | Jonathan Hafen, Chair   |

**Committee Webpage:** <http://www.utcourts.gov/committees/civproc/>

**2020 Meeting Schedule:** May 27, 2020, June 24, 2020, September 23, 2020, October 28, 2020, November 18, 2020

# Tab 1

The draft June 2020 minutes are attached for approval.

**UTAH SUPREME COURT ADVISORY COMMITTEE  
ON RULES OF CIVIL PROCEDURE**

**Summary Minutes – June 24, 2020**

**DUE TO THE COVID-19 PANDEMIC AND STATE OF EMERGENCY  
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX**

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| <b>Committee members,<br/>staff &amp; guests</b> | <b>Present</b> | <b>Excused</b> | <b>Appeared by<br/>Phone</b> |
|--|----------------|----------------|------------------------------|
| Jonathan Hafen, Chair                            | <b>X</b>       |                |                              |
| Rod N. Andreason                                 | <b>X</b>       |                |                              |
| Judge James T. Blanch                            | <b>X</b>       |                |                              |
| Lauren DiFrancesco                               | <b>X</b>       |                |                              |
| Judge Kent Holmberg                              | <b>X</b>       |                |                              |
| James Hunnicutt                                  | <b>X</b>       |                |                              |
| Larissa Lee                                      | <b>X</b>       |                |                              |
| Trevor Lee                                       |                | <b>X</b>       |                              |
| Judge Amber M. Mettler                           |                | <b>X</b>       |                              |
| Timothy Pack                                     |                | <b>X</b>       |                              |
| Bryan Pattison                                   |                | <b>X</b>       |                              |
| Michael Petrogeorge                              | <b>X</b>       |                |                              |
| Judge Clay Stucki                                | <b>X</b>       |                |                              |
| Judge Laura Scott                                | <b>X</b>       |                |                              |
| Leslie W. Slaugh                                 | <b>X</b>       |                |                              |
| Trystan B. Smith                                 | <b>X</b>       |                |                              |
| Heather M. Sneddon                               |                | <b>X</b>       |                              |
| Paul Stancil                                     | <b>X</b>       |                |                              |
| Judge Andrew H. Stone                            | <b>X</b>       |                |                              |
| Justin T. Toth                                   | <b>X</b>       |                |                              |
| Susan Vogel                                      | <b>X</b>       |                |                              |
| Brooke McKnight                                  | <b>X</b>       |                |                              |
| Ash McMurray, Recording<br>Secretary             |                | <b>X</b>       |                              |
| Nancy Sylvester, Staff                           | <b>X</b>       |                |                              |
| Chuck Conrad, Guest                              | <b>X</b>       |                |                              |

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## (1) WELCOME AND RULE 68 UPDATE

Jonathan Hafen welcomed and updated the committee on his meeting with the Utah Supreme Court regarding Rule 68. Mr. Hafen noted that the Court has an open mind about the rule but has asked that the rule be circulated from and through the Utah State Bar for discussion rather than from the Court itself. The committee will work with the Utah Association for Justice and Representative Brammer to collect feedback from the legal community regarding the potential change to Rule 68.

## (2) APPROVAL OF MINUTES

Mr. Hafen asked for approval of the May 2020 minutes. Rod Andreason moved to approve the minutes. Jim Hunnicutt seconded the motion. The minutes were approved unanimously.

## (3) RULE 101

Mr. Hunnicutt introduced proposed language that he prepared with Susan Vogel and Nathanael Player regarding family-law-specific amendments to Rule 101 to make it consistent with caution and consequences amendments to Rules 4, 7, 8, and 36. Leslie Slaugh noted that the proposed language may need to address that a written response may be required. The committee discussed Mr. Slaugh's comment and amended the proposed language. The committee also discussed how best to refer to the consequences for failure to include the cautionary language or bilingual notice. After the discussion concluded, Ms. Vogel moved to send the proposed amendments to the Utah Supreme Court for comment. Mr. Hunnicutt seconded the motion. The motion passed unanimously.

The committee approved the following proposed amendments to send to the Court:

### **Rule 101. Motion practice before court commissioners.**

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

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

(a)(2) All motions must include the bilingual Notice to Responding Party approved by the Judicial Council.

(a)(3) Each motion to a court commissioner must include the following cautionary language at the top right corner (immediately below the 1½ inch margin) of the first page of the document, 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 might make a decision against you without your input. In addition, you may also file a written response at least 14 days

before the hearing.” Failure to include this cautionary language or the bilingual Notice to Responding Party may be grounds to continue the hearing, or may provide the non-moving party with a basis to set aside the order resulting from the motion under Rule 60(b) for excusable neglect.

#### **(4) RULE 24**

Nancy Sylvester introduced comments suggesting amendments to Rule 24. The committee first discussed whether to expand the language of Rule 24(b)(2) to add “political subdivisions” or “state or local government entity.” The committee amended the proposed language to read as follows, but at Judge Kent Holmberg’s suggestion, the committee will return to the question of whether to use the term “political subdivision” rather than “agency”:

##### **Rule 24. Intervention.**

[...]

(b)(2) **By a Governmental Entity, Officer, or Agency.** On timely motion, the court may permit a federal, state, or local government, or its officer or agent, to intervene if a party’s claim or defense is based on:

(b)(2)(A) a statute or executive order administered by the officer or agency;  
or

(b)(2)(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

Turning to Rule 24(d), the committee corrected a typo in Rule 24(d)(3)(A). In Rule 24(d)(3)(A) and (B) the committee expanded the term “statutes” to also include “paper challenging constitutionality as set forth above” to capture other possible constitutional challenges:

##### **(d)(3) Notification procedures.**

(d)(3)(A) **Form and content.** The notice shall (i) be in writing, (ii) be titled “Notice of Constitutional Challenge Under URCP 24(d),” (iii) concisely describe the nature of the challenge, and (iv) include, as an attachment, the pleading, motion, or other paper challenging constitutionality as set forth above.

(d)(3)(B) **Timing.** The party shall serve the notice on the Attorney General or other governmental entity on or before the date the party files the paper challenging constitutionality as set forth above.

#### **(5) RULE 83**

Ms. Sylvester introduced amendments to Rule 83 recommended by appellate court staff to clarify whether a district or appellate court may rely on another court’s vexatious litigant order. The committee discussed making explicit that the findings in a vexatious litigant order entered under Rule 83 may be used statewide by any court to impose its own conditions on the litigant. The committee discussed a concern raised by Judge Laura Scott regarding a presiding judge in one district not being responsible for reviewing filings entered in another. The committee also discussed a suggestion by Judge Stone that the presiding judge be able consult with the judge who entered the

vexatious litigant order when considering what to do with future filings. After incorporating revisions to the proposed language recommended by the committee, Mr. Andreason moved to send the proposed amendments to the Supreme Court for comment. Lauren DiFrancesco seconded the motion. The motion passed unanimously.

The committee approved the following proposed amendments to send to the Court:

**Rule 83. Vexatious litigants.**

[...]

(b) **Vexatious litigant orders.** The court may, on its own motion or on the motion of any party, enter an order requiring a vexatious litigant to:

[...]

(b)(5) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any future claim for relief in any court; or

[...]

(e) **Prefiling orders as to future claims.**

(e)(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims shall, before filing, obtain an order authorizing the vexatious litigant to file the claim. The presiding judge of the judicial district in which the claim is to be filed, in consultation with the judge who entered the vexatious litigant order, shall decide the application. In granting an application, the presiding judge may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

[...]

(i) **Applicability of vexatious litigant order to other courts.** After a court has issued a vexatious litigant order, any other court may rely upon that court's findings and order its own restrictions against the litigant as provided in paragraph (b).

**(6) RULE 43**

The committee formed a subcommittee to move the provisions regarding remote hearings from Code of Judicial Administration Rule 4-106 to Rule 43 of the Rules of Civil Procedure. The subcommittee comprises Susan Vogel, Lauren DiFrancesco (chair), Judge Clay Stucki, and Judge Laura Scott. The subcommittee will also consider federal rules and what other states have done.

**(7) ADJOURNMENT**

The remaining items were deferred until July 29, 2020. Mr. Hafen informed the committee that the Court approved the committee's recommendation to reappoint Justin Toth, Heather Sneddon, and Judge Andrew Stone as members of the committee. Mr. Hafen noted that Larissa Lee had left the committee due to her appointment as the Appellate Court Administrator and thanked her for her service. The Court approved the committee's recommendation to appoint recording secretary Ash McMurray as a member of the committee to fill the vacancy left by Ms. Lee. The meeting adjourned at 5:58 p.m.

# Tab 2

Legislative Standing Item: Rule 83

Should the vexatious litigant rule also apply to represented parties?

1       **Rule 83. Vexatious litigants.**

2       **(a) Definitions.**

3       (a)(1) The court may find a person to be a "vexatious litigant" if the person, with or without legal  
4       representation, including an attorney acting pro se, without legal representation, does any of the  
5       following:

6               (a)(1)(A) In the immediately preceding seven years, the person has filed at least five claims  
7       for relief, other than small claims actions, that have been finally determined against the person,  
8       and the person does not have within that time at least two claims, other than small claims actions,  
9       that have been finally determined in that person's favor.

10              (a)(1)(B) After a claim for relief or an issue of fact or law in the claim has been finally  
11       determined, the person two or more additional times re-litigates or attempts to re-litigate the  
12       claim, the issue of fact or law, or the validity of the determination against the same party in whose  
13       favor the claim or issue was determined.

14              (a)(1)(C) In any action, the person three or more times does any one or any combination of  
15       the following:

16                      (a)(1)(C)(i) files unmeritorious pleadings or other papers,

17                      (a)(1)(C)(ii) files pleadings or other papers that contain redundant, immaterial, impertinent  
18       or scandalous matter,

19                      (a)(1)(C)(iii) conducts unnecessary discovery or discovery that is not proportional to what  
20       is at stake in the litigation, or

21                      (a)(1)(C)(iv) engages in tactics that are frivolous or solely for the purpose of harassment  
22       or delay.

23              (a)(1)(D) The person purports to represent or to use the procedures of a court other than a  
24       court of the United States, a court created by the Constitution of the United States or by Congress  
25       under the authority of the Constitution of the United States, a tribal court recognized by the United  
26       States, a court created by a state or territory of the United States, or a court created by a foreign  
27       nation recognized by the United States.

28              (a)(2) "Claim" and "claim for relief" mean a petition, complaint, counterclaim, cross claim or third-  
29       party complaint.

30       **(b) Vexatious litigant orders.** The court may, on its own motion or on the motion of any party, enter  
31       an order requiring a vexatious litigant to:

32                      (b)(1) furnish security to assure payment of the moving party's reasonable expenses, costs and, if  
33       authorized, attorney fees incurred in a pending action;

34                      (b)(2) obtain legal counsel before proceeding in a pending action;

35                      (b)(3) obtain legal counsel before filing any future claim for relief;



36 (b)(4) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before  
37 filing any paper, pleading, or motion in a pending action;

38 (b)(5) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before  
39 filing any future claim for relief in any court; or

40 (b)(6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct.

41 **(c) Necessary findings and security.**

42 (c)(1) Before entering an order under subparagraph (b), the court must find by clear and  
43 convincing evidence that:

44 (c)(1)(A) the party subject to the order is a vexatious litigant; and

45 (c)(1)(B) there is no reasonable probability that the vexatious litigant will prevail on the claim.

46 (c)(2) A preliminary finding that there is no reasonable probability that the vexatious litigant will  
47 prevail is not a decision on the ultimate merits of the vexatious litigant's claim.

48 (c)(3) The court shall identify the amount of the security and the time within which it is to be  
49 furnished. If the security is not furnished as ordered, the court shall dismiss the vexatious litigant's  
50 claim with prejudice.

51 **(d) Prefiling orders in a pending action.**

52 (d)(1) If a vexatious litigant is subject to a prefiling order in a pending action requiring leave of the  
53 court to file any paper, pleading, or motion, the vexatious litigant shall submit any proposed paper,  
54 pleading, or motion to the judge assigned to the case and must:

55 (d)(1)(A) demonstrate that the paper, pleading, or motion is based on a good faith dispute of  
56 the facts;

57 (d)(1)(B) demonstrate that the paper, pleading, or motion is warranted under existing law or a  
58 good faith argument for the extension, modification, or reversal of existing law;

59 (d)(1)(C) include an oath, affirmation or declaration under criminal penalty that the proposed  
60 paper, pleading or motion is not filed for the purpose of harassment or delay and contains no  
61 redundant, immaterial, impertinent or scandalous matter;

62 (d)(2) A prefiling order in a pending action shall be effective until a final determination of the  
63 action on appeal, unless otherwise ordered by the court.

64 (d)(3) After a prefiling order has been effective in a pending action for one year, the person  
65 subject to the prefiling order may move to have the order vacated. The motion shall be decided by the  
66 judge to whom the pending action is assigned. In granting the motion, the judge may impose any  
67 other vexatious litigant orders permitted in paragraph (b).

68 (d)(4) All papers, pleadings, and motions filed by a vexatious litigant subject to a prefiling order  
69 under this paragraph (d) shall include a judicial order authorizing the filing and any required security.  
70 If the order or security is not included, the clerk or court shall reject the paper, pleading, or motion.

71 **(e) Prefiling orders as to future claims.**

72 (e)(1) A vexatious litigant subject to a pre-filing order restricting the filing of future claims shall,  
73 before filing, obtain an order authorizing the vexatious litigant to file the claim. The presiding judge of  
74 the judicial district in which the claim is to be filed, in consultation with the judge who entered the  
75 vexatious litigant order, shall decide the application. In granting an application, the presiding judge  
76 may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

77 (e)(2) To obtain an order under paragraph (e)(1), the vexatious litigant's application must:

78 (e)(2)(A) demonstrate that the claim is based on a good faith dispute of the facts;

79 (e)(2)(B) demonstrate that the claim is warranted under existing law or a good faith argument  
80 for the extension, modification, or reversal of existing law;

81 (e)(2)(C) include an oath, affirmation, or declaration under criminal penalty that the proposed  
82 claim is not filed for the purpose of harassment or delay and contains no redundant, immaterial,  
83 impertinent or scandalous matter;

84 (e)(2)(D) include a copy of the proposed petition, complaint, counterclaim, cross-claim, or  
85 third party complaint; and

86 (e)(2)(E) include the court name and case number of all claims that the applicant has filed  
87 against each party within the preceding seven years and the disposition of each claim.

88 (e)(3) A pre-filing order limiting the filing of future claims is effective indefinitely unless the court  
89 orders a shorter period.

90 (e)(4) After five years a person subject to a pre-filing order limiting the filing of future claims may  
91 file a motion to vacate the order. The motion shall be filed in the same judicial district from which the  
92 order entered and be decided by the presiding judge of that district.

93 (e)(5) A claim filed by a vexatious litigant subject to a pre-filing order under this paragraph (e) shall  
94 include an order authorizing the filing and any required security. If the order or security is not  
95 included, the clerk of court shall reject the filing.

96 **(f) Notice of vexatious litigant orders.**

97 (f)(1) The clerks of court shall notify the Administrative Office of the Courts that a pre-filing order  
98 has been entered or vacated.

99 (f)(2) The Administrative Office of the Courts shall disseminate to the clerks of court a list of  
100 vexatious litigants subject to a pre-filing order.

101 **(g) Statute of limitations or time for filing tolled.** Any applicable statute of limitations or time in  
102 which the person is required to take any action is tolled until 7 days after notice of the decision on the  
103 motion or application for authorization to file.

104 **(h) Contempt sanctions.** Disobedience by a vexatious litigant of a pre-filing order may be punished  
105 as contempt of court.

106 **(i) Other authority.** This rule does not affect the authority of the court under other statutes and rules  
107 or the inherent authority of the court.

108 | **(j) Applicability of vexatious litigant order to other courts.** After a court has issued a vexatious  
109 | litigant order, any other court may rely upon that court's findings and order its own restrictions  
110 | against the litigant as provided in paragraph (b).

111

112

# Tab 3

Rules 4, 7, 8, 36, and 101:

Compare and wordsmith all consequences language.

1       **Rule 4. Process.**

2       **(a) Signing of summons.** The summons must be signed and issued by the plaintiff or the plaintiff's  
3 attorney. Separate summonses may be signed and issued.

4       **(b) Time of service.** Unless the summons and complaint are accepted, a copy of the summons and  
5 complaint in an action commenced under Rule 3(a)(1) must be served no later than 120 days after the  
6 complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint  
7 are not timely served, the action against the unserved defendant may be dismissed without prejudice on  
8 motion of any party or on the court's own initiative.

9       **(c) Contents of summons.**

10       (c)(1) The summons must:

11           (c)(1)(A) contain the name and address of the court, the names of the parties to the action,  
12 and the county in which it is brought;

13           (c)(1)(B) be directed to the defendant;

14           (c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and  
15 otherwise the plaintiff's address and telephone number;

16           (c)(1)(D) state the time within which the defendant is required to answer the complaint in  
17 writing;

18           (c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default  
19 will be entered against the defendant; ~~and~~

20           (c)(1)(F) state either that the complaint is on file with the court or that the complaint will be  
21 filed with the court within 10 days after service; and

22           (c)(1)(G) include the bilingual notice set forth in the form summons approved by the Utah  
23 Judicial Council.

24       (c)(2) If the action is commenced under Rule 3(a)(2), the summons must also:

25           (c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days  
26 after service; and

27           (c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at  
28 least 14 days after service to determine if the complaint has been filed.

29       (c)(3) If service is by publication, the summons must also briefly state the subject matter and the  
30 sum of money or other relief demanded, and that the complaint is on file with the court.

31       **(d) Methods of service.** The summons and complaint may be served in any state or judicial district  
32 of the United States. Unless service is accepted, service of the summons and complaint must be by one  
33 of the following methods:

34           **(d)(1) Personal service.** The summons and complaint may be served by any person 18 years of  
35 age or older at the time of service and not a party to the action or a party's attorney. If the person to  
36 be served refuses to accept a copy of the summons and complaint, service is sufficient if the person  
37 serving them states the name of the process and offers to deliver them. Personal service must be  
38 made as follows:

39 (d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or  
40 (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by  
41 leaving them at the individual's dwelling house or usual place of abode with a person of suitable  
42 age and discretion who resides there, or by delivering them to an agent authorized by  
43 appointment or by law to receive process;

44 (d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and  
45 complaint ~~to the minor and also to the a parent or guardian of the minor's father, mother, or~~  
46 ~~guardian~~ or, if none can be found within the state, then to any person having the care and control  
47 of the minor, or with whom the minor resides, or by whom the minor is employed;

48 (d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or  
49 incapable of conducting the individual's own affairs, by delivering a copy of the summons and  
50 complaint to the individual and to the guardian or conservator of the individual if one has been  
51 appointed; the individual's legal representative if one has been appointed, and, in the absence of  
52 a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or  
53 control of the individual;

54 (d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or  
55 any of its political subdivisions, by delivering a copy of the summons and complaint to the person  
56 who has the care, custody, or control of the individual, or to that person's designee or to the  
57 guardian or conservator of the individual if one has been appointed. The person to whom the  
58 summons and complaint are delivered must promptly deliver them to the individual;

59 (d)(1)(E) Upon a corporation not otherwise provided for in this rule, a limited liability company,  
60 a partnership, or an unincorporated association subject to suit under a common name, by  
61 delivering a copy of the summons and complaint to an officer, a managing or general agent, or  
62 other agent authorized by appointment or law to receive process and by also mailing a copy of  
63 the summons and complaint to the defendant, if the agent is one authorized by statute to receive  
64 process and the statute so requires. If no officer or agent can be found within the state, and the  
65 defendant has, or advertises or holds itself out as having, a place of business within the state or  
66 elsewhere, or does business within this state or elsewhere, then upon the person in charge of the  
67 place of business;

68 (d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and  
69 complaint as required by statute, or in the absence of a controlling statute, to the recorder;

70 (d)(1)(G) Upon a county, by delivering a copy of the summons and complaint as required by  
71 statute, or in the absence of a controlling statute, to the county clerk;

72 (d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons  
73 and complaint as required by statute, or in the absence of a controlling statute, to the  
74 superintendent or administrator of the board;

75 (d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and  
76 complaint as required by statute, or in the absence of a controlling statute, to the president or  
77 secretary of its board;

78 (d)(1)(J) Upon the state of Utah or its department or agency by delivering a copy of the  
79 summons and complaint to the attorney general and any other person or agency required by  
80 statute to be served; and

81 (d)(1)(K) Upon a public board, commission or body by delivering a copy of the summons and  
82 complaint as required by statute, or in the absence of a controlling statute, to any member of its  
83 governing board, or to its executive employee or secretary.

84 **(d)(2) Service by mail or commercial courier service.**

85 (d)(2)(A) The summons and complaint may be served upon an individual other than one  
86 covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or  
87 judicial district of the United States provided the defendant signs a document indicating receipt.

88 (d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs  
89 (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of  
90 the United States provided defendant's agent authorized by appointment or by law to receive  
91 service of process signs a document indicating receipt.

92 (d)(2)(C) Service by mail or commercial courier service shall be complete on the date the  
93 receipt is signed as provided by this rule.

94 **(d)(3) Acceptance of service.**

95 **(d)(3)(A) Duty to avoid expenses.** All parties have a duty to avoid unnecessary expenses of  
96 serving the summons and complaint.

97 **(d)(3)(B) Acceptance of service by party.** Unless the person to be served is a  
98 minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind,  
99 or incapable of conducting the individual's own affairs, a party may accept service of a summons  
100 and complaint by signing a document that acknowledges receipt of the summons and complaint.

101 **(d)(3)(B)(i) Content of proof of electronic acceptance.** If acceptance is obtained  
102 electronically, the proof of acceptance must demonstrate on its face that the electronic signature  
103 is attributable to the party accepting service and was voluntarily executed by the party. The proof  
104 of acceptance must demonstrate that the party received readable copies of the summons and  
105 complaint prior to signing the acceptance of service.

106 **(d)(3)(B)(ii) Duty to avoid deception.** A request to accept service must not be  
107 deceptive, including stating or implying that the request to accept service originates with a public  
108 servant, peace officer, court, or official government agency. A violation of this paragraph may  
109 nullify the acceptance of service and could subject the person to criminal penalties under  
110 applicable Utah law.

111 **(d)(3)(C) Acceptance of service by attorney for party.** An attorney may accept service of a  
112 summons and complaint on behalf of the attorney's client by signing a document that acknowledges  
113 receipt of the summons and complaint.

114 **(d)(3)(D) Effect of acceptance, proof of acceptance.** A person who accepts service of the  
115 summons and complaint retains all defenses and objections, except for adequacy of service. Service

116 is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes  
117 proof of service under Rule 4(e).

118 **(d)(4) Service in a foreign country.** Service in a foreign country must be made as follows:

119 (d)(4)(A) by any internationally agreed means reasonably calculated to give notice, such as  
120 those means authorized by the Hague Convention on the Service Abroad of Judicial and  
121 Extrajudicial Documents;

122 (d)(4)(B) if there is no internationally agreed means of service or the applicable international  
123 agreement allows other means of service, provided that service is reasonably calculated to give  
124 notice:

125 (d)(4)(B)(i) in the manner prescribed by the law of the foreign country for service in that  
126 country in an action in any of its courts of general jurisdiction;

127 (d)(4)(B)(ii) as directed by the foreign authority in response to a letter of request issued  
128 by the court; or

129 (d)(4)(B)(iii) unless prohibited by the law of the foreign country, by delivering a copy of the  
130 summons and complaint to the individual personally or by any form of mail requiring a signed  
131 receipt, addressed and dispatched by the clerk of the court to the party to be served; or

132 (d)(4)(C) by other means not prohibited by international agreement as may be directed by the  
133 court.

134 **(d)(5) Other service.**

135 (d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot  
136 be ascertained through reasonable diligence, if service upon all of the individual parties is  
137 impracticable under the circumstances, or if there is good cause to believe that the person to be  
138 served is avoiding service, the party seeking service may file a motion to allow service by some  
139 other means. An affidavit or declaration supporting the motion must set forth the efforts made to  
140 identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of  
141 the individual parties.

142 (d)(5)(B) If the motion is granted, the court will order service of the complaint and summons  
143 by means reasonably calculated, under all the circumstances, to apprise the named parties of the  
144 action. The court's order must specify the content of the process to be served and the event upon  
145 which service is complete. Unless service is by publication, a copy of the court's order must be  
146 served with the process specified by the court.

147 (d)(5)(C) If the summons is required to be published, the court, upon the request of the party  
148 applying for service by other means, must designate a newspaper of general circulation in the  
149 county in which publication is required.

150 **(e) Proof of service.**

151 (e)(1) The person effecting service must file proof of service stating the date, place, and manner of  
152 service, including a copy of the summons. If service is made by a person other than by an attorney,  
153 sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the



154 proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a,  
155 Uniform Unsworn Declarations Act.

156 (e)(2) Proof of service in a foreign country must be made as prescribed in these rules for service  
157 within this state, or by the law of the foreign country, or by order of the court.

158 (e)(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a  
159 receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the  
160 court.

161 (e)(4) Failure to file proof of service does not affect the validity of the service. The court may allow  
162 proof of service to be amended.

163 **Advisory Committee Notes**

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**Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.****(a) Pleadings.** Only these pleadings are allowed:

- (a)(1) a complaint;
- (a)(2) an answer to a complaint;
- (a)(3) an answer to a counterclaim designated as a counterclaim;
- (a)(4) an answer to a crossclaim;
- (a)(5) a third-party complaint;
- (a)(6) an answer to a third-party complaint; and
- (a)(7) a reply to an answer if ordered by the court.

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

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

(b)(2) A request under [Rule 26](#) for extraordinary discovery must follow Rule [37\(a\)](#).

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

(b)(4) A request under Rule [45](#) to quash a subpoena must follow Rule [37\(a\)](#).

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

**(c) Name and content of motion.**

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

(c)(2) **Caution language.** For all dispositive motions, the motion must include the following language at the top right corner of the first page of the document, in bold type:

**This motion requires you to respond. Please see the Notice to Responding Party.**

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

(c)(4) **Failure to include notices.** Failure to include the cautionary language in paragraph (c)(2) and the bilingual notice in paragraph (c)(3) may be grounds to continue the hearing on the motion, or may provide the non-moving party with a basis under Rule 60(b) for excusable neglect to set aside the order resulting from the motion.

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

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

- (c)(4~~6~~)(A) a concise statement of the relief requested and the grounds for the relief requested; and

(c)(46)(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.

(c)(27) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the motion.

(c)(38) **Length of motion.** If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the motion may not exceed 25 pages, not counting the attachments, unless a longer motion is permitted by the court. Other motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the court.

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

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

(d)(1)(A) a concise statement of the party's preferred disposition of the motion and the grounds supporting that disposition;

(d)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the nonmoving party and argument citing authority for that disposition; and

(d)(1)(C) objections to evidence in the motion, citing authority for the objection.

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

(d)(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the memorandum opposing the motion may not exceed 25 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other opposing memoranda may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

**(e) Name and content of reply memorandum.**

(e)(1) Within 7 days after the memorandum opposing the motion is filed, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion. The moving party must title the memorandum substantially as "Reply memorandum supporting motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(e)(1)(A) a concise statement of the new matter raised in the memorandum opposing the motion;

(e)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party not previously set forth that respond to the opposing party's statement of facts and argument citing authority rebutting the new matter;

(e)(1)(C) objections to evidence in the memorandum opposing the motion, citing authority for the objection; and

(e)(1)(D) response to objections made in the memorandum opposing the motion, citing authority for the response.

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

(e)(3) If the motion is for relief authorized by Rule [12\(b\)](#) or [12\(c\)](#), Rule [56](#) or Rule [65A](#), the reply memorandum may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other reply memoranda may not exceed 10 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

**(f) Objection to evidence in the reply memorandum; response.** If the reply memorandum includes an objection to evidence, the nonmoving party may file a response to the objection no later than 7 days after the reply memorandum is filed. If the reply memorandum includes evidence not previously set forth, the nonmoving party may file an objection to the evidence no later than 7 days after the reply memorandum is filed, and the moving party may file a response to the objection no later than 7 days after the objection is filed. The objection or response may not be more than 3 pages.

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

(g)(1) the motion;

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

(g)(3) the reply memorandum, if any; and

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

**(h) Hearings.** The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing must be separately identified in the caption of the document containing the request. The court must grant a request for a hearing on a motion under Rule [56](#) or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

**(i) Notice of supplemental authority.** A party may file notice of citation to significant authority that comes to the party's attention after the party's motion or memorandum has been filed or after oral argument but before decision. The notice may not exceed 2 pages. The notice must state the citation to the authority, the page of the motion or memorandum or the point orally argued to which the authority applies, and the reason the authority is relevant. Any other party may promptly file a response, but the court may act on the motion without waiting for a response. The response may not exceed 2 pages.

**(j) Orders.**

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

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

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

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

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

(j)(5)(A) after all other parties have approved the form of the order (The party preparing the proposed order must indicate the means by which approval was received: in person; by telephone; by signature; by email; etc.);

(j)(5)(B) after the time to object to the form of the order has expired (The party preparing the proposed order must also file a certificate of service of the proposed order.); or

(j)(5)(C) within 7 days after a party has objected to the form of the order (The party preparing the proposed order may also file a response to the objection.).

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

(j)(6)(A) a stipulated motion;

(j)(6)(B) a motion that can be acted on without waiting for a response;

(j)(6)(C) an ex parte motion;

(j)(6)(D) a statement of discovery issues under Rule [37\(a\)](#); and

(j)(6)(E) the request to submit for decision a motion in which a memorandum opposing the motion has not been filed.

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

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

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

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

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

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

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

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

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

(l)(1)(A) motion to permit an over-length motion or memorandum;

(l)(1)(B) motion for an extension of time if filed before the expiration of time;

(l)(1)(C) motion to appear pro hac vice; and

(l)(1)(D) other similar motions.

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

(l)(2)(A) be titled as a regular motion;

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

(l)(2)(C) cite the statute or rule authorizing the motion to be acted on without waiting for a response; and

(l)(2)(D) be accompanied by a request to submit for decision and a proposed order.

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

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

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

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

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

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

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

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

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

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

(p)(3) motion to continue a hearing;

(p)(4) motion to appoint a guardian ad litem;

(p)(5) motion to substitute parties;

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

(p)(7) motion for a conference under Rule [16](#); and

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

**(q) Limit on order to show cause.** ~~An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show cause to believe a party has violated a court order. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket.~~

Advisory Committee Notes

1       **Rule 8. General rules of pleadings.**

2       **(a) Claims for relief.** An original claim, counterclaim, cross-claim or third-party claim must contain a  
3 short and plain: (1) statement of the claim showing that the party is entitled to relief; and (2) demand for  
4 judgment for specified relief. Relief in the alternative or of several different types may be demanded. A  
5 party who claims damages but does not plead an amount must plead that the damages are such as to  
6 qualify for a specified tier defined by Rule 26(c)(3). A pleading that qualifies for tier 1 or tier 2 discovery  
7 constitutes a waiver of any right to recover damages above the tier limits specified in Rule 26(c)(3),  
8 unless the pleading is amended under Rule 15. A pleading requesting relief must include the following  
9 language on the top of the first page in bold print:

10       **If you do not respond to this document within applicable time limits, judgment could be**  
11 **entered against you as requested.**

12       Failure to include the caution language may provide the non-moving party with a basis under Rule  
13 60(b) for excusable neglect to set aside the order resulting from the motion.

14       **(b) Defenses; form of denials.** A party must state in simple, short and plain terms any defenses to  
15 each claim asserted and must admit or deny the statements in the claim. A party without knowledge or  
16 information sufficient to form a belief about the truth of a statement must so state, and this has the effect  
17 of a denial. Denials must fairly meet the substance of the statements denied. A party may deny all of the  
18 statements in a claim by general denial. A party may specify the statement or part of a statement that is  
19 admitted and deny the rest. A party may specify the statement or part of a statement that is denied and  
20 admit the rest.

21       **(c) Affirmative defenses.** An affirmative defense must contain a short and plain: (1) statement of the  
22 affirmative defense; and (2) a demand for relief. A party must set forth affirmatively in a responsive  
23 pleading accord and satisfaction, arbitration and award, assumption of risk, comparative fault, discharge  
24 in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches,  
25 license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other  
26 matter constituting an avoidance or affirmative defense. If a party mistakenly designates a defense as a  
27 counterclaim or a counterclaim as a defense, the court, on terms, may treat the pleadings as if the  
28 defense or counterclaim had been properly designated.

29       **(d) Effect of failure to deny.** Statements in a pleading to which a responsive pleading is required,  
30 other than statements of the amount of damage, are admitted if not denied in the responsive pleading.  
31 Statements in a pleading to which no responsive pleading is required or permitted are deemed denied or  
32 avoided.

33       **(e) Consistency.** A party may state a claim or defense alternately or hypothetically, either in one  
34 count or defense or in separate counts or defenses. If statements are made in the alternative and one of  
35 them is sufficient, the pleading is not made insufficient by the insufficiency of an alternative statement. A  
36 party may state legal and equitable claims or legal and equitable defenses regardless of consistency.

37       **(f) Construction of pleadings.** All pleadings will be construed to do substantial justice.

38       Advisory Committee Notes

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1       **Rule 36. Request for admission.**

2       **(a) Request for admission.** A party may serve upon any other party a written request to admit the  
3 truth of any discoverable matter set forth in the request, including the genuineness of any document. The  
4 matter must relate to statements or opinions of fact or of the application of law to fact. Each matter  
5 ~~shall~~must be separately stated and numbered. A copy of the document ~~shall~~must be served with the  
6 request unless it has already been furnished or made available for inspection and copying.

7       **(b) Required notice on request for admission.** The following notice is required on all requests for  
8 admission. The notice must be on the top of the first page in bold print as follows: **You must respond to**  
9 **these requests for admissions within 28 days. If you do not respond within 28 days, the court will**  
10 **consider you to have admitted these requests as true.** Failure to include the cautionary language may  
11 may provide the non-requesting party with a basis under Rule 60(b) for excusable neglect to set aside a  
12 court determination that, due to non-response, the requests are deemed admitted.

13       **(bc) Answer or objection.**

14       **(bc)(1)** The matter is admitted unless, within 28 days after service of the request, the responding  
15 party serves upon the requesting party a written response.

16       **(bc)(2)** The answering party ~~shall~~must restate each request before responding to it. Unless the  
17 answering party objects to a matter, the party must admit or deny the matter or state in detail the  
18 reasons why the party cannot truthfully admit or deny. A party may identify the part of a matter which  
19 is true and deny the rest. A denial ~~shall~~must fairly meet the substance of the request. Lack of  
20 information is not a reason for failure to admit or deny unless, after reasonable inquiry, the  
21 information known or reasonably available is insufficient to enable an admission or denial. A party  
22 who considers the subject of a request for admission to be a genuine issue for trial may not object on  
23 that ground alone but may, subject to Rule 37(c), deny the matter or state the reasons for the failure  
24 to admit or deny.

25       **(bc)(3)** If the party objects to a matter, the party ~~shall~~must state the reasons for the objection.  
26 Any reason not stated is waived unless excused by the court for good cause. The party ~~shall~~must  
27 admit or deny any part of a matter that is not objectionable. It is not grounds for objection that the  
28 truth of a matter is a genuine issue for trial.

29       **(ed) Effect of admission.** Any matter admitted under this rule is conclusively established unless the  
30 court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or  
31 amendment if the presentation of the merits of the action will be promoted and withdrawal or amendment  
32 will not prejudice the requesting party. Any admission under this rule is for the purpose of the pending  
33 action only. It is not an admission for any other purpose, nor may it be used in any other action.

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1 **Rule 101. Motion practice before court commissioners.**

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

4 (a)(1) A motion must be in writing and state succinctly and with particularity the relief sought and  
5 the grounds for the relief sought. Any evidence necessary to support the moving party's position must  
6 be presented by way of one or more affidavits or declarations or other admissible evidence. The  
7 moving party motion may also file include a supporting memorandum.

8 (a)(2) All motions must include the bilingual Notice to Responding Party approved by the Judicial  
9 Council.

10 (a)(3) Each motion to a court commissioner must include the following cautionary language at the  
11 top right corner (immediately below the 1½ inch margin) of the first page of the document, in bold  
12 type: "This motion will be decided by the court commissioner at an upcoming hearing. If you do not  
13 appear at the hearing, the Court might make a decision against you without your input. In addition,  
14 you may also file a written response at least 14 days before the hearing." Failure to include this  
15 cautionary language or the bilingual Notice to Responding Party may be grounds to continue the  
16 hearing, or may provide the non-moving party with a basis to set aside the order resulting from the  
17 motion under Rule 60(b) for excusable neglect.

18 **(b) Time to file and serve.** The moving party must file the motion and any supporting papers with the  
19 clerk of the court and obtain a hearing date and time. The moving party must serve the responding party  
20 with the motion and supporting papers, together with notice of the hearing at least 28 days before the  
21 hearing. If service is more than 90 days after the date of entry of the most recent appealable order,  
22 service may not be made through counsel.

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

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

30 **(e) Counter motion.** Responding to a motion is not sufficient to grant relief to the responding party. A  
31 responding party may request affirmative relief by way of a counter motion. A counter motion need not be  
32 limited to the subject matter of the original motion. All of the provisions of this rule apply to counter  
33 motions except that a counter motion must be filed and served with the response. Any response to the  
34 counter motion must be filed and served no later than the reply to the motion. Any reply to the response  
35 to the counter motion must be filed and served at least 3 business days before the hearing. The reply  
36 must be served in a manner that will cause the reply to be actually received by the party responding to  
37 the counter motion (i.e. hand-delivery, fax or other electronic delivery as allowed by rule or agreed by the

38 parties) at least 3 business days before the hearing. A separate notice of hearing on counter motions is  
39 not required.

40 **(f) Necessary documentation.** Motions and responses regarding temporary orders concerning  
41 alimony, child support, division of debts, possession or disposition of assets, or litigation expenses, must  
42 be accompanied by verified financial declarations with documentary income verification attached as  
43 exhibits, unless financial declarations and documentation are already in the court's file and remain  
44 current. Attachments for motions and responses regarding child support and child custody must also  
45 include a child support worksheet.

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

48 **(h) Exhibits; objection to failure to attach.**

49 (h)(1) Except as provided in paragraph (h)(3) of this rule, any documents such as tax returns,  
50 bank statements, receipts, photographs, correspondence, calendars, medical records, forms, or  
51 photographs must be supplied to the court as exhibits to one or more affidavits (as appropriate)  
52 establishing the necessary foundational requirements. Copies of court papers such as decrees,  
53 orders, minute entries, motions, or affidavits, already in the court's case file, may not be filed as  
54 exhibits. Court papers from cases other than that before the court, such as protective orders, prior  
55 divorce decrees, criminal orders, information or dockets, and juvenile court orders (to the extent the  
56 law does not prohibit their filing), may be submitted as exhibits.

57 (h)(2) If papers or exhibits referred to in a motion or necessary to support the moving party's  
58 position are not served with the motion, the responding party may file and serve an objection to the  
59 defect with the response. If papers or exhibits referred to in the response or necessary to support the  
60 responding party's position are not served with the response, the moving party may file and serve an  
61 objection to the defect with the reply. The defect must be cured within 2 business days after notice of  
62 the defect or at least 3 business days before the hearing, whichever is earlier.

63 (h)(3) Voluminous exhibits which cannot conveniently be examined in court may not be filed as  
64 exhibits, but the contents of such documents may be presented in the form of a summary, chart or  
65 calculation under Rule 1006 of the Utah Rules of Evidence. Unless they have been previously  
66 supplied through discovery or otherwise and are readily identifiable, copies of any such voluminous  
67 documents must be supplied to the other parties at the time of the filing of the summary, chart or  
68 calculation. The originals or duplicates of the documents must be available at the hearing for  
69 examination by the parties and the commissioner. Collections of documents, such as bank  
70 statements, checks, receipts, medical records, photographs, e-mails, calendars and journal entries  
71 that collectively exceed ten pages in length must be presented in summary form. Individual  
72 documents with specific legal significance, such as tax returns, appraisals, financial statements and  
73 reports prepared by an accountant, wills, trust documents, contracts, or settlement agreements must  
74 be submitted in their entirety.

75       **(i) Length.** Initial and responding memoranda may not exceed 10 pages of argument without leave of  
76 the court. Reply memoranda may not exceed 5 pages of argument without leave of the court. The total  
77 number of pages submitted to the court by each party may not exceed 25 pages, including affidavits,  
78 attachments and summaries, but excluding financial declarations and income verification. The court  
79 commissioner may permit the party to file an over-length memorandum upon ex parte application and  
80 showing of good cause.

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

84       **(k) Limit on order to show cause.** An application to the court for an order to show cause may be  
85 made only for enforcement of an existing order or for sanctions for violating an existing order. An  
86 application for an order to show cause must be supported by affidavit or other evidence sufficient to show  
87 cause to believe a party has violated a court order.

88       **(l) Hearings.**

89           (l)(1) The court commissioner may not hold a hearing on a motion for temporary orders before the  
90 deadline for an appearance by the respondent under Rule 12.

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

96       **(m) Motions to judge.** The following motions must be to the judge to whom the case is assigned:  
97 motion for alternative service; motion to waive 30-day waiting period; motion to waive divorce education  
98 class; motion for leave to withdraw after a case has been certified as ready for trial; and motions in limine.  
99 A court may provide that other motions be considered by the judge.

100       **(n) Objection to court commissioner's recommendation.** A recommendation of a court  
101 commissioner is the order of the court until modified by the court. A party may object to the  
102 recommendation by filing an objection under Rule 108.

103

# Tab 4

Rule 24:

Discussion of the terms "governmental entity," "political subdivision," and "agency."

**Rule 24. Intervention.**

(a) ~~Intervention of right. Upon~~ On timely application motion, the court must permit anyone shall be permitted to intervene in an action who:

~~(a)(1) when a statute confers~~ is given an unconditional right to intervene ~~by a statute;~~ or

~~(a)(2) when the applicant claims an interest relating to the property or transaction which that is the subject of the action, and the applicant is so situated that the disposition disposing of the action may as a practical matter impair or impede the applicant's movant's ability to protect that its interest, unless the applicant's interest is adequately represented by existing parties~~ adequately represent that interest.

(b) ~~Permissive intervention. Upon~~

~~(b)(1) In General. On~~ timely application motion, the court may permit anyone may be permitted to intervene in an action: (1) when a statute confers who:

~~(b)(1)(A) is given~~ a conditional right to intervene by a statute; or ~~(2) when an applicant's~~

~~(b)(1)(B) has a claim or defense and that shares with~~ the main action have a common

~~question of law or fact in common. When a party to an action bases~~

~~(b)(2) By a Governmental Entity, Officer, or Agency. On~~ timely motion, the court may permit a federal, or state, or local government, or its officer or agental officer or agency, to intervene if a party's claim or defense upon any is based on:

~~(b)(2)(A) a statute or executive order administered by a governmental the officer or or agency;~~ or upon

~~(b)(2)(B) any regulation, order, requirement, or agreement issued or made pursuant to under~~ the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action.

~~(b)(3) Delay or Prejudice. In exercising its discretion, the court shall must consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties parties'~~ rights.

~~(c) Procedure. Notice and motion required. A person desiring motion to intervene shall serve a motion to intervene upon must be served on~~ the parties as provided in Rule Rule 5. The motions shall motion must state the grounds therefor for intervention and shall be accompanied by a pleading setting forth that sets out the claim or defense for which intervention is sought.

~~(d) Constitutionality of Utah statutes, and ordinances, rules, and other administrative or legislative enactments.~~

~~(d)(1) If a party challenges the constitutionality of a statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality shall notify the Attorney General of such fact. The court shall permit the state to be heard upon timely application.~~ Challenges to a statute. If a party challenges the constitutionality of a statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality shall notify the Attorney

**Comment [NS1]:** Should this be political subdivision rather than agency?

**Comment [NS2]:** Political subdivision?

**Comment [NS3]:** From Judge Holmberg:

I am not convinced that "governmental entity is not a good term to use in the rule. We were considering using "political subdivision." I found two places in Utah Code that define the term and many, many sections that use the term. The two places I found were in the Governmental Immunity Act and under Title 11: "Political subdivision" means any county, city, town, school district, community reinvestment agency, special improvement or taxing district, local district, special service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13, Interlocal Cooperation Act, or other governmental subdivision or public corporation.

Here is how it is defined in Black's:

POLITICAL SUBDIVISION, Black's Law Dictionary (11th ed. 2019)

A division of a state that exists primarily to discharge some function of local government.

Blacks does not define Governmental Entity.

The governmental immunity act defines "Governmental entity" as:

(a) the state and its political subdivisions;

Utah Code Ann. § 63G-7-102 (4)

IN SUMMARY:

It may be semantics at this point. "Other governmental entity" and "political subdivision" mean the same thing. "Other governmental entity" does sound broader and maybe easier to work with.

38 General of such fact by serving the notice on the Attorney General by email or, if circumstances  
39 prevent service by email, by mail at the address below. The party shall then file proof of service with  
40 the court.

41 Email: [notices@agutah.gov](mailto:notices@agutah.gov)

42 Mail:

43 Office of the Utah Attorney General

44 Attn: Utah Solicitor General

45 350 North State Street, Suite 230

46 P.O. Box 142320

47 Salt Lake City, Utah 84114-2320

48 ~~\_(d)(2) If a party challenges the constitutionality of a county or municipal ordinance in an action in~~  
49 ~~which the county or municipal attorney has not appeared, the party raising the question of~~  
50 ~~constitutionality shall notify the county or municipal attorney of such fact. The court shall permit the~~  
51 ~~county or municipality to be heard upon timely application.~~

52 (d)(2) **Challenges to an ordinance or other governmental enactment.** If a party challenges the  
53 constitutionality of a governmental entity's ordinance, rule, or other administrative or legislative  
54 enactment in an action in which the governmental entity has not appeared, the party raising the  
55 question of constitutionality shall notify the governmental entity of such fact by serving the person  
56 identified in Rule 4(d)(1) of the Utah Rules of Civil Procedure. The party shall then file proof of service  
57 with the court.

58 (d)(3) **Notification procedures.**

59 (d)(3)(A) **Form and content.** The notice shall (i) be in writing, (ii) be titled "Notice of  
60 Constitutional Challenge Under URCP 24(d)," (iii) concisely describe the nature of the  
61 challenge, and (iv) include, as an attachment, the pleading, motion, or other paper  
62 challenging constitutionality as set forth above.

63 (d)(3)(B) **Timing.** The party shall serve the notice on the Attorney General or other  
64 governmental entity on or before the date the party files the paper challenging  
65 constitutionality as set forth above.

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

67 (d)(4)(A) Within 14 days after the deadline for the parties to file all papers in response to the  
68 constitutional challenge, the Attorney General or other governmental entity ("responding entity")  
69 shall file a notice of intent to respond unless the responding entity determines that a response is  
70 unnecessary. The responding entity may seek up to an additional 7 days' extension of time to file  
71 a notice of intent to respond.

72 (d)(4)(B) If the responding entity files a notice of intent to respond within the time permitted by  
73 this rule, the court will allow the responding entity to file a response to the constitutional challenge  
74 and participate at oral argument when it is heard.



75            (d)(4)(C) Unless the parties stipulate to or the court grants additional time, the responding  
76            entity's response to the constitutional challenge shall be filed within 14 days after filing the notice  
77            of intent to respond.

78            (d)(4)(D) The responding entity's right to respond to a constitutional challenge under Rule  
79            25A of the Utah Rules of Appellate Procedure is unaffected by the responding entity's decision  
80            not to respond under this rule.

81            (d)(5) **Failure to provide notice.** ~~(d)(3)~~ Failure of a party to provide notice as required by this rule  
82            is not a waiver of any constitutional challenge otherwise timely asserted. If a party does not serve a  
83            notice as required by this rule, the court may postpone the hearing until the party serves the notice.

84  
85

# Tab 5

## Remote Hearings:

Below are some of the items the Remote Hearings subcommittee discussed as well as the remaining items left to discuss with the full committee.

-Susan Vogel is going to look at whether we should include something about TTY for those who are hearing impaired if the hearing format won't be video conference (where a sign language interpreter would make the necessary accommodation).

-The subcommittee made the default for evidentiary hearings videoconference and opted not to make videoconference the default for Rule 12 and 56 motions as well.

-The subcommittee discussed and is still considering whether we should include an Advisory Committee Note for Rule 45 indicating that the person to contact for technical difficulties should not be the court as the courts don't have tech support folks to help in this area. Instead, the purpose of having someone to call is more to notify the parties and the court that attempts are being made and the person didn't no-show and perhaps change the format to telephone if video isn't working.

-An alternative to a committee note would be to just say in the rule that it should be either the issuing attorney (or pro se party) or someone at the issuing attorney's office as that is the person with the greatest interest in having the witness attend (and the person who needs to know what efforts were or weren't made to attend for follow-up motion practice).

### **Rule 43. Evidence.**

**(a) Form.** In all trials and evidentiary hearings, the testimony of witnesses shall be taken in open court, unless otherwise provided by these rules, the Utah Rules of Evidence, or a statute of this state. The court may, upon request or on its own order, for good cause and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location. Whenever possible, contemporaneous transmission shall be conducted via videoconference. For good cause shown, the court may permit testimony via telephonic means. Appropriate safeguards must include:

(a)(1) notice of the date, time, and method of transmission, including instructions for participation and who to contact if there are technical difficulties;

(a)(2) a party and the party's counsel to communicate confidentially;

(a)(3) documents, photos and other things that are delivered in the courtroom to be delivered previously or simultaneously to the remote participants;

(a)(4) an interpreter, if needed; and

(a)(5) a verbatim record of the testimony.

**(b) Evidence on motions.** When a motion is based on facts not in the record, the court may hear the matter on affidavits, declarations, oral testimony or depositions.

#### **Advisory Committee Note**

Federal Rule of Civil Procedure 43 has permitted testimony by contemporaneous transmission since 1996. State court judges have been conducting telephone conferences for many decades. These range from simple scheduling conferences to resolution of discovery disputes to status conferences to pretrial conferences. These conferences tend not to involve testimony, although judges sometimes permit testimony by telephone or more recently by video conference with the consent of the parties. The 2016 amendments are part of a coordinated effort by the Supreme Court and the Judicial Council to authorize a convenient practice that is more frequently needed in an increasingly connected society and to bring a level of quality to that practice suitable for a court record. As technology evolves the methods of contemporaneous transmission will change.

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

#### **(h) Hearings.**

(h)(1) The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing must be separately identified in the caption of the document containing the request. The court must grant a request for a hearing on a motion under Rule 56 or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(h)(2) The court may, upon request or on its own order, for good cause and with appropriate safeguards, conduct any hearing remotely or permit a witness, a party, or counsel to participate in a hearing remotely. Appropriate safeguards must include:

(h)(2)(A) notice of the date, time, and method of transmission, including instructions for participation and who to contact if there are technical difficulties

(h)(2)(B) a party and the party's counsel to communicate confidentially;

(h)(2)(C) documents, photos and other things that are delivered in the courtroom to be delivered previously or simultaneously to the remote participants;

(h)(2)(D) an interpreter, if needed; and

(h)(2)(E) a verbatim record of the testimony.

#### **Rule 45. Subpoena.**

##### **(a) Form; issuance.**

(a)(1) Every subpoena shall:

(a)(1)(A) issue from the court in which the action is pending;

(a)(1)(B) state the title and case number of the action, the name of the court from which it is issued, and the name and address of the party or attorney responsible for issuing the subpoena;

(a)(1)(C) command each person to whom it is directed

(a)(1)(C)(i) to appear and give testimony at a trial, hearing or deposition, or

(a)(1)(C)(ii) to appear and produce for inspection, copying, testing or sampling documents, electronically stored information or tangible things in the possession, custody or control of that person, or

(a)(1)(C)(iii) to copy documents or electronically stored information in the possession, custody or control of that person and mail or deliver the copies to the party or attorney responsible for issuing the subpoena before a date certain, or

(a)(1)(C)(iv) to appear and to permit inspection of premises;

(a)(1)(D) if an appearance is required, specify notice of the date, time and place for the appearance and, if remote transmission is requested, instructions for participation and who to contact if there are technical difficulties; and

(a)(1)(E) include a notice to persons served with a subpoena in a form substantially similar to the approved subpoena form. A subpoena may specify the form or forms in which electronically stored information is to be produced.

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

# Tab 6

The Board of District Court Judges is proposing a rule change regarding empaneling jurors in response to issues that have arisen during the COVID-19 pandemic.

1 **Rule 47. Jurors.**

2 (a) **Examination of jurors.** The court may permit the parties or their attorneys to conduct the  
3 examination of prospective jurors or may itself conduct the examination. In the latter event, the  
4 court shall permit the parties or their attorneys to supplement the examination by such further  
5 inquiry as is material and proper or shall itself submit to the prospective jurors such additional  
6 questions of the parties or their attorneys as is material and proper. Prior to examining the jurors,  
7 the court may make a preliminary statement of the case. The court may permit the parties or their  
8 attorneys to make a preliminary statement of the case, and notify the parties in advance of trial.

9 (b) **Alternate jurors.** The court may direct that alternate jurors be impaneled. Alternate jurors, in  
10 the order in which they are called, shall replace jurors who, prior to the time the jury retires to  
11 consider its verdict, become unable or disqualified to perform their duties. Alternate jurors shall  
12 be selected at the same time and in the same manner, shall have the same qualifications, shall be  
13 subject to the same examination and challenges, shall take the same oath, and shall have the  
14 same functions, powers, and privileges as principal jurors. An alternate juror who does not  
15 replace a principal juror shall be discharged when the jury retires to consider its verdict unless  
16 the parties stipulate otherwise and the court approves the stipulation. The court may withhold  
17 from the jurors the identity of the alternate jurors until the jurors begin deliberations.

18 (c) **Challenge defined; by whom made.** A challenge is an objection made to the trial jurors and  
19 may be directed (1) to the panel or (2) to an individual juror.

20 (d) **Challenge to panel; time and manner of taking; proceedings.** A challenge to the panel can  
21 be founded only on a material departure from the forms prescribed in respect to the drawing and  
22 return of the jury, or on the intentional omission of the proper officer to summon one or more of  
23 the jurors drawn. It must be taken before a juror is sworn. It must be in writing or be stated on  
24 the record, and must specifically set forth the facts constituting the ground of challenge. If the  
25 challenge is allowed, the court must discharge the jury so far as the trial in question is concerned.

26 (e) **Challenges to individual jurors; number of peremptory challenges.** The challenges to  
27 individual jurors are either peremptory or for cause. Each party shall be entitled to three  
28 peremptory challenges. Several defendants or several plaintiffs shall be considered as a single  
29 party for the purposes of making peremptory challenges unless there is a substantial controversy  
30 between them, in which case the court shall allow as many additional peremptory challenges as

31 is just. If one or two alternate jurors are called, each party is entitled to one peremptory challenge  
32 in addition to those otherwise allowed. **If the jury panel is of a number where a jury cannot be**  
33 **seated if some or all peremptory challenges are exercised, the court may, prior to any side**  
34 **exercising peremptory challenges, equally reduce the number of peremptory challenges to which**  
35 **each side is entitled, to allow a jury to be seated.**

36 **(f) Challenges for cause.** A challenge for cause is an objection to a particular juror and shall be  
37 heard and determined by the court. The juror challenged and any other person may be examined  
38 as a witness on the hearing of such challenge. A challenge for cause may be taken on one or  
39 more of the following grounds. On its own motion the court may remove a juror upon the same  
40 grounds.

41 (f)(1) A want of any of the qualifications prescribed by law to render a person competent as a  
42 juror.

43 (f)(2) Consanguinity or affinity within the fourth degree to either party, or to an officer of  
44 a corporation that is a party.

45 (f)(3) Standing in the relation of debtor and creditor, guardian and ward, master and  
46 servant, employer and employee or principal and agent, to either party, or united in  
47 business with either party, or being on any bond or obligation for either party; provided,  
48 that the relationship of debtor and creditor shall be deemed not to exist between a  
49 municipality and a resident thereof indebted to such municipality by reason of a tax,  
50 license fee, or service charge for water, power, light or other services rendered to such  
51 resident.

52 (f)(4) Having served as a juror, or having been a witness, on a previous trial between the  
53 same parties for the same cause of action, or being then a witness therein.

54 (f)(5) Pecuniary interest on the part of the juror in the result of the action, or in the main  
55 question involved in the action, except interest as a member or citizen of a municipal  
56 corporation.

57 (f)(6) Conduct, responses, state of mind or other circumstances that reasonably lead the  
58 court to conclude the juror is not likely to act impartially. No person may serve as a juror,

59 if challenged, unless the judge is convinced the juror can and will act impartially and  
60 fairly.

61 (g) **Selection of jury.** The judge shall determine the method of selecting the jury and notify the  
62 parties at a pretrial conference or otherwise prior to trial. The following methods for selection are  
63 not exclusive.

64 (g)(1) **Strike and replace method.** The court shall summon the number of jurors that are  
65 to try the cause plus such an additional number as will allow for any alternates, for all  
66 peremptory challenges permitted, and for all challenges for cause that may be granted. At  
67 the direction of the judge, the clerk shall call jurors in random order. The judge may hear  
68 and determine challenges for cause during the course of questioning or at the end thereof.  
69 The judge may and, at the request of any party, shall hear and determine challenges for  
70 cause outside the hearing of the jurors. After each challenge for cause sustained, another  
71 juror shall be called to fill the vacancy, and any such new juror may be challenged for  
72 cause. When the challenges for cause are completed, the clerk shall provide a list of the  
73 jurors remaining, and each side, beginning with the plaintiff, shall indicate thereon its  
74 peremptory challenge to one juror at a time in regular turn until all peremptory challenges  
75 are exhausted or waived. The clerk shall then call the remaining jurors, or so many of  
76 them as shall be necessary to constitute the jury, including any alternate jurors, and the  
77 persons whose names are so called shall constitute the jury. If alternate jurors have been  
78 selected, the last jurors called shall be the alternates, unless otherwise ordered by the  
79 court prior to voir dire.

80 (g)(2) **Struck method.** The court shall summon the number of jurors that are to try the  
81 cause plus such an additional number as will allow for any alternates, for all peremptory  
82 challenges permitted and for all challenges for cause that may be granted. At the direction  
83 of the judge, the clerk shall call jurors in random order. The judge may hear and  
84 determine challenges for cause during the course of questioning or at the end thereof. The  
85 judge may and, at the request of any party, shall hear and determine challenges for cause  
86 outside the hearing of the jurors. When the challenges for cause are completed, the clerk  
87 shall provide a list of the jurors remaining, and each side, beginning with the plaintiff,  
88 shall indicate thereon its peremptory challenge to one juror at a time in regular turn until



89 all peremptory challenges are exhausted or waived. The clerk shall then call the  
90 remaining jurors, or so many of them as shall be necessary to constitute the jury,  
91 including any alternate jurors, and the persons whose names are so called shall constitute  
92 the jury. If alternate jurors have been selected, the last jurors called shall be the alternates,  
93 unless otherwise ordered by the court prior to voir dire.

94 (g)(3) In courts using lists of prospective jurors generated in random order by computer,  
95 the clerk may call the jurors in that random order.

96 (h) **Oath of jury.** As soon as the jury is selected an oath must be administered to the jurors, in  
97 substance, that they and each of them will well and truly try the matter in issue between the  
98 parties, and render a true verdict according to the evidence and the instructions of the court.

99 (i) **Proceedings when juror discharged.** If, after impaneling the jury and before verdict, a juror  
100 becomes unable or disqualified to perform the duties of a juror and there is no alternate juror, the  
101 parties may agree to proceed with the other jurors, or to swear a new juror and commence the  
102 trial anew. If the parties do not so agree the court shall discharge the jury and the case shall be  
103 tried with a new jury.

104 (j) **Questions by jurors.** A judge may invite jurors to submit written questions to a witness as  
105 provided in this section.

106 (j)(1) If the judge permits jurors to submit questions, the judge shall control the process to  
107 ensure the jury maintains its role as the impartial finder of fact and does not become an  
108 investigative body. The judge may disallow any question from a juror and may  
109 discontinue questions from jurors at any time.

110 (j)(2) If the judge permits jurors to submit questions, the judge should advise the jurors  
111 that they may write the question as it occurs to them and submit the question to the bailiff  
112 for transmittal to the judge. The judge should advise the jurors that some questions might  
113 not be allowed.

114 (j)(3) The judge shall review the question with counsel and unrepresented parties and rule  
115 upon any objection to the question. The judge may disallow a question even though no  
116 objection is made. The judge shall preserve the written question in the court file. If the  
117 question is allowed, the judge shall ask the question or permit counsel or an

118 unrepresented party to ask it. The question may be rephrased into proper form. The judge  
119 shall allow counsel and unrepresented parties to examine the witness after the juror's  
120 question.

121 (k) **View by jury.** When in the opinion of the court it is proper for the jury to have a view of the  
122 property which is the subject of litigation, or of the place in which any material fact occurred, it  
123 may order them to be conducted in a body under the charge of an officer to the place, which shall  
124 be shown to them by some person appointed by the court for that purpose. While the jury are  
125 thus absent no person other than the person so appointed shall speak to them on any subject  
126 connected with the trial.

127 (l) **Communication with jurors.** There shall be no off-the-record communication between  
128 jurors and lawyers, parties, witnesses or persons acting on their behalf. Jurors shall not  
129 communicate with any person regarding a subject of the trial. Jurors may communicate with  
130 court personnel and among themselves about topics other than a subject of the trial. It is the duty  
131 of jurors not to form or express an opinion regarding a subject of the trial except during  
132 deliberation. The judge shall so admonish the jury at the beginning of trial and remind them as  
133 appropriate.

134 (m) **Deliberation of jury.** When the case is finally submitted to the jury they may decide in court  
135 or retire for deliberation. If they retire they must be kept together in some convenient place under  
136 charge of an officer until they agree upon a verdict or are discharged, unless otherwise ordered  
137 by the court. Unless by order of the court, the officer having charge of them must not make or  
138 allow to be made any communication to them with respect to the action, except to ask them if  
139 they have agreed upon their verdict, and the officer must not, before the verdict is rendered,  
140 communicate to any person the state of deliberations or the verdict agreed upon.

141 (n) **Exhibits taken by jury; notes.** Upon retiring for deliberation the jury may take with them  
142 the instructions of the court and all exhibits which have been received as evidence in the cause,  
143 except exhibits that should not, in the opinion of the court, be in the possession of the jury, such  
144 as exhibits of unusual size, weapons or contraband. The court shall permit the jury to view  
145 exhibits upon request. Jurors are entitled to take notes during the trial and to have those notes  
146 with them during deliberations. As necessary, the court shall provide jurors with writing  
147 materials and instruct the jury on taking and using notes.

148 (o) **Additional instructions of jury.** After the jury have retired for deliberation, if there is a  
149 disagreement among them as to any part of the testimony, or if they desire to be informed on any  
150 point of law arising in the cause, they may require the officer to conduct them into court. Upon  
151 their being brought into court the information required must be given in the presence of, or after  
152 notice to, the parties or counsel. Such information must be given in writing or stated on the  
153 record.

154 (p) **New trial when no verdict given.** If a jury is discharged or prevented from giving a verdict  
155 for any reason, the action shall be tried anew.

156 (q) **Court deemed in session pending verdict; verdict may be sealed.** While the jury is absent  
157 the court may be adjourned from time to time in respect to other business, but it shall be open for  
158 every purpose connected with the cause submitted to the jury, until a verdict is rendered or the  
159 jury discharged. The court may direct the jury to bring in a sealed verdict at the opening of the  
160 court, in case of an agreement during a recess or adjournment for the day.

161 (r) **Declaration of verdict.** When the jury or three-fourths of them, or such other number as may  
162 have been agreed upon by the parties pursuant to Rule 48, have agreed upon a verdict they must  
163 be conducted into court, their names called by the clerk, and the verdict rendered by their  
164 foreperson; the verdict must be in writing, signed by the foreperson, and must be read by the  
165 clerk to the jury, and the inquiry made whether it is their verdict. Either party may require the  
166 jury to be polled, which shall be done by the court or clerk asking each juror if it is the juror's  
167 verdict. If, upon such inquiry or polling there is an insufficient number of jurors agreeing  
168 therewith, the jury must be sent out again; otherwise the verdict is complete and the jury shall be  
169 discharged from the cause.

170 (s) **Correction of verdict.** If the verdict rendered is informal or insufficient, it may be corrected  
171 by the jury under the advice of the court, or the jury may be sent out again.