Agenda

Supreme Court Advisory Committee
Utah Rules of Civil Procedure
March 22, 2023
4:00 to 6:00 p.m.
Hybrid – In-person and via Webex

Welcome and approval of Feb. minutes	Tab 1	Lauren DiFrancesco
Introduction of new committee members		Lauren DiFrancesco
Rule 3	Tab 2	Trevor Lee
Rule 47 – attorney voir dire – update	Tab 3	Lauren DiFrancesco and Judge Holmberg
Subcommittees discussion	Tab 4	Lauren DiFrancesco
Back from Public Comment – Rules 4, 7, 83	Tab 5	Lauren DiFrancesco
HJR2 – amendment of Rule 65A	Tab 6	Lauren DiFrancesco
Rule 53 – Special Masters	Tab 7	Lauren DiFrancesco
Rule 5	Tab 8	Loni Page
Rule 30(b)(6)	Tab 9	Justin Toth
Consent agenda - *None*		
Pipeline items: - Rules 69A, 69B, 69C (Chad Rasmussen) - MSJ Deadline - Remote Hearings - Rule 60 (Judge Holmberg)		Lauren DiFrancesco

Next Meeting: April 26

Meeting Schedule: 4th Wednesday at 4pm unless otherwise scheduled

Committee Webpage: http://www.utcourts.gov/committees/civproc/

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – February 22, 2023

DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason	**X**		Stacy Haacke, Staff
Lauren DiFrancesco, Chair	**X**		Crystal Powell, Recording Secretary
Judge Kent Holmberg		**X**	Jace Willard, Staff
James Hunniucutt	**X**		
Trevor Lee	**X**		
Ash McMurray	**X**		
Kim Neville		**X**	
Timothy Pack	**X**		
Loni Page	**X**		
Bryan Pattison	**X**		
Judge Laura Scott	**X**		
Judge Clay Stucki	**X**		
Judge Andrew H. Stone	**X**		
Justin T. Toth	**X**		
Susan Vogel	**X**		
Tonya Wright	**X**		
Judge Rita Cornish	**X**		
Vacant Commissioner Seat			
Vacant Academic Seat			
Vacant Academic Seat			
Vacant Self-Rep Perspective Seat			
Vacant Self-Rep Perspective Seat			
2 *Emeritus* Seats Vacant			

(1) INTRODUCTIONS

The meeting started at 4:00 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests. Ms. DiFrancesco also announced that two new Committee members will

be joining to fill the commissioner and attorney posts that are vacant. She also reminded the Committee that the meeting will be hybrid of in person and remote beginning in March 2023.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the January Minutes subject to amendments noted by the Minutes subcommittee. Ms. Susan Vogel moved to adopt the Minutes as amended. Mr. Jim Hunniucutt seconded. The Minutes were unanimously approved.

(3) RULE 59. PUBLIC COMMENTS (ALTERING OR AMENDING A JUDGMENT)

Ms. DiFrancesco reported that there were no public comments. The Committee referred the Rule to the Supreme Court for approval. Mr. Hunniucut raised the motion. Mr. Justin Toth seconded. The motion was approved by all.

(4) RULE 45 (e). PROTECTION OF PERSONS SUBJECT TO SUBPOENAS; OBJECTION

Ms. DiFrancesco reported that this rule change contemplates making it clear that a non-party affected by a subpoena can either serve an objection or a file a motion under Rule 37. If they serve an objection, subsection (5) applies and the party is not entitled to compliance, and they have to request an order compelling compliance under Rule 37 (a). Ms. Di Francesco noted that the draft language sounds a little odd and invited the Committee to suggest better language.

Ms. Vogel raised her non preference for the word "quash" but Ms. DiFrancesco noted that at this point the word can't be removed as it is used in many places in the rules and invited the plain language subcommittee to bring a proposal on abolishing the word "quash" from the rules of civil procedure. Mr. Justin Thot clarified that a motion to quash only applies to fighting a subpoena. He also offered that even if Rule 45 says that a motion to quash has to be filed under Rule 37, Rule 37 is as statement of discovery issues and so the language should not be a motion to quash. Ms. Vogel expressed that it should be easy to object to a subpoena without having to file a statement of discovery issues under Rule 37. Ms. Di Francesco agreed and reminded the Committee that the Rule amendment is to accomplish that goal. The Committee discussed various draft language and the effect on parties and non-parties in not creating confusion. The Committee settled on the language "The person subject to the subpoena or a non-party affected by the subpoena may serve an

objection." Mr. Thot moved to adopt that language. Judge Cornish seconded. The amendment passed unanimously.

(5) RULE 12(A)(1). DEFENSES AND OBJECTIONS.

Ms. Loni Page presented on the proposed amendments. The Supreme court questioned whether it would lead to more defaults if it were not clarified that the answer must also be filed in addition to being served. The Committee discussed the proposed language changes and the history behind the use of the word "file" vs. "file and serve." The Committee discussed if other rules also need to be amended to make the language consistent. Judge Stone expressed that the language should be clear on the expectation of parties. Mr. Andreason also agreed that at times redundant language may be needed for the sake of greater clarity. Judge Stucki moved to adopt the language "file and serve." Ms. Vogel seconded. The motion passed unanimously.

The Committee discussed the inclusion of a table that summarizes the deadlines. Mr. Toth suggested that the inclusion of the table to postponed.

(6) RULE 26.1 (h). NOTICE REQUIREMENTS.

Ms. Page presented the amended language for the notice requirements. The Committee discussed the comments from the Supreme Court that the Rule should clarify that disclosures are only required if the responsible party files an answer or otherwise disagrees with the petition. The subcommittee will continue working on the proposed amendments and did not settle on any changes at this time.

(7) RULE 104. DIVORCE DEGREE UPON AFFIDAVIT.

Ms. Page presented on the proposed amendments and discussed the comments from the Supreme Court that the Rule creates duplication of work and more confusion in divorce actions. The Supreme Court suggested repealing the Rule or clarifying that a sworn pleading or declaration can suffice for the affidavit mentioned in the Rule. The Committee discussed their concerns regarding changing "affidavit" to "declaration" as it might lead to variance with other parts of the Rules. The Committee also discussed whether the Rule should be repealed and the reasons for and against. Judge Stone reiterated his concern from previous meetings that it is important to have the sworn affidavit the decree findings are consistent with what was served on the other party. Ms. Vogel suggested that the Committee working on the Rule more. Ms. DiFrancesco agreed that tabling the issue would also allow a subcommittee to be formed to look at other places in the rule where a sworn pleading may suffice for a declaration. The subcommittee will continue working on the amendment.

(8) Rule 6. Computing Time. Legal Holidays. Juneteenth.

Ms. Di Francesco, presented on the amendments to the court legal holidays. She reported that for the amendment—although it goes against the normal rules of drafting the Rules—the list of holidays will be removed and a link to the court page on holidays will be included. The Committee discussed their concerns on having a link to a court page in the civil rules to define the legal holidays. Some of those concerns include potential changes to the website, access to the webpage in the print version of the Rules, where the link only works digitally, and the length of the link in print form is clumsy. After some discussion, the Committee suggested to define the holiday as "Juneteenth National Freedom Day (as recognized by the Utah Legislature as the third Monday of June)" so that there is no confusion on when it counts based on the federally designated date. Judge Stucki made a motion to on the proposed new language. Judge Stone seconded. The motion passed unanimously.

(9) RULE 30(b)(6). NOTICE OF SUBPOENA DIRECTED TO AN ORGANIZATION.

Mr. Justin Toth presented on the proposed amendments. He summarized that the issue is deciding if and how the Rule should be amended based on federal amendments. He summarized the differences in the state and federal rules where the federal rules require the parties to meet and confer once a subpoena has been served to depose an organization. He also explained that the federal rule includes a more detailed process for notice compared to the state rule. He relayed that the subcommittee thought it would be particularly helpful to hear the judges' responses to some of the questions raised in deciding what amendments to make, based on what the judges are seeing in cases. Some of those questions include whether to have a meet and confer requirement; the timing of the meet and confer; timing of service of notice of deposition; the procedure and timing for resolving objections under Rule 37; time limitations of the depositions. The Committee discussed the questions in turn and gave their guidance to Mr. Toth's subcommittee to begin drafting language for the Rule. Mr. Toth thanked the Committee for the guidance they provided and will draft the Rule accordingly.

(**10) SUBCOMMITTEES. FINALIZING.**

Ms. DiFrancesco asked the subcommittees to report on the status of their work and if some subcommittees should be disbanded. Judge Scott reported that her Probate Subcommittee is still needed and will refocus on working on the probate rules now that they have concluded working on tangent issues. Ms. Vogel reported that the Terminology Subcommittee (renamed Plain Language Subcommittee) reported that it will remain active indefinitely. Judge Stone reported that the Records Subcommittee has conclude its work and may be disbanded. Ms. Vogel suggested that the Rule 101 Subcommittee be kept until the Commissioner joins the Committee. The other active

subcommittees were also briefly acknowledged. Ms. DiFrancesco also reported that new subcommittees will need to be formed to address pending issues.

(11) ADJOURNMENT.

The meeting adjourned at 6:00 p.m.

Tab 2

Tim Clark (10778)
tclark84105@gmail.com
(801) 463-1518

February 23, 2022

VIA EMAIL

Lauren DiFrancesco
Chair, Supreme Court's Advisory Committee on the Rules of Civil Procedure
difrancescol@gtlaw.com

Re: Rule 3(a)(2) of the Utah Rules of Civil Procedure

Dear Lauren,

I write regarding Rule 3(a)(2) of the Utah Rules of Civil Procedure and hope that the Supreme Court's Advisory Committee on the Rules of Civil Procedure might briefly review that provision. Having recently had the unfortunate experience of being personally sued by a collection agency in relation to a disputed medical bill, I was able to gain the perspective of an actual defendant in that type of case. My case was relatively unimportant and itself not an issue for the committee. As a result of this learning experience, however, I would like to draw some attention on certain gaps in Rule 3(a)(2). While I realize that this rule is not a high profile or particularly significant rule, I am afraid that this rule is adding to the disadvantage that legally unsophisticated and economically vulnerable parties already have in trying to navigate the system. While some amount financial hardship is unavoidable when consumers of medical services are private pay or have a high deductible plan, I am concerned that gaming of the rules only exacerbates these issues. Accordingly, I respectfully suggest, for the committee's consideration, a couple amendments regarding Rule 3(a)(2).

1. Eliminate Rule 3(a)(2).

Rule 3(a)(2) is unnecessary and can be deleted. Current Rule 3(a)(2) allows for formal service of a Complaint prior to the Complaint being filed (with filing then at plaintiff's discretion). The defendant has to check with the court clerk, after the period for filing has passed, to see if the complaint is actually filed. Presumably, this rule variation is intended to facilitate quick settlement before filing costs are incurred. I'm skeptical. For example, I was sued on a $225 medical bill; after being served, I was told I

would have to pay over $600 to resolve the claim; within a day, I offered $345 to settle.[1] Express Recovery Services, represented by the Law Office of Edwin Parry, stubbornly insisted that I was required to pay the full amount demanded, and I never received any response to my offer, much less a meaningful counter-offer. Perhaps my experience is simply anecdotal and not representative of more common circumstances, but I have a hard time believing that an unsophisticated party gets any better treatment than an attorney with over 15 years litigation experience. Rule 3(a)(2) is confusing to defendants and causes additional stress to figure out if a case is actually being filed or not. In sum, why keep the relative complexity of Rule 3(a)(2) if it doesn't actually help resolve cases? The process for initiating cases and making a responsive pleading would be easier to understand if Rule 3(a)(2) were simply deleted.

2. <u>If Rule 3(a)(2) Remains, Clarify the Deadline for Responsive Pleadings</u>.

Even if Rule 3(a)(2) is retained, the responsive pleading deadline for a case initiated under Rule 3(a)(2) should be clarified. Again, I'll use my case for illustration purposes only. Instead of responding to my settlement offer, the Law Office of Edwin Parry filed the Complaint on day 10, the last day allowed under Rule 3(a)(2). From what I understand, the Law Office of Edwin Parry files many cases on behalf of Express Recovery Services, and filing on Day 10 is their common practice. Although I am very familiar with litigation, I was still rattled by this process. On Day 1, I explained the medical provider's billing error to them and hoped that it would be resolved without resorting to a lawsuit. On Day 2, I offered to pay more than the original bill and was told that Mr. Parry might get back to me. On Day 11, I was happy that a lawsuit didn't show on Exchange. On Day 14, I was dismayed to learn that the Complaint had been filed. As a practical matter, even though I was aware that a complaint might be filed, 14 days passed before I came to understand that I was actually being sued in Third District Court.

After talking with the court clerk and learning that a complaint has been filed, a defendant served under Rule 3(a)(2) then has to figure out when a responsive pleading is due. Under a reasonable reading of Rule 12, I believe that service is not "complete" until a Complaint is actually filed, meaning that the responsive pleading deadline should be 21 days after the actual filing date of the Complaint. But the Law Office of Edwin Parry firmly insists that a responsive pleading is due 21 days *after initial service*, regardless of when the Complaint is filed. And they can point to a form of summons on the court's website supporting this interpretation.[2] The Summons served with a copy of the Complaint advises defendants to wait "at least 14 days after service" before calling the court clerk to see if a Complaint has been filed. As a result, unsophisticated parties, already confused by the process, find themselves at an immediate disadvantage when they realize, after talking to the court clerk, that they are supposed to file a formal document with the court within seven days. From a very practical perspective, defendants may file a responsive pleading to meet this deadline before even learning of options for representation. Even if representation is later obtained, a *pro se* defendant may make unwarranted admissions in their answer; they may also fail to assert affirmative defenses or compulsory counterclaims. As a result,

[1] While I believed in the merits of my defense, I did not want to litigate. I explained my offer was for the full amount potentially recoverable, because UTAH CODE § 12-1-11, explicitly referenced in the contract, limited the collection fee to $90 (being 40% of $225).

[2] *See* Ten Day Summons, available at https://www.utcourts.gov/howto/filing/summons/.

before the case has even started, defendants are at a disadvantage, adding to the perception that the deck is stacked in the collection agency's favor.

Consistent with the spirit of the Rules of Civil Procedure, all defendants should get at least 21 days to file an answer after knowing that a complaint has actually been filed, regardless of whether they are sued under Rule 3(a)(1) or (a)(2). Even if this process for serving an unfiled complaint is retained, there is an extremely easy fix for the responsive pleading deadline. Rule 12 could be amended to state an answer must be served within 28 days after the filing of a Complaint if a case is initiated under Rule 3(a)(2) (with the extra seven days provided because of the requirement to call the court clerk to learn about the filing, which the collection agency itself recommends not be done until at least 14 days after service).

3. Procedures for Funneling Minor Disputes to Small Claims Court.

The specific issues related to Rule 3(a)(2) discussed above can be addressed with an easy amendment. Nonetheless, I will also generally encourage the committee to consider how routine collection actions on relatively minor medical bills can be steered to small claims (if litigation is truly warranted at all). As a general principle, unsophisticated and unrepresented lay persons are better served by the small claims process, which is much more likely to provide the defendant a meaningful opportunity to present an actual defense on the merits, which should be a goal of the system. Our judges and other court staff do a great job of helping *pro se* litigants navigate the system. But small claims is specifically structured to handle these types of cases. Especially with the threat of attorney's fees for a prevailing party, the *pro se* defendant cannot afford the risks associated with learning to navigate the more complex procedures for district court. I suspect that a collection agency would still accomplish a very high percentage of default judgments in small claims, because a high percentage of cases involve undisputed bills (the main problem being an ability to pay). But for the small percentage of cases involving an actual dispute on the merits, the small claims process would allow a *pro se* defendant to adequately, and briefly, present their side of the story to a human being authorized to decide the case. Even if the defendant loses, the small claims judge is best positioned to make sure that the judgment entered fairly reflects an amount truly warranted under the contract at issue, versus whatever the collection agency unilaterally asserts in its demands.

Thank you for your consideration of these issues.

Sincerely,

/s/ Tim Clark

Name

Address

City, State, Zip

Phone

Email

I am [ ] Plaintiff/Petitioner ~~[ ] Defendant/Respondent~~
[ ] Plaintiff/Petitioner's Attorney ~~[ ] Defendant/Respondent's Attorney~~ (Utah Bar #:_____)
[ ] Plaintiff/Petitioner's Licensed Paralegal Practitioner
~~[ ] Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #:_____)~~

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

_____
Plaintiff/Petitioner

v.

_____
Defendant/Respondent

~~Ten Day~~ Case Initiation Summons
(Utah Rule of Civil Procedure 3 and 4)

(a case number and judge will be assigned if the Plaintiff files the attached complaint with the court within the 10-day deadline referenced below)

_____
Case Number

_____
Judge

_____
~~Commissioner (domestic cases)~~

The State of Utah to

_____ (party's name):

A lawsuit ~~has~~may be~~en~~ filed against you within the next 10 days. **Call the court at _____ no earlier than 11 days after this summons is served on**

you to ask if the attached complaint has been filed and to obtain a case number. ~~Within 21 days after service of this summons on you, you must file with the court a written response, called an answer, to the attached complaint.~~If the lawsuit has been filed, you must file with the court a written response to the complaint, called an answer, and you must file it within 30 days after service of this summons. ~~**Call the court at _____ at least 11 days after service of this summons on you** to ask if the complaint has been filed and to obtain a case number to include in your answer~~ Your~~The~~ answer must include your case number, and must also be served on the plaintiff, plaintiff's attorney, or plaintiff's licensed paralegal practitioner, whose name and address are at the top left corner of this summons.

If you fail to file an answer within 30~~21~~ days of service of this summons, judgment by default may be entered against you for the relief demanded in the complaint.

You may choose to file a motion under Rule 12 of the Utah Rules of Civil Procedure instead of filing an answer. If you choose to file such a motion, you will need to follow the same requirements set forth in the preceding paragraphs to file and serve the motion.

If the Plaintiff does not file with the court the attached complaint within 10 days after service of this summons on you, the case ~~is considered dismissed~~will not go forward and you do not need to file an answer or motion.

The court's Finding Legal Help web page (utcourts.gov/help) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help, and free legal clinics.

~~A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.~~	~~Se ha presentado una demanda en su contra. Si desea que el juez considere su lado, deberá presentar una respuesta por escrito dentro del periodo de tiempo establecido. La respuesta por escrito es conocida como la Respuesta.~~
~~**Call the court to see if a Complaint or Petition has been filed**~~ ~~The plaintiff must file the Complaint with the court within 10 days after service of this~~	~~**Llame al tribunal para ver si se ha presentado una demanda o petición**~~ ~~El demandante debe presentar la demanda en el tribunal dentro de 10 días después de haberle entregado~~

Summons on you. If the complaint is not filed within that time, the case is considered to be dismissed and you do not need to file an answer. Call the court at _____ (phone number) at least 14 days after service of this Summons to ask if the Complaint has been filed. This is an action to: _____ _____ (describe nature of action).	formalmente este citatorio a usted. Si la demanda no es presentada dentro de ese plazo, el caso se considera desestimado usted no necesita presentar una respuesta. Llame al tribunal al _____ (número de teléfono) al menos 14 días después de la entrega formal de este citatorio a usted para preguntar si se ha presentado la demanda. Esta es una acción para: _____ _____ (describir el tipo de acción).
Deadline! Your Answer must be filed with the court and served on the other party **within 21 days** of the date you were served with this Summons. If you do not file and serve your Answer by the deadline, the other party can ask the court for a default judgment. A default judgment means the other party can get what they asked for, and you do not get the chance to tell your side of the story.	**¡Fecha límite para contestar!** Su Respuesta debe ser presentada en el tribunal y también con la debida entrega formal a la otra parte **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio. Si usted no presenta una respuesta ni hace la entrega formal dentro del plazo establecido, la otra parte podrá pedirle al juez que asiente un fallo por incumplimiento. Un fallo por incumplimiento significa que la otra parte recibe lo que pidió, y usted no tendrá la oportunidad de decir su versión de los hechos.
Read the complaint/petition The Complaint or Petition has been filed with the court and explains what the other party is asking for in their lawsuit. Read it carefully.	**Lea la demanda o petición** La demanda o petición fue presentada en el tribunal y ésta explica lo que la otra parte pide. Léala cuidadosamente.

Answer the complaint/petition

You must file your Answer in writing with the court **within 21 days** of the date you were served with this Summons. You can find an Answer form on the court's website:

utcourts.gov/ans

Scan QR code to visit page

Cómo responder a la demanda o petición

Usted debe presentar su Respuesta por escrito en el tribunal **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio. Puede encontrar el formulario para la presentación de la Respuesta en la página del tribunal:

utcourts.gov/ans-span

Para accesar esta página escanee el código QR

Serve the Answer on the other party

You must email, mail or hand deliver a copy of your Answer to the other party (or their attorney or licensed paralegal practitioner, if they have one) at the address shown at the top left corner of the first page of this Summons.

Entrega formal de la respuesta a la otra parte

Usted deberá enviar por correo electrónico, correo o entregar personalmente una copia de su Respuesta a la otra parte (o a su abogado o asistente legal, si tiene) a la dirección localizada en la esquina izquierda superior de la primera hoja del citatorio.

Finding help

The court's Finding Legal Help web page (utcourts.gov/help) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.

Scan QR code to visit page

Cómo encontrar ayuda legal

Para información sobre maneras de obtener ayuda legal, vea nuestra página de Internet Cómo Encontrar Ayuda Legal. (utcourts.gov/help-span) Algunas maneras de obtener ayuda legal son por medio de una visita a un taller jurídico gratuito, o mediante el Centro de Ayuda. También hay ayuda legal a precios de descuento y consejo legal breve.

Para accesar esta página escanee el código QR

قم بالمسح الضوئي للرمز لزيارة الصفحة

An Arabic version of this document is available on the court's website:

نسخة عربية من هذه الوثيقة على موقع المحكمة على الإنترنت:توجد

utcourts.gov/arabic-ten

~~A Simplified Chinese version of this document is available on the court's website:~~
~~本文件的~~简体中文版可在法院网站上找到：
~~utcourts.gov/chinese-ten~~

请扫描QR码访问网页

~~A Vietnamese version of this document is available on the court's website:~~
~~Một bản tiếng Việt của tài liệu này có sẵn trên trang web của tòa:~~
~~utcourts.gov/viet-ten~~

Xin vui lòng quét mã QR (Trả lời nhanh)để viếng trang

Plaintiff/Petitioner or Defendant/Respondent

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

_____ Signature ► _____

Date

Printed Name _____

Attorney or Licensed Paralegal Practitioner of record (if applicable)

_____ Signature ► _____

Date

Printed Name _____

Name

Address

City, State, Zip

Phone

Email

I am [ ] Plaintiff/Petitioner
[ ] Plaintiff/Petitioner's Attorney (Utah Bar #:_____)
[ ] Plaintiff/Petitioner's Licensed Paralegal Practitioner

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

_____ Plaintiff/Petitioner v. _____ Defendant/Respondent	**Case Initiation Summons** (Utah Rule of Civil Procedure 3 and 4) (a case number and judge will be assigned if the Plaintiff files the attached complaint with the court within the 10-day deadline referenced below) _____ Case Number _____ Judge

The State of Utah to

_____ (party's name):

A lawsuit may be filed against you within the next 10 days. **Call the court at _____ no earlier than 11 days after this summons is served on you** to ask if the attached complaint has been filed and to obtain a case number. If the

lawsuit has been filed, you must file with the court a written response to the complaint, called an answer, and you must file it within 30 days after service of this summons. Your answer must include your case number, and must also be served on the plaintiff, plaintiff's attorney, or plaintiff's licensed paralegal practitioner, whose name and address are at the top left corner of this summons.

If you fail to file an answer within 30 days of service of this summons, judgment by default may be entered against you for the relief demanded in the complaint.

You may choose to file a motion under Rule 12 of the Utah Rules of Civil Procedure instead of filing an answer. If you choose to file such a motion, you will need to follow the same requirements set forth in the preceding paragraphs to file and serve the motion.

If the Plaintiff does not file with the court the attached complaint within 10 days after service of this summons on you, the case will not go forward and you do not need to file an answer or motion.

The court's Finding Legal Help web page (utcourts.gov/help) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help, and free legal clinics.

Plaintiff/Petitioner or Defendant/Respondent

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

_____ Signature ► _____

Date

Printed Name _____

Attorney or Licensed Paralegal Practitioner of record (if applicable)

_____ Signature ► _____

Date

Printed Name _____

Rule 3. Commencement of action.

(a) How commenced. A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4. If the action is commenced by the service of a summons and a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.
(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the complaint in cases commenced under paragraph (a)(1) or from the time of service of the summons and a copy of the complaint in cases commenced under paragraph (a)(2).

Rule 12. Defenses and objections.

Effective: 11/1/2021

(a) When presented.

(1) In actions other than domestic relations. Unless otherwise provided by statute or order of the court, for cases commenced under Rule 3(a)(1), a defendant must serve an answer within 21 days after the service of the summons and complaint is complete within the state and within 30 days after service of the summons and complaint is complete outside the state. In cases commenced under Rule 3(a)(2), so long as a complaint is filed within 10 days of service, a defendant must serve an answer within 30 days after service of the summons and complaint is complete. A party served with a pleading stating a cross-claim must serve an answer thereto within 21 days after the service. The plaintiff must serve an answer to a counterclaim in the answer within 21 days after service of the answer or, if a reply is ordered by the court, within 21 days after service of the order, unless the order otherwise directs. The service of a motion under this rule alters these periods of time as follows, unless a different time is fixed by order of the court, but a motion directed to fewer than all of the claims in a pleading does not affect the time for responding to the remaining claims:

(A) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading must be served within 14 days after notice of the court's action;

(B) If the court grants a motion for a more definite statement, the responsive pleading must be served within 14 days after the service of the more definite statement.

(2) In domestic relations actions. A party served with a domestic relations action must serve an answer within 21 days after service of the summons and petition is complete within the state and within 30 days after service of the summons and petition is complete outside the state. Any counterpetition must be filed with the answer. A party served with a counterpetition must serve an answer within 21 days after service of the counterpetition.

(b) How presented. Every defense, in law or fact, to claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, must be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join an indispensable party. A motion making any of these defenses must be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion or by further pleading after the denial of such motion or objection. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion must be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties must be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(c) Motion for judgment on the pleadings. After the pleadings are closed, but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by

the court, the motion must be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties must be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(d) Preliminary hearings. The defenses specifically enumerated (1) - (7) in subdivision (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in subdivision (c) of this rule must be heard and determined before trial on application of any party, unless the court orders that the hearings and determination thereof be deferred until the trial.

(e) Motion for more definite statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading. The motion must point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 14 days after notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion to strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 21 days after the service of the pleading, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of defenses. A party who makes a motion under this rule may join with it the other motions herein provided for and then available. If a party makes a motion under this rule and does not include therein all defenses and objections then available which this rule permits to be raised by motion, the party must not thereafter make a motion based on any of the defenses or objections so omitted, except as provided in subdivision (h) of this rule.

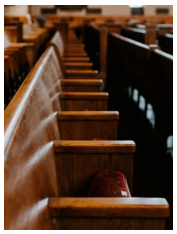
(h) Waiver of defenses. A party waives all defenses and objections not presented either by motion or by answer or reply, except (1) that the defense of failure to state a claim upon which relief can be granted, the defense of failure to join an indispensable party, and the objection of failure to state a legal defense to a claim may also be made by a later pleading, if one is permitted, or by motion for judgment on the pleadings or at the trial on the merits, and except (2) that, whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court must dismiss the action. The objection or defense, if made at the trial, must be disposed of as provided in Rule 15(b) in the light of any evidence that may have been received.

(i) Pleading after denial of a motion. The filing of a responsive pleading after the denial of any motion made pursuant to these rules must not be deemed a waiver of such motion.

(j) Security for costs of a nonresident plaintiff. When the plaintiff in an action resides out of this state, or is a foreign corporation, the defendant may file a motion to require the plaintiff to furnish security for costs and charges which may be awarded against such plaintiff. Upon hearing and determination by the court of the reasonable necessity therefor, the court must order the plaintiff to file a $300.00 undertaking with sufficient sureties as security for payment of such costs and charges as may be awarded against such plaintiff. No security must be required of any officer, instrumentality, or agency of the United States.

(k) Effect of failure to file undertaking. If the plaintiff fails to file the undertaking as ordered within 30 days of the service of the order, the court must, upon motion of the defendant, enter an order dismissing the action.

Tab 3



Civil Jury Selection: The Launch Pad to Storytelling at Trial

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- ✓ How to use jury selection as part of storytelling at trial
- ✓ How to get the poison out by identifying hot button issues in your case
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- ✓ How to walk jurors for cause

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Zachary Wool
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Agenda

5 Minutes - Introduction
60 Minutes - Presentation
10 Minutes - Live Q&A with the Speaker

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Tab 4

Subcommittee/Subject	Members	Subcommittee Chair	Current Assignments
ACTIVE:			
Probate	Judge Scott, Allison Barger, Brant Christiansen, David Parkinson, Judge Kelly, Kathie Brown Roberts, Keri Sargent, Russ Mitchell, Shonna Thomas, Sarah Box	Judge Scott	Doing work for multiple committees: Currently addressing guardianship reports and appointment of court visitors - UCJA; hoping to get back to URCP probate specific rules soon; subcommittee meets on a monthly basis; also Rule 81
Records Classification	Judge Stone, Justin Toth, Jim Hunnicutt, Susan Vogel, Crystal Powell	Judge Stone	Draft of Restricting Access to Cases and Documents -- needs to be updated based on feedback from USC from April 2022
Plain language/Terminology	Susan Vogel, Ash McMurray, Trevor Lee, Loni Page, Heather Lester, Giovanna Speiss	Susan Vogel	Ongoing generally, but specifically: Rule 12(a)(1), 26.1(h), 104
Rule 5	Susan Vogel, Loni Page, Tonya Wright, Keri Sargent	Loni Page	Will present on 3/22/23
Rule 30(b)(6)	Justin Toth, Tonya Wright, Rod Andreason	Justin Toth	Whether to implement changes similar to recent changes to FRCP 30(b)(6) & DUCivR 30-2
Rule 3(a)(2)	Trevor Lee, Susan Vogel, Judge Stucki, Keri Sargeant, Tonya Wright	Trevor Lee	Will present on 3/22/23
Eviction Expungements	Judge Stucki, Tonya Wright, Lauren DiFrancesco	Lauren DiFrancesco	Whether to enact rule change based on statutory adoption; consensus is yes, working on draft
Rule 60	Judge Holmberg, Judge Cornish, Susan Vogel, Justin Toth	Judge Holmberg	finality and whether fraud on the court can be effectively addressed (Tab 10 from 10/2022 meeting)
Rule 101	Jim Hunnicutt, Susan Vogel, Commissioner Conklin	Jim Hunnicutt	Add word limit option, similar to Rule 7 recent changes?; Susan has additional suggestions.
MSJ Deadline	Rod Anderson, Jensie Anderson, Michael Stahler	Rod Andreason	Deadline is currently triggered based on "end of discovery" -- which is not a clear date, and unclear what date is if there is no expert discovery.

Remote Hearings	Jonas Anderson, Michael Stahler, Heather Lester, Bryan Pattison, Tim Pack	Tim Pack	Per detailed memo from USC
Affidavit/Declaration	Ash McMurray, Giovanna Speiss, Bryan Pattison	Ash McMurray	Rules variously refer to affidavits, declarations, and/or unsworn declarations – please review all rules and proposed changes to make the rules consistent on this issue; please note, this issue is also implicated by "verified" language in the rules (complaints, counterclaims, petitions, etc.).

Tab 5

Rules Returning from Public Comment

Rule 4

You got to love Judge Orme's concurrence in Jordan Credit Union v. Sullivan, 2022 UT App 120; well worth your time to look up and read.
.
--Jason F. Barnes

I agree with the change to Rule 4. Personal service is preferable to substitute service and the current rule does not allow personal service on incarcerated individuals as noted in the Jordan Credit Union decision. This rule change will offer additional protections as substitute service on incarcerated individuals allows for the opportunity for default when the incarcerated individual would have had no notice.

-- Peter Vanderhooft

I am the appellant in the Jordan Credit Union case and I likewise agree that an amendment to the rule would be wise. The current language is clear and concise and does not allow personal service directly on an incarcerated individual.

Being the appellant in the Jordan Credit Union case I agree that an amendment to the rule would be both fair and appropriate. While it is a technicality which resulted in a reversal of a default judgment, the current verbage and language is clear.

--Patrick Sullivan

Rule 7

I also agree with the change to Rule 7 regarding motions to appear remotely. There is no reason why these motions should receive a full briefing, especially where the Courts are continuing to hold some hearings remotely. This resolves an access to justice issue where it would be a burden for the parties and their counsel to go in to the court, especially for motions that do not require testimony or introduction of evidence.

-- Peter Vanderhooft

I support the changes to Rule 7. Remote appearances work well for motions and status conferences, etc.

-- J. Bogart

Rule 83

I have no substantive comments regarding the rule changes as they apply to vexatious litigants.

-- Peter Vanderhooft

Re URCP 83: It is not clear how petitions for interlocutory appeals are to be treated – by implication the vexatious litigant needs to get pre-approval from the trial court (because only appeal as of right is mentioned). If the aim is to keep the trial court out of both sorts of appeals, perhaps rephrase to include express reference to the rules, URAP 3-4 & 5.

-- J. Bogart

Rule 4. Process.

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

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

(c) Contents of summons.

(1) The summons must:

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

(B) be directed to the defendant;

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

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

(E) notify the defendant that in case of failure to answer in writing, judgment by default may be entered against the defendant;

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

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

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

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

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

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

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

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

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

(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to a parent or guardian of the minor or, if none can be found within the state, then to any person having the care and control of the minor, or with whom the minor resides, or by whom the minor is employed;

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

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

(E) Upon a corporation not otherwise provided for in this rule, a limited liability company, a partnership, or an unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer,

a managing or general agent, or other agent authorized by appointment or law to receive process and by also mailing a copy of the summons and complaint to the defendant, if the agent is one authorized by statute to receive process and the statute so requires. If no officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, a place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of the place of business;

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

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

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

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

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

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

(2) Service by mail or commercial courier service.

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

(B) The summons and complaint may be served upon an entity covered by paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of the United States provided defendant's agent

authorized by appointment or by law to receive service of process signs a document indicating receipt.

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

(3) Acceptance of service.

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

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

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

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

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

(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

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

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

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

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

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

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

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

(5) Other service.

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

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

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

(e) Proof of service.

(1) The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.

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

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

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

Effective: ***May/Nov.*** ***1, 202_***

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

(a) Pleadings. Only these pleadings are allowed:

(1) a complaint;

(2) an answer to a complaint;

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

(4) an answer to a crossclaim;

(5) a third-party complaint;

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

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

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

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

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

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

(4) A request under Rule 45 to quash a subpoena must follow Rule 37(a).

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

(c) Name and content of motion.

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

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

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

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

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

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

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

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

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

(8) **Length of motion.** If the motion is for relief authorized by Rule 12(b) or 12(c), Rule56 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.

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

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

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

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

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

(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.

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

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

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

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

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

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

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

(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, ot 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:

(1) the motion;

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

(3) the reply memorandum, if any; and

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

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

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

(i) Notice of supplemental authority. A party may file notice of citation to significant authority that comes to the party's attention after the party's motion or memorandum has been filed or after oral argument but before decision. The notice 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.

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

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

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

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

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

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

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

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

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

(A) a stipulated motion;

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

(C) an ex parte motion;

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

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

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

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

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

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

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

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

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

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

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

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

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

(C) motion to appear pro hac vice;

(D) motion to strike a document filed by a vexatious litigant in violation of Rule 83(d); ~~and~~

(E) motion to appear remotely; and

~~(D)~~(F) other similar motions.

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

(A) be titled as a regular motion;

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) motion to continue a hearing;

(4) motion to appoint a guardian ad litem;

(5) motion to substitute parties;

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

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

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

Effective: May/Nov. 1, 202_.

Rule 83. Vexatious litigants.

(a) Definitions.

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

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

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

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

(i) files unmeritorious pleadings or other papers,

(ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

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

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

(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:

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

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

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

(4) abide by a prefiling order requiring the vexatious litigant to obtain the court's ~~leave~~ permission~~of the court~~ before filing any paper, pleading, or motion, in a pending action~~;~~, except that the court may not require a vexatious litigant to obtain the court's permission before filing a notice of appeal;

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

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

(c) Necessary findings and security.

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

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

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

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

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

(d) Prefiling orders in a pending action.

(1) If a vexatious litigant is subject to a prefiling order in a pending action requiring ~~leave~~ the court's permission~~of the court~~ to file any paper, pleading, or motion, the vexatious litigant shall submit any proposed paper, pleading, or motion, except for a notice of appeal, to the judge assigned to the case and must:

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

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

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

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

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

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

(e) Prefiling orders as to future claims.

(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims shall submit an application seeking an order before filing. The presiding judge of the judicial district in which the claim is to be filed shall decide the application. The presiding judge may consult with the judge who entered the vexatious litigant order in deciding 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).

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

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

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

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

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

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

(3) A prefiling order limiting the filing of future claims is effective indefinitely unless the court orders a shorter period.

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

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

(f) Notice of vexatious litigant orders.

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

(2) The Administrative Office of the Courts shall disseminate to the clerks of court a list of vexatious litigants subject to a prefiling order.

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

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

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

(j) 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).

Effective: May/Nov. 1, 202_.

Tab 6

Enrolled Copy **H.J.R. 2**

JOINT RESOLUTION AMENDING RULES OF CIVIL PROCEDURE ON INJUNCTIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This joint resolution amends the Utah Rules of Civil Procedure, Rule 65A, regarding injunctions.

Highlighted Provisions:

This resolution:

- amends the Utah Rules of Civil Procedure, Rule 65A, regarding injunctions.

Special Clauses:

This resolution provides a special effective date.

Utah Rules of Civil Procedure Affected:

AMENDS:

Rule 65A, Utah Rules of Civil Procedure

Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each of the two houses voting in favor thereof:

As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all members of both houses of the Legislature:

Section 1. **Rule 65A**, Utah Rules of Civil Procedure is amended to read:

Rule 65A. Injunctions.

(a) **Preliminary injunctions.**

(a) (1) **Notice.** No preliminary injunction shall be issued without notice to the adverse party.

(a) (2) **Consolidation of hearing.** Before or after the commencement of the hearing of an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial. This subdivision (a)(2) shall be so construed and applied as to save to the parties any rights they may have to trial by jury.

(b) **Temporary restraining orders.**

(b) (1) **Notice.** No temporary restraining order shall be granted without notice to the adverse party or that party's attorney unless (A) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (B) the applicant or the applicant's attorney certifies to the court in writing as to the efforts, if any, that have been made to give notice and the reasons supporting the claim that notice should not be required.

(b) (2) **Form of order.** Every temporary restraining order shall be endorsed with the date and hour of issuance and shall be filed forthwith in the clerk's office and entered of record. The order shall define the injury and state why it is irreparable. The order shall expire by its terms within such time after entry, not to exceed 14 days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

(b) (3) **Priority of hearing.** If a temporary restraining order is granted, the motion for a preliminary injunction shall be scheduled for hearing at the earliest possible time and takes precedence over all other civil matters except older matters of the same character. When the

motion comes on for hearing, the party who obtained the temporary restraining order shall have the burden to show entitlement to a preliminary injunction; if the party does not do so, the court shall dissolve the temporary restraining order.

(b) (4) **Dissolution or modification.** On 48 hours' notice to the party who obtained the temporary restraining order without notice, or on such shorter notice to that party as the court may prescribe, the adverse party may appear and move its dissolution or modification. In that event the court shall proceed to hear and determine the motion as expeditiously as the ends of justice require.

(c) **Security.**

(c) (1) **Requirement.** The court shall condition issuance of the order or injunction on the giving of security by the applicant, in such sum and form as the court deems proper, unless it appears that none of the parties will incur or suffer costs, attorney fees or damage as the result of any wrongful order or injunction, or unless there exists some other substantial reason for dispensing with the requirement of security. No such security shall be required of the United States, the State of Utah, or of an officer, agency, or subdivision of either; nor shall it be required when it is prohibited by law.

(c) (2) **Amount not a limitation.** The amount of security shall not establish or limit the amount of costs, including reasonable attorney fees incurred in connection with the restraining order or preliminary injunction, or damages that may be awarded to a party who is found to have been wrongfully restrained or enjoined.

(c) (3) **Jurisdiction over surety.** A surety upon a bond or undertaking under this rule submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom any papers affecting the surety's liability on the bond or undertaking may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of the court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(d) **Form and scope.** Every restraining order and order granting an injunction shall set forth the reasons for its issuance. It shall be specific in terms and shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained. It shall be binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive notice, in person or through counsel, or otherwise, of the order. If a restraining order is granted without notice to the party restrained, it shall state the reasons justifying the court's decision to proceed without notice.

(e) **Grounds.** A restraining order or preliminary injunction may issue only upon a showing by the applicant that:

(e) (1) there is a substantial likelihood that the applicant will prevail on the merits of the underlying claim;

(e) [~~(1) The~~] (2) the applicant will suffer irreparable harm unless the order or injunction issues;

(e) [~~(2) The~~] (3) the threatened injury to the applicant outweighs whatever damage the proposed order or injunction may cause the party restrained or enjoined; and

(e) [~~(3) The~~] (4) the order or injunction, if issued, would not be adverse to the public interest[~~; and~~].

[~~(e) (4) There is a substantial likelihood that the applicant will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further litigation.~~]

(f) Motion for reconsideration.

(f) (1) A party enjoined or restrained by a restraining order or a preliminary injunction on February 14, 2023, may move the court to reconsider whether the order or injunction should remain in effect if the order or injunction:

(A) is in writing;

(B) is restraining or enjoining the enforcement of a law; and

(C) explicitly states that the court granted the order or injunction on the ground that the case presented serious issues on the merits which should be the subject of further litigation.

(f) (2) A motion for reconsideration under this paragraph (f) may be filed at any time before the final determination of the case.

(f) (3) Upon a motion for reconsideration, the court must determine whether the issuance of the restraining order or preliminary injunction meets the requirements in paragraph (e) regardless of the requirements for the issuance of the order or injunction on the day on which the order or injunction was issued.

(f) (4) If the court determines that the issuance of the restraining order or preliminary injunction does not meet the requirements of paragraph (e), the court must terminate the order or injunction.

[~~(f)~~] **(g) Domestic relations cases.** Nothing in this rule shall be construed to limit the equitable powers of the courts in domestic relations cases.

Section 2. **Effective date.**

As provided in Utah Constitution Article VIII, Section 4, this resolution takes effect upon a two-thirds vote of all members elected to each house.

Tab 7

Rule 53A. Special masters for child-related issues in domestic relations actions~~law matters~~.

(a) **Scope.** This rule supersedes Rule 53 for ~~applies to~~ parenting disputes in the following domestic relations actions~~law matters~~: divorce; temporary separation; separate maintenance; parentage; custody; child support; and modification actions.

(b) **Definition**. For purposes of this rule, a special master is a quasi-judicial officer appointed by the courts who are given limited powers to manage parenting disputes, including but not limited to: child custody, visitation or parent time, co-parenting, child related expenses, complying with and interpreting written parenting plans or orders, and shielding the child from parental conflict.

(c) **Appointment.** A court may appoint a special master pursuant to this rule. ~~A special master is a court-ordered individual who may provide dispute resolution services in a domestic law matter~~ after entry of a parenting plan, temporary order, or final order in a case. A court may appoint a special master as follows:

(1) Upon stipulation of the parties;

(2) Upon motion of a party and for good cause shown; or

(3) Upon the court's own initiative, if the court finds that:

(i) there is an extraordinary need for the appointment of a special master expedient to the administration of justice; and

(ii) the parties are able to pay for the cost of the special master.

(d) **Compensation.** The appointment order shall contain the compensation of the special master or that the compensation shall be pursuant to the terms of the special master's fee agreement. The appointment order shall contain an apportionment of the fees between the parties.

(e~~d~~) **Term and scope of appointment.** The court shall specify the length and scope of the special master's appointment at the time of appointment. The court may modify ~~or terminate~~ the length and scope of the appointment upon stipulation of the parties, motion of a party or the special master for good cause shown ~~or the special master~~, or on the court's own initiative upon a finding of good cause. ~~for good cause shown.~~

(f~~e~~) **Special master powers~~authority~~ regarding existing orders.** The special master shall not make decisions that are contrary to or inconsistent with existing orders, judgments, decrees, or court-ordered parenting plans absent express authority to do so by the court in the order appointing the special master. Recognizing that the special master's role may involve creating rules, clarifications, or additional requirements for the parties to follow to resolve disputes pursuant to the terms of their Decree/Order, the special master shall not issue any decisions ~~orders~~ or modifications of orders that would otherwise require a

Commented [JJP1]: Parties often refer to masters as special masters, but rule 53 refers simply to masters. Was there a discussion about whether it makes sense to keep the same lingo (i.e., master vs. special master) used in Rule 53?

Commented [BH2R1]: While the term Master is distinct in Rule 53, the committee believes that practice and case law is consistent with the term special master for these cases in several states, including Utah and the AFCC.

Commented [JJP3]: It's unclear to me what the intended scope of the rule is. The title suggests it's limited to child-related issues, and the definition in subsection (b) suggest

Commented [JJP4]: This edit is intended to mirror the

Commented [BH5R4]: Accepted changes

Commented [DLE(SL6]: For consistency with Rule 7B

Commented [BH7R6]: Accepted

Commented [BH8R6]: Additional issue: There are seve

Commented [JJP9]: For consistency.

Commented [BH10R9]: Accepted

Commented [JJP11]: These two sections seem to cove

Commented [BH12R11]: The committee believes that

Commented [BH13R11]: There are several places in th

Commented [JDH14]: The Performance Audit

Commented [BH15R14]: The committee recognizes th

Commented [JJP16]: This seems to be another definiti

Commented [BH17R16]: The purpose was for timing c

Commented [JJP18]: How is the master compensated

Commented [BH19R18]: Akin to GAL appointments ar

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Commented [BH20]: This language tracks the PGAL

Commented [JJP21]: Is it intentional not to allow the

Commented [BH22R21]: It was not. We revised the

Commented [JJP23]: Is this consistent with and/or

Commented [BH24R23]: The committee believes that

Commented [JJP25]: Maybe we should label this

Commented [BH26R25]: We agree

Commented [JDH27]: Throughout this rule, we refer t

Commented [BH28R27]: We agree

Commented [JDH29]: The first part of (e) says that the

Commented [BH30R29]: We agree.

judicial order, absent express authority to do so by the court in the order appointing the special master.

(g) **Binding effect of decision.** A decision of a special master is binding on the parties until modified or vacated by the court, special master, or written stipulation of the parties.

~~(hf) **Quasi-judicial immunity.** A special master, when acting within the scope of the special master's appointment order in the furtherance of the judicial process, a special master shall have quasi-judicial immunity.~~

(i~~g~~) **Sanctions.** A special master may issue sanctions only if specifically authorized to do so in the appointment order. A special master may not make a finding of contempt pursuant to Utah law. ~~A special master may not~~ or ~~issue any sanctions as stated in Utah Code A § 78B-6-310.~~

(j~~h~~) Service~~Reports~~ **of decisions**. A special master shall issue all decisions in writing directly to the parties. ~~–~~ A special master shall also file ~~provide the~~ written decisions with the court ~~informally to the parties or by filing with the court~~.

(k~~i~~) **Procedure to modify or vacate special master decision.** A court has authority to modify or vacate a special master decision as follows:

~~(1) A decision of a special master is binding on the parties until modified or vacated by the court.~~

(1~~2~~) A party may file a written motion to modify or vacate a special master's decision within 14 days after the parties are served under this rule ~~notified of the decision is made.~~ A court may consider an untimely motion upon good cause shown.

(A~~2~~) The motion must identify succinctly and with particularity the ~~decision challenged~~decision challenged~~to which the motion is made~~, state the relief sought, and include an accompanying declaration ~~must~~ that provides all information and documents to support the request. The time for filing, length and content of the motion~~pleadings,~~ declarations, and request to submit for decision are as stated ~~for motions~~ under Rule 7 or, if the matter has a domestic commissioner assigned, under Rule 101.

(2~~3~~) The court shall review the special master's decision de novo. ~~The court shall make independent findings of fact and conclusions of law based on the evidence presented to the court.~~

(l~~j~~) **Suspension or termination of special master's appointment.** A special master's appointment may be suspended or terminated as follows:

(1) **Suspension or termination by special master.** A special master may elect to suspend or terminate the special master's appointment by issuing a notice of suspension or resignation to ~~the parties~~all parties~~, all counsel,~~ and filing with the court. A special master may not suspend or terminate the special master's appointment while an issue is pending before the special master.

Commented [JDH31]: I'm not entirely sure what this
Commented [BH32R31]: We added this to avoid a
Commented [BH33R31]: Specifically, best interests
Commented [JJP34]: Like Justice Hagen, I'm not sure I
Commented [BH35R34]: There were several concerns
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Commented [JJP36]: Is there a similar provision in rule
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Commented [JJP38]: Can you help me understand wha
Commented [BH39R38]: Per the comment above we
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Commented [JJP40]: Rule 53(d)(2) says a witness can b
Commented [BH41R40]: As noted 53(d)(2) applies to
Commented [JJP42]: I'm not sure what this envisions.
Commented [BH43R42]: We had contemplated emaili
Commented [JDH44]: Should this be "and"? Do we wa
Commented [BH45R44]: Agreed as indicated in our
Commented [JDH46]: I wonder if this needs to be its
Commented [BH47R46]: Agreed. We added subsectio
Commented [JJP48]: Will we end up with disputes abo
Commented [BH49R48]: Agreed and modified.
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Commented [JJP50]: This probably should also include
Commented [BH51R50]: We took this language direct
Commented [JJP52]: I don't think this is the right word
Commented [BH53R52]: We agree. Edited to motion.
Commented [JJP54]: Consider revising this to same
Commented [BH55R54]: We specified this language to
Commented [JJP56]: Do you want these to be in writin
Commented [BH57R56]: We struck the language as
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Commented [JJP58]: We should eliminate this here or
Commented [BH59R58]: Agreed. We like your language.
Commented [JJP60]: Just wondering if we should requ
Commented [BH61R60]: We edited the language to

(2) **Termination by the parties.** Unless the appointment of the special master was made upon the court's own initiative, tThe parties may terminate the special master's appointment upon written stipulation filed with the court and served on the special master.

(3) **Termination by the court.** The court may suspend or terminate the special master's appointment on its own initiative or by motion of a party for good cause shown.

(lk) **Use of Special Masters for other issues.** This rule does not preclude the court from appointing special masters pursuant to Rule 53 for other issues outside of those listed in part (b) of this rule.

Effective Date --

Commented [JJP62]: Just terminate? Or suspend or terminate?

Commented [BH63R62]: Suspension usually is for non-payment of fees. We do not see parties moving to suspend the special master, but could move to terminate.

Commented [JDH64]: If we give the court the option to appoint a special master on its own motion without a stipulation or a motion from either party, does it make sense to allow the parties to stipulate to termination?

Commented [JJP65R64]: I had the same question.

Commented [BH66R64]: We added a qualifier. Good point.

Commented [JJP67]: Just terminate? Or suspend or terminate?

Commented [BH68R67]: We added suspend to allow more judicial discretion.

Commented [JJP69]: A final and global thought:

I'm a little unsure how this rule and rule 53 are supposed to work together. If rule 53 is to have no application to matters identified within the scope of this rule, something to that effect should probably be included in the rule. But then we also need to make sure that what 53 covers, this rule also covers. As just one example, there is nothing in here about compensation, which is covered in Rule 53(a).

I also wonder if this rule could be streamlined so as to only address things that might be missing from Rule 53. It's unclear to me, for example, what specific gaps this rule is intended to fill that rule 53 doesn't already. Did the committee consider drafting a rule that states that rule 53 applies, with certain exceptions or differences as noted in this rule 53A.

In sum, it's just a little unclear whether we need this rule in its entirety and how these two rules exist together.

Commented [BH70R69]: The distinction is for custody issues. Rule 53A is limited to parent-time disputes in subsection (b). It is possible that a divorce with property issues could find use with a Rule 53 master to sell or value assets. However, special masters are most commonly used in domestic relations actions for parenting disputes. Parenting disputes are of a special nature involving best interests and judicial findings as outlined in the legislative audit. We needed a uniform rule specifically for parenting disputes that clarified the scope, powers, and role. We did not want to interfere with other civil cases that make use of Rule 53. We have added language in the scope clarifying that this rule supersedes 53 for parenting disputes. The court can still appoint a Rule 53 master for non-parenting issues (rare, but possible).

Tab 8

To:	Supreme Court Advisory Committee on Utah Rules of Civil Procedure
From:	Loni Page, Tonya Wright, Keri Sargent, and Susan Vogel, Subcommittee Members
Date:	March 15, 2023
Re:	Summary of Proposed Amendments to Rule 5

The proposed changes to URCP 5 are summarized as follows.

(a)When service is required.

(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, every paper filed with the court must be served by the party filing it on every party to the case except as follows[LP1] :

(A) [LP2] Ex parte motions provided for under Rule 7

[LP3] (B-F)

[LP1] We took the committee's suggestion to simplify and only list the exceptions. We need the committee's help with identifying other exceptions.

[LP2] Removed paragraphs (B-F) to simplify and because committee noted paragraph (D) conflicts with 26(f).

[LP3] Removed “offer of judgment” because the committee noted that not "every party to the case" must receive an offer of settlement aka judgment. Judgment being federal rule language; settlement being trial court language. URCP 68 Settlement offers.

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(2) Serving parties in default[LP1]**.** No service is required on a party who is in default except that:

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

(B) a party in default for any reason other than for failure to file and serve an answer must be served as provided in paragraph (a)(1);[LP2]

[LP1] We were asked to review with regard to orders of restitution under 78B-6-811(6) and the defendant's burden to provide an address. We added "last known address" to (b)(3) Methods of Service subparagraph (C)(i).

[LP2] Added “file and serve an answer” to clarify what it means to “appear” and to mirror language recently proposed in URCP 12 during the February 2023 committee meeting.

(b) How service is made.

(1) Whom to serve [LP1] **.** If a party is self-represented, service must be made upon the self-represented party.

[LP1] These changes were approved by the committee during its September 2022 meeting.

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(3) Methods of service[LP1] **.** A paper is served under this rule by

(A) **Electronic filing.** Except in the juvenile court, [LP2]any paper filed through an electronic filing account is considered served upon legal professionals who also have an electronic filing account, including papers the court submits to its case management system (CORIS). An electronic filing account does not include MyCase.

[LP1] MyCase is not yet an electronic filing account for purposes of service and will not be until Fall 2023 at the earliest.

[LP2] Clarified “person” served via an electronic filing account is a “legal professional” which includes attorneys and LPPs under CJA 13-01. The subcommittee is seeking the committee's guidance on licensed attorneys and paralegals versus legal professionals versus attorneys as is found throughout the rules.

(B) **Email.** If the party serving or being served a paper does not have an electronic filing account,[LP1] emailing it to

(i) the most recent email address the person being served has provided to the court under Rule 10(a)(3) or Rule 76, or

(ii) if service is to a licensed attorney or paralegal, to the email address on their pleadings and/or on file with the Utah State Bar. [LP2]

[LP1] Added to clarify that if the party serving or being served does not have an electronic filing account (which does not include MyCase) their next option is email.

[LP2] Removed the language that indicates what must be done if an email is undeliverable. The timeframes were arduous for the courts and we do not spell out the process for returned mail so we don't feel a process should be included in the rule for email either.

(C) **Mail and other methods.** If the party serving or being served with a paper does not have an electronic filing account or email,

(i) mailing it to the most recent address the person being served has provided to the court [LP1]under Rule 10(a)(3) or Rule 76, or, if none, the person's last known address;

[LP1] Added to ensure that the most accurate or recently provided address is used.

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(5) Who serves[LP1]**.** Unless otherwise directed by the court or these rules:

(A) every paper required to be served must be served by the party preparing it; and

(B) every paper prepared by the court will be served by the court; and

(C) every paper signed by the court but not prepared by the court will be served by the party who prepared it.

[LP1] Added paragraph (C) to clarify that the court does not serve all parties with a copy of an order after signing. The subcommittee members have impressed upon Clerks of Court the importance of providing self-represented litigants with a copy of the signed order because legal professionals do receive electronic notice upon signature. This will be a best practice until and unless all self-represented parties have MyCase and service via MyCase is added to this rule. Additional discussion centered on clerks not knowing whether or not a judge interlineated an order so serving just the orders modified by the court is not feasible. Kept "prepared" in lieu of "filed by" since not all papers required to be served are filed.

(d) Certificate of service. No certificate of service is required when a paper is served through an electronic filing account under paragraph (b)(3)(A) which excludes MyCase[LP1]. When a paper that is required to be served is served by email, mail or other methods:

(1) if the paper is filed with the court, a certificate of service showing the date and manner of service must be filed with it or within a reasonable time after service; and

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

[LP1] The addition of “excludes MyCase” is arguably redundant but wanted language to be clear for self-represented parties.

(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. Legal professionals with an electronic filing account must file a paper electronically[LP1]. A party without an electronic filing account may file a paper with the clerk of the court or a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

[LP1] Added to clarify that “parties” are “legal professionals” so as not to imply self-represented parties must file papers electronically [via MyCase or email].

Advisory Committee Notes

Note adopted 2023

Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the document on legal professionals[LP1] who have an e-filing account. (Legal professionals representing parties in the district court are required to have an account and electronically file documents.

[LP1] CJA 13-01

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

(a) When service is required.

(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, every ~~the following~~ paper~~s~~ filed with the court must be served by the party filing it on every party to the case except as follows:

(A) ~~a judgment;~~

~~(B) an order that states it must be served;~~

~~(C) a pleading after the original complaint;~~

~~(D) a paper relating to disclosure or discovery;~~

~~(E) a paper filed with the court other than a~~ Ex parte motions provided for under Rule 7 ~~that may be heard ex parte; and~~

~~(F) a written notice, appearance, demand, offer of judgment, or similar paper.~~

(2) Serving parties in default. No service is required on a party who is in default except that:

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

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

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

(D) a party in default for any reason must be served with notice of entry of judgment under Rule 58A(g); and

(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.

(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required

before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

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

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

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

(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(3) Methods of service. A paper is served under this rule by ~~using one or more of the methods in the following paragraphs.~~:

(A) **Electronic filing.** ~~except~~ Except in the juvenile court, ~~a paper is served by submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account.~~;any paper filed through an electronic filing account is considered served upon legal professionals who also have an electronic filing account, including papers the court submits to its case management system (CORIS). An electronic filing account does not include MyCase.

(B) **Email.** If the party serving or being served a paper does not have an electronic filing account, ~~**Email.** A paper not electronically served under paragraph (b)(3)(A) is served by~~ emailing it to

(i) the most recent email address the person being served has provided ~~by the person~~ to the court ~~and other parties~~ under Rule 10(a)(3) or Rule 76, or

(ii) ~~to~~ if service is to a licensed attorney or paralegal, to the email address on their pleadings and/or on file with the Utah State Bar. ~~If email service to the email address is returned as undeliverable, service must then be made by another method in accordance with paragraph (b)(3)(C). Service is complete upon the attempted email service for purposes of the sender meeting any time period, provided service by another method is made within 3 days following receipt of an undeliverable email notice, excluding Saturday, Sunday, or legal holidays.~~

(C) **Mail and other methods.** ~~This paragraph applies~~ If the party serving ~~if the person required to serve~~ or being served with a paper does not have an electronic filing account or email, ~~has notified the court and the parties that the person does not have the ability to serve and receive documents by email or an email is returned as undeliverable. This paragraph also applies if the person to be served has not provided an email address to the court under Rule 10. A paper may be served under this paragraph by:~~

(i) mailing it to the most recent address the person being served has provided~~person's last known mailing address provided by the person~~ to the court ~~and other parties~~ under Rule 10(a)(3) or Rule 76, or, if none, the person's last known address;

~~(D)~~(ii) handing it to the person;

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

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

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

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

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

(A) every paper required to be served must be served by the party preparing it; and

(B) every paper prepared by the court will be served by the court; and~~.~~

(C) every paper signed by the court but not prepared by the court will be served by the party who prepared it.

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

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

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

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

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

(d) Certificate of service. No certificate of service is required when a paper is served ~~by filing it with~~through ~~the~~an ~~court's~~ electronic~~-~~ filing ~~system~~account under paragraph

(b)(3)(A) which excludes MyCase. When a paper that is required to be served is served by email, mail or other ~~means~~methods:

(1) if the paper is filed with the court, a certificate of service showing the date and manner of service must be filed with it or within a reasonable time after service; and

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

~~A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B) when service to all parties is made under paragraph (b)(3)(A).~~

(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. ~~Parties~~ Legal professionals with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper ~~by delivering it to~~ with the clerk of the court or ~~to~~ a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

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

(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section 46-1-16(7);

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

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

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

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

Effective May 1, 2023

Advisory Committee Notes

Note adopted ~~2015~~2023

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

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

Tab 9

Rule 30(b)(6) Requirements in Utah (Federal and State)

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

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Key Principles to Amended Utah R. Civ. P. 30(b)(6)

1. Like the amended FRCP 30(b)(6), the amendment encourages practitioners to engage in "[c]andid exchanges about the purposes of the deposition and the organization's information structure [that] may clarify and focus the matters for examination and enable the organization to designate and to prepare an appropriate witness or witnesses, thereby avoiding later disagreements."

2. Like the amended FRCP 30(b)(6), this amendment to URCP 30(b)(6) seeks to "facilitate collaborative efforts to achieve the proportionality goals" expressed in Rules 1 and 26(b)(1) of the URCP.

3. Consistent with the discussion from the Committee last month, the amendments do *not* (1) add time deadlines to service of the notice, objections or the meet-and-confer process or (2) provide additional limitations on the number of topics that may be set forth in the motion. The assumption is that those issues can be addressed by counsel and the Court under Rule 37 and any scheduling order from the Court.

Relevant Language of FRCP and DCiv-R 30(b)(6)

Fed. R. Civ. P. 30(b)(6)

Notice or Subpoena Directed to an Organization. In its notice or subpoena, a party may name as the deponent a public or private corporation, a partnership, an association, a governmental

agency, or other entity and must describe with reasonable particularity the matters for examination. The named organization must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf; and it may set out the matters on which each person designated will testify. Before or promptly after the notice or subpoena is served, the serving party and the organization must confer in good faith about the matters for examination. A subpoena must advise a nonparty organization of its duty to confer with the serving party and to designate each person who will testify. The persons designated must testify about information known or reasonably available to the organization. This paragraph (6) does not preclude a deposition by any other procedure allowed by these rules.

……..

DUCivR 30-2 NOTICES REQUIRED FOR DEPOSITIONS UNDER FED. R. CIV. P. 30(b)(6)

The 30(b)(6) notice must be served at least 28 days prior to the scheduled deposition and at least 45 days before the discovery cutoff date. Within 7 days of being served with the notice, the noticed entity may serve written objections. If the parties are unable to resolve the objections within 7 days of service of the objections, either party may seek resolution from the court in accordance with DUCivR 37-1. If the motion is not resolved before the set date of the deposition, the deposition may proceed on subject matters not addressed by the motion.

Unless otherwise agreed to by the parties or ordered by the Court upon a showing of good cause, the notice must not exceed more than 20 topics, including subparts, the deposition of all corporate representatives produced in response to such notice must not exceed 7 hours in length, and a party may not serve more than one notice on any particular party or non-party. If a request for documents accompanies the notice, it is subject to the provisions of Fed. R. Civ. P. 34. If a subpoena duces tecum accompanies the notice, it is subject to the applicable Federal Rules of Civil Procedure and Local Rules.