Utah Supreme Court
Advisory Committee on the Utah Rules of Civil Procedure
Meeting Agenda
Laruen DiFrancesco, Chair

Location: WebEx Meeting: Link

Date: January 24, 2024

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes (Oct & Dec)	Tab 1	Lauren DiFrancesco
Yearly Committee Member Introductions		Lauren DiFrancesco
Rule 56 – Revisions from public comment and Supreme Court feedback. (*Discussion*)	Tab 2	Rod Andreason
Rule 6 – Language on holidays. No public comments received. (*Motion for final approval*)	Tab 3	Lauren DiFrancesco
Rule 12 – Answers must be filed and served. One public comment received. (*Discussion / Motion for final approval*)	Tab 4	Lauren DiFrancesco
Rule 83 – Vexatious litigant language. No public comments received. (*Motion for final approval*)	Tab 5	Lauren DiFrancesco
Rule 101 – Motions to enforce order and for sanctions language. No public comments received. (*Motion for final approval*)	Tab 6	Lauren DiFrancesco
Rules 64, 66, 69A, 69B, 69C – Amend language to "file" instead of "record." No public comments received. (*Motion for final approval*)	Tab 7	Lauren DiFrancesco
Rule 74 – Two issues - Contact information when attorney withdraws; and when one attorney withdraws. (*Discussion / Motion for public comment*)	Tab 8	Lauren DiFrancesco / Michael Stahler
Rules 7(k), (l), (m), and 37 applying in family law cases. (*Discussion*)	Tab 9	Samantha Parmley
Rule 5 – Service. (*Continued discussion*)	Tab 10	Loni Page
Rules 7, 37, 45, and 30 from the Omnibus Subcommittee (*Continued discussion*)	Tab 11	Justin Toth
Rule 42 – Filings when cases are consolidated. (*Continued discussion / Motion for public comment*)	Tab 12	Lauren DiFrancesco

Rule 18 – Voidable transactions language	Tab 13	Judge Laura Scott
Legislative Session has begun – Rapid Response (*Information*)		Lauren DiFrancesco
Subcommittee follow up		Lauren DiFrancesco

Reminder: Check style guide for conformity before rules are sent to the Supreme Court.

Upcoming Items:

- Omnibus Subcommittee
- Rule 47 Attorney Voir Dire
- Third Party Financing
- Remote Hearings Subcommittee
- Rule 76 Subcommittee
- Standard POs Subcommittee
- Rule 62 Subcommittee
- Rule 53A Special Masters
- Removal of gendered pronouns by Plain Language Subcommittee
- Records Classification
- Probate Subcommittee
- Rule 7A and 37 – Motion for Sanctions
- Rule 3(a)(2)
- Rule 4 and §78B-8-302(7)

URCP Committee Website: Link

Meeting Schedule:

February 28

March 27

April 24

May 22

June 26

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Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – October 25, 2023
In-Person and via Webex

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Vice-Chair	X		Stacy Haacke, Staff
Lauren DiFrancesco, Chair	X		Keri Sargent
Trevor Lee		X	Crystal Powell
Ash McMurray	X		Glenda Pittman
Michael Stahler	X		
Timothy Pack	X		
Loni Page	X		
Bryan Pattison	X		
Judge Clay Stucki	X		
Judge Andrew H. Stone	X		
Justin T. Toth		X	
Susan Vogel	X		
Tonya Wright	X		
Judge Rita Cornish	X		
Commissioner Catherine Conklin	X		
Giovanna Speiss		X	
Jonas Anderson		X	
Heather Lester		X	
Jensie Anderson	X		
Judge Blaine Rawson	X		
Judge Ronald Russell	X		
Rachel Sykes	X		
Judge Laura Scott, *Emeritus*	X		
James Hunnicutt, *Emeritus*	X		

(1) INTRODUCTIONS

The meeting started at 4:04 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the September 2023 Minutes subject to amendments noted by the Minutes subcommittee. Mr. Rod Andreason moved to adopt the Minutes as amended. Mr. Michael Stahler seconded. The Minutes were unanimously approved.

(3) AFFIDAVITS, DECLARATIONS, AND VERIFIED DOCUMENTS

Mr. Ash McMurray presented on the work his subcommittee has done in standardizing the use of the terms "affidavits," "declarations," and "verified documents" throughout the Rules in conformity with the Utah Unsworn Declarations Act which removes the distinction between the various types of sworn document. He noted that the subcommittee's first objective was to create the least amount of language change throughout the Rules but that became very cumbersome as it required too many references to the statute. He noted that the subcommittee then decided to establish one consistent term to cover affidavits, declarations, and verified documents along with a definition to consolidate the meaning. The term decided was "declaration" consistent with the language in the Act. He also proposed the creation of the new Rule 87 which would contain a definition.

Ms. DiFrancesco questioned if the use of affidavit or unsworn declaration throughout the Rules is necessary given the proposed Rule 87 as it seems duplicative. Mr. McMurray clarified that Rule 87 includes the various definitions between sworn and unsworn declarations, and affidavits but only "declaration" is used throughout the Rules. Ms. Loni Page questioned whether the terms "Affiant" and "Declarant" were also consolidated in the Rules. Ms. McMurray noted that those terms were removed and consolidated. The Committee discussed language changes to draft Rule 87 under the definitions of "verified," and "signed." The Committee discussed creating a definition that doesn't introduce a new term. The Committee discussed the impact of the amendment for self-represented persons to ensure that changes do not make self-representation more difficult.

The Committee also discussed the primary purpose of the Act in doing away with the need to notarize documents and providing for additional means to verify beyond an oath. Judge Andrew Stone expressed his concern that the Committee needs to ensure that changes are not overbroad where the notary also verifies the identity of the person signing documents which is critical in many types of cases such as parental rights and adoptions dealing with

voluntary relinquishment. The Committee generally discussed the language in specific laws in comparison to the language in the Rule to ensure that the Rule incorporates exceptions laid out in various rules statutes. Ms. DiFrancesco suggested that the Committee table the Rule to allow for research into more specific statutory examples. No motion was made or taken.

(4) RULE 60. FRAUD ON THE COURT

Judge Rita Cornish summarized the research memorandum circulated to the Committee on Rule 60(b)(3) (motion to set aside based on fraud on the court). She noted that the issue that the subcommittee is having is that the court's footnote in the background case law is based on a false premise where she noted that the Utah Supreme Court has repeatedly addressed that there should be no distinction between fraud on the court (extrinsic fraud) and fraud on a party (intrinsic fraud). The subcommittee suggested that the Committee seek further instructions from the Utah supreme court on how to proceed given the history of the case law and the instructions to the subcommittee. Ms. DiFrancesco suggested having an informal meeting with the Justices that participated in the opinion rather than having the issue on the formal conference calendar. No motion was made or taken.

(5) RULE 56. MOTION FOR SUMMARY JUDGMENT DEADLINE FEEDBACK FROM UTAH SUPREME COURT

Ms. DiFrancesco summarized the proposed amendment on the Motion for Summary Judgment deadline. The Utah Supreme Court agrees with the proposal, and the proposal has been sent out for public comment but there is a concern that with no procedural deadline, cases might go on indefinitely. The court would like to see more comprehensive language or time guides to ensure that cases are moving forward. Specifically, to consider modifying the language of subparagraph (b) to include that judges may set deadlines for motions for summary judgment, certificates of readiness for trial, or any language that would establish a timeline to move the case forward. Ms. DiFrancesco will send the proposal back to the subcommittee before it is discussed generally.

(6) RULE 104. DIVORCE DECREE UPON AFFIDAVIT

Ms. Susan Vogel updated the Committee that the work continues on this issue, but a draft is not ready yet and should be ready for the next meeting.

(7) RULE 76. UPDATING CONTACT INFORMATION AND MYCASE

Ms. Vogel addressed the status of the MyCase system and offered to present more specifically on it. She reported that the court is close to having functionality available in MyCase so that when a MyCase user updates their email address, their email address in CORIS updates automatically. When that happens, there will be a note entered in the case history. Rule 76 will need to be amended to avoid confusion The amendment requires that attorneys and self-represented people must keep their contact information (address, email and phone number) current with the court and the notice must be presented to the other parties unless a court order provides otherwise such as in protective orders.

Judge Cornish noted that some of the civil rules apply in criminal cases and there is a concern for self-represented persons updating their information in MyCase which will not update the criminal courts. She encouraged taking a closer look at the Rule to ensure that the criminal system is not affected. Judge Stone questioned whether parties would be confined to using MyCase. Ms. Vogel explained that no Rule will require a party to use the MyCase system because even though it expands the options for persons with access to technology; such a Rule would limit the options of persons who do not have that access. No Motion was made or taken.

(8) DECEMBER MEETING AND ADJOURNMENT

Ms. DiFrancesco notified the Committee that the December meeting with be held on December 6, 2023, at 4:00 p.m. There will be no meeting in November. The meeting was adjourned at 6:00 p.m.

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – December 6, 2023
via Webex

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Vice-Chair		X	Keisa Williams, Staff
Lauren DiFrancesco, Chair	X		Keri Sargent
Trevor Lee	X		Jacqueline Carlton
Ash McMurray	X		Michael Drechsel
Michael Stahler		X	Nick Stiles
Timothy Pack	X		Samantha Parmley
Loni Page	X		
Bryan Pattison	X		
Judge Clay Stucki	X		
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Tonya Wright	X		
Judge Rita Cornish	X		
Commissioner Catherine Conklin	X		
Giovanna Speiss		X	
Jonas Anderson	X		
Heather Lester		X	
Jensie Anderson		X	
Judge Blaine Rawson	X		
Judge Ronald Russell	X		
Rachel Sykes	X		
Judge Laura Scott, *Emeritus*	X		
James Hunnicutt, *Emeritus*	X		

(1) INTRODUCTIONS

The meeting started after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests.

(2) REMINDER FROM THE SUPREME COURT REGARDING VOTING MEMBERS

Only committee members vote. Emeritus members do not vote or second any motions. Ms. DiFrancesco mentions she does not vote except to break a tie. The non-voting members are the emeritus, ex-officio and recordings secretary.

(3) REMOTE HEARINGS.

Tim Pack begins the discussion and reminds the committee of the memorandum from the Supreme Court and the previous discussion. In that discussion many judges liked the discretion as opposed to a default rule. There was no final consensus on this issue at the last meeting. The Supreme Court is asking for an update. The subcommittee met again in October and did not make any big decisions. Consensus from the subcommittee is that there is no a need for a rule unless there is a problem to fix or some injustice happening that would require a rule. Subcommittee's recommendation is to do nothing at this time, but opens the discussion to alternatives or other opinions.

Ms. DiFrancesco mentions Michael Drechsel sent an email that she forwarded to the Committee with additional questions from the Supreme Court. They indicate if the Committee recommends there should not be a rule of procedure that provides a presumption regarding certain hearing types, to still please identify the types of hearings that would be best presumed to be conducted remotely or in-person.

Susan Vogel indicates she received messages from an individual in Spanish with questions about her Webex hearing, but the Self Help Center cannot provide tech support. This is a problem, and she understand the judges wanting to have discretion, but there needs to be an avenue for patrons to reach out when they are having issues with Webex hearings. Would be helpful to have a rule on what the court notices should include regarding a hearing. Also, a rule that would allow a person to challenge the nature of the hearing.

Judge Stone indicates that complaints may not be the best or only way to establish presumptions. For every complaint there may just as many, if not more, times there are no complaints from parties.

Ms. DiFrancesco recalls discussing URCP rule 7 at the last meeting. Mr. Pack does not recall a consensus of adding specific hearings to rule 7, but this could be a place to start. There is discussion regarding when a court may rule on a motion without waiting for a response. Judge Cornish has seen divorce cases where one party wants to appear remotely

and the other party objects indicating the person should be present in the witness chair. She indicates she takes into account the parties location and decides on a case by case basis. She sees parties oppose these regularly. Rachel Sykes indicates she has sat around the court house on a law and motion calendar that was not evidentiary from 9:00 am to 2:00 pm awaiting a 9:00 am hearing to be called. She has also been asked for a doctor's note when asking to appear remotely. Some judges are more liberal than others in granting requests.

Ms. DiFrancesco mentions these requests are about a person attending remotely, not dictating the medium of the entire hearing. Ms. Sykes indicates some judges do not want to do anything remotely.

Michael Drechsel introduces himself and mentions there are several lawyer legislators who have reached out to the court on this issue. A few incidents have been reported where lawyers of the same firm on a similar case and motion experience different requirements for in-person attendance for courtrooms in the same court house. They are interested in finding something that provides consistency throughout the state. They would pursue fixing it themselves, but reaching out to see if the court is working on the issue. They also see the lack of conformity as a detriment to the people who are being served by the court.

Ms. Vogel mentions domestic violence cases and reaching out to those helping victims to get their perspective.

Judge Stone indicates it appears there are judges who are resistant to allowing virtual attendance. There do not appear to be judges who are denying requests by parties who want to be present in-person. Judge Stucki is an advocate of preserving discretion by the judge. A one size fits all may create more problems than it solves. The approach in his court is to allow parties to attend how they wish, and most attorneys appear virtually. He suggests recommending factors to be considered.

Ms. DiFrancesco mentions adding factors for the court to consider when there is a motion to appear virtually or motion to appear in-person. And must answer the question of what should be happening remotely and what should be happening in-person.

Judge Cornish mentions adding this to the request to submit for decision. And then the other party could respond or not. If a hearing is requested, what type of hearing. Commissioner Conklin states they have hearings on everything, and if looking at factors to consider would like to add the length of the hearing. She presumably does very short hearings virtually. Judge Russell notes that one reason judges have requested discretion is because each district is very different, and criminal matters are very different from civil. A one size fits all on each of these may be difficult. He has returned to many in-person hearings because it is more efficient, but that may be different elsewhere, and if there is a request he considers it. This issue has been studied extensively in other states and there may be rules in place to

consider. Minnesota and Arizona have guidelines, statements or rules. Tim indicates the subcommittee has not looked into what other states have done.

Ms. Vogel notes the different requests. For a hearing to be held remotely or in-person, and then also requests by individuals to appear in a method that is different than how it was scheduled. Ms. DiFrancesco clarifies, yes, there are requests for the hearing format and for how an individual will attend. There could be a sequential process for which method a party is requesting, and then a party requesting to appear in a way opposite to how the hearing was set. Do we want a process that would invite a challenge to the judge's determination as to the hearing format.

Judge Cornish returns to the Supreme Court's question regarding specific hearings and the default. Ms. DiFrancesco responds, yes that is one question, and she does not believe we have an answer to what the Supreme Court wants to do with that question, whether it be by creating a rule or providing guidance to judges with recommendations.

Mr. Drechsel indicates there is no answer to that, but it is a topic of interest and the feedback from the legislature is being taken seriously by the Supreme Court. This is feedback from the private experience of lawyer legislators. Judge Cornish asks if there could be a district by district decision or local rule. Mr. Drechsel indicates a standing order for districts is a viable approach. Ms. DiFrancesco notes the prior experience is that the Justices do not want district by district approaches, and if that is the recommendation then it should be very clear. But do not think the Supreme Court would want that to be the recommendation. Nick Stiles also notes conformity is a good approach as we are a unified court system. The Supreme Court is curious to know if we are not doing anything, then why are we not doing anything about this issue yet. Mr. Drechsel also notes community partners including the sheriffs office, and the bar may want to know why they are transporting some inmates and not others.

Judge Stone introduces the hybrid capability. He has not had an issue with parties complaining when he listens to the requests of the parties and attorneys. Judge Scott mirrors Judge Stone's comments. Many hearings are remote, some are hybrid and she is in the office every day. This also may be resolved internally with conversations with judges. Judge Stucki notes that this is his exact experience – what do the parties and attorneys want to do. Very rarely does he impose doing something different than the parties have requested, but he has a reason and has not received push back from parties or attorneys. Factors for judges to consider may provide for conformity over having a one size fits all rule.

Ms. DiFrancesco walks through each question specifically in order to return to the Supreme Court with a few answers.

> First Question - Should there be a rule of procedure that allows participants to request their hearing be held opposite the decision of the judicial officer?

- *Committee votes to provide an option in rule 7(l) for a party to appear remotely or in-person* (opposite of the format set by the court). The Subcommittee is to come up with language for rule 7.

Second Question - Should we add a rule that gives the court guidance about what factors to be considered in granting or denying such a motion?

- *Majority of Committee votes yes to this question.* Subcommittee is to look at what has happened in other states, and what other factors have been considered. The Committee has discussed length of the hearing, distance to the court house, nature of the hearing, presentation of evidence, and burden on the parties. Judge Rawson mentions not having these factors be presumptive one way or the other because he had someone requesting to appear remotely and then four rescheduled hearings due to poor internet connection. After this he had to order they at least appear with decent internet connection or at the court house. Mr. Drechsel also mentions prior conduct of the parties as a factor. Ms. Vogel mentions language as a factor. It is also mentioned the Subcommittee consider a certification with the request to appear remotely that the person has adequate internet connection. Commissioner Conklin adds to the language factor whether an interpreter is needed.

Third Question - Should there be a rule of procedure that provides a presumption regarding certain hearing types?

- *Majority of Committee votes no to this question.*
- Subpart to this question, the Supreme Court requested feedback as to what should be presumptively in-person.
    - Judge Stone adds the first presumption should be the parties preferences. Judge Stucki adds that there could be factors about taking evidence instead of a presumption because you could have an in-person trial and still allow someone to appear remotely. Then is there going to be a presumption about hybrid formats.
    - *Majority of Committee votes for the parties' preference to be a presumption.*
    - *Majority of Committee votes for trials and evidentiary hearings to have a presumption in-person.*
    - Ms. DiFrancesco also asks whether motions to dismiss and motions for summary judgment should have a presumption in-person. Judge Scott mentions that she rarely has attorneys request to be in-person for these hearings. Judge Cornish has similar experience. Commissioner Conklin mentions for dispositive motions she often has to have in Chambers meetings and those are better served in-person. Judge Russell schedules all of his civil motions, even dispositive ones, remotely. He would allow someone to be in-

person if they asked but it seems more convenient, comfortable, and if counsel is out of state then there is less expense for travel. Tonya Wright adds that every attorney in her office would prefer to do motion hearings virtually. Judge Stone's experience is that people would prefer virtually, and does not think it is his place to say no, you must come in-person.

- Ms. DiFrancesco asks whether parties should be able to appear in-person as a matter of right for dispositive motions. Judge Stone adds why would that not be a right in every case. If someone wants to come in-person, then come in-person. Judge Cornish agrees with Judge Stone. She runs her criminal calendar remotely, and if they ask to appear in-person, then she schedules it in-person. She is at the court house every day and will be there if they want to appear. She does not think everyone should have a right to appear remotely.
- Ms. DiFrancesco asks whether there should be a presumption that parties may appear in-person for anything heard by a judge or commissioner. *Majority of Committee votes yes.* Judge Stone wants to be careful with the language and using the word "right." Judge Cornish clarifies that they should be allowed to show up in-person, not that they can require to have everyone show up in-person. Ms. DiFrancesco mentions this may be a factor, that there is a presumption that the court will grant any request by a party to be able to appear, themselves, in-person for any hearing, absent good cause. Ms. Vogel asks if the courts are set up to deal with someone who just shows up. Not all court rooms are set up for hybrid, and they would need notice to have a baliff present. Judge Rawson adds the use of "right" language might not be best because if there is a party housed in the maximum security part of the prison and they then say they have a right to attend a civil hearing in Layton, that could create a problem. There may be security reasons why you conduct a hearing remotely. In a lot of ways may want to leave these decisions with the judiciary who have worked on the individual cases. If he's planning to do a remote hearing and someone walks in to appear in-person, they may not be set up with enough security to accommodate them. Ms. DiFrancesco mentions this all may fall under "absent good cause." Rather if someone files a motion to appear in person, then the judge should have good cause to deny it. Judge Rawson mentions when he is ruling on said motion what if he does not know whether he will have a bailiff available. Ms. DiFrancesco mentions if they file the motion too close to the hearing then there is good cause to deny. Commissioner Conklin indicates her courtroom is not set up for a hybrid hearing, and she does remote hearings from her home. It

would not be convenient for court staff or bailiffs who are short staffed to have one hearing out of entire days because someone decided they wanted to appear in-person. She sets specific hearings on those days to be remote. Ms. DiFrancesco mentioned when she scheduled a family law case hearing the clerk sent dates and listed the ones that would be remote and the ones that would be in-person. Return to the vote, does the Committee want to include language that creates a presumption that if a person requests to be in-person that they be permitted to attend in-person. *Majority of Committee votes yes.*

- Discussion about pro se calendars. Judge Cornish says her pro se calendar is remote and understands others are as well. Some may be hybrid. Third district and Farmington family law pro se calendars are remote.
- For dispositive motions, should the format be the preference of the parties, with no listed presumption. *Committee votes yes.*

- Subpart to this question, the Supreme Court requested feedback as to what should be presumptively remote hearings.
  - Status conferences and rule 16 conferences. *Committee votes yes.*
  - Statement of discovery issues. Judge Rawson mentions that with pro se parties, especially in family law cases, parties may not have access to a laptop which makes remote hearings more difficult. There is also a presumption in URCP Rule 37 for discovery issues to be handled remotely.
  - Motion to enforce and for sanctions under Rules 7A or 7B. Judge Cornish mentions this may depend upon the underlying action whether it is debt collection or family law. Judge Russell mentions that this may be an evidentiary hearing which may be best held in-person. Judge Stone also adds if they are asking for incarceration it may change the way the hearing is held. Question is whether to default to what the parties request, unless it is an evidentiary hearing. Five committee members vote yes. Ms. Vogel indicates she is abstaining in order to flush it out more. Judge Stucki did not feel strongly one way or another. Judge Stone says he has had really good evidentiary hearings remotely and does not buy the efficacy arguments. Judge Rawson mentions he may not have the same set up with technology and it may not be the same throughout the state. Ms. Sykes agrees with Judge Stone. Ms. Vogel asks about pro se parties. Judge Stone would be opposed to a rule for pro se parties. Jim Hunnicutt mentions the southern part of the state, and he had a remote hearing experience with Judge Torgerson that was very positive. His guess is that Judge Torgerson prefers remote because of all the court rooms he serves in throughout southern

Utah. Loni Page mentions she believes the parties in southern Utah prefer remote as well. They sometimes will receive requests for in-person attendance, followed by a stipulation to appear remotely. And she agrees with Mr. Hunnicutt that this is the experience in seventh district.

- Ms. Wright mentions domestic case management conferences. These are essentially status conferences but have a separate rule. These are mostly held remotely.

Last Question – should there be a rule of procedure that provides an appeal process for challenging the decision of a judicial officer as it relates to remote or in-person hearings. And if so, who should consider the appeal. Previously discussed this going to the presiding judge of the district.

- *The Majority of the Committee votes no.*
- Interlocutory appeal would be the appeal process.

Ms. Vogel requests to be added to the Subcommittee, which is granted.

(4) SUBCOMMITTEE ON RULE 5(a)(2) AND 5(b)(3).

Ms. DiFrancesco summarizes this issue as whether individuals who are defaulted have to be served on an ongoing basis. This has been discussed a handful of times and have had discussions with persons at the Bar about this issue. Would like to bring this back to a new subcommittee. According to Rule 5(a)(2) a party in default is no longer required to be served except with very specific documents. This may be problematic in debt collection. Can these individuals always be easily served. Ms. DiFrancesco would like to see what is going on in other states and can send emails along with Bar Foundation information. Judge Stone recommends reaching out to debt collection bar. Subcommittee will be Ms. Vogel, Judge Cornish, Commissioner Conklin, Judge Scott, and Justin Toth. Ms. Vogel will chair this subcommittee.

(5) ADJOURNMENT.

The meeting was adjourned at 6:00 p.m. The next meeting will be January 24, 2024, at 4:00 p.m.

Tab 2

Rule 56. Summary judgment.

(a) Motion for summary judgment or partial summary judgment. A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The court shall grant summary judgment if the moving party shows that there is no genuine dispute as to any material fact and the moving party is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion. The motion and memoranda must follow Rule 7 as supplemented below.

~~(a)~~(1) Instead of a statement of the facts under Rule 7, a motion for summary judgment must contain a statement of material facts claimed not to be genuinely disputed. Each fact must be separately stated in numbered paragraphs and supported by citing to materials in the record under paragraph (c)(1) of this rule.

~~(a)~~(2) Instead of a statement of the facts under Rule 7, a memorandum opposing the motion must include a verbatim restatement of each of the moving party's facts that is disputed with an explanation of the grounds for the dispute supported by citing to materials in the record under paragraph (c)(1) of this rule. The memorandum may contain a separate statement of additional materials facts in dispute, which must be separately stated in numbered paragraphs and similarly supported.

~~(a)~~(3) The motion and the memorandum opposing the motion may contain a concise statement of facts, whether disputed or undisputed, for the limited purpose of providing background and context for the case, dispute and motion.

~~(a)~~(4) Each material fact set forth in the motion or in the memorandum opposing the motion under paragraphs (a)(1) and (a)(2) that is not disputed is deemed admitted for the purposes of the motion.

(b) Time to file a motion. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may move for summary judgment at any time after service of a motion for summary judgment by the adverse party or after

21 days from the commencement of the action. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may move for summary judgment at any time. ~~Unless the court orders otherwise, a party may file a motion for summary judgment at any time no later than 28 days after the close of all discovery.~~ The court may set a deadline under Rule 16 to file motions for summary judgment.

(c) Procedures.

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

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

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

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

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

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

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

~~(d)~~(1) defer considering the motion or deny it without prejudice;

~~(d)~~(2) allow time to obtain affidavits or declarations or to take discovery; or

~~(d)~~(3) issue any other appropriate order.

(e) Failing to properly support or address a fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by paragraph (c), the court may:

~~(e)~~(1) give an opportunity to properly support or address the fact;

~~(e)~~(2) consider the fact undisputed for purposes of the motion;

~~(e)~~(3) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the moving party is entitled to it; or

~~(e)~~(4) issue any other appropriate order.

(f) Judgment independent of the motion. After giving notice and a reasonable time to respond, the court may:

~~(f)~~(1) grant summary judgment for a nonmoving party;

~~(f)~~(2) grant the motion on grounds not raised by a party; or

~~(f)~~(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to grant all the requested relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or declaration submitted in bad faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result.

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

Advisory Committee Notes

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

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

Tab 3

Rule 6. Time.

Effective: ~~***5/1/2021***~~

(a) Computing time. The following rules apply in computing any time period specified in these rules, any local rule or court order, or in any statute that does not specify a method of computing time.

(1) When the period is stated in days or a longer unit of time:

(A) exclude the day of the event that triggers the period;

(B) count every day, including intermediate Saturdays, Sundays, and legal holidays; and

(C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

(2) When the period is stated in hours:

(A) begin counting immediately on the occurrence of the event that triggers the period;

(B) count every hour, including hours during intermediate Saturdays, Sundays, and legal holidays; and

(C) if the period would end on a Saturday, Sunday, or legal holiday, the period continues to run until the same time on the next day that is not a Saturday, Sunday, or legal holiday.

(3) Unless the court orders otherwise, if the clerk's office is inaccessible:

(A) on the last day for filing under Rule 6(a)(1), then the time for filing is extended to the first accessible day that is not a Saturday, Sunday or legal holiday; or

(B) during the last hour for filing under Rule 6(a)(2), then the time for filing is extended to the same time on the first accessible day that is not a Saturday, Sunday, or legal holiday.

(4) Unless a different time is set by a statute or court order, filing on the last day means:

(A) for electronic filing, before midnight; and

(B) for filing by other means, the filing must be made before the clerk's office is scheduled to close.

(5) The "next day" is determined by continuing to count forward when the period is measured after an event and backward when measured before an event.

(6) "Legal holiday" means the day for observing:

(A) New Year's Day;

(B) Dr. Martin Luther King, Jr. Day;

(C) Washington and Lincoln Day;

(D) Memorial Day;

(E) Juneteenth National Freedom Day (as recognized by the Utah Legislature as the third Monday of June);

(F)~~(E)~~ Independence Day;

(G)~~(F)~~ Pioneer Day;

(H)~~(G)~~ Labor Day;

(I)~~(H)~~ Columbus Day;

(J)~~(I)~~ Veterans' Day;

(K)~~(J)~~ Thanksgiving Day;

(L)~~(K)~~ Christmas; and

(M)~~(L)~~ any day designated by the Governor or Legislature as a ~~state~~ legal holiday.

(b) Extending time.

(1) When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

(2) A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d) and (e), and 60(c).

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(c) Additional time after service by mail. When a party may or must act within a specified time after service and service is made exclusively by mail under Rule 5(b)(3)(C)(i), 7 days are added after the period would otherwise expire under paragraph (a).

(d) Response time for an unrepresented party. When a party is not represented by an attorney, does not have an electronic filing account, and may or must act within a specified time after the filing of a paper, the period of time within which the party may or must act is counted from the service date and not the filing date of the paper.

(e) Filing or service by inmate.

(1) For purposes of Rule 45(i) and this paragraph (e), an inmate is a person confined to an institution or committed to a place of legal confinement.

(2) Papers filed or served by an inmate are timely filed or served if they are deposited in the institution's internal mail system on or before the last day for filing or service. Timely filing or service may be shown by a contemporaneously filed notarized statement or written declaration setting forth the date of deposit and stating that first-class postage has been, or is being, prepaid, or that the inmate has complied with any applicable requirements for legal mail set by the institution. Response time will be calculated from the date the papers are received by the court, or for papers served on parties that do not need to be filed with the court, the postmark date the papers were deposited in U.S. mail.

(3) The provisions of paragraph (e)(2) do not apply to service of process, which is governed by Rule 4.

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Tab 4

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Posted: October 4, 2023

Utah Courts

Rules of Civil Procedure – Comment Period Closed November 18, 2023

URCP012. Defenses and objections. AMEND. After this rule was posted for public comment there are additional proposed changes to subparagraphs (a)(1) and (a)(2). The amendments clarify the applicability of the rules and the language for pleadings filed in domestic relations actions.

URCP083. Vexatious litigants. AMEND. Amendments were previously made to this rule and published for comment. Amendments are now also proposed to lines 42 and 63 to include the language "or petition for permission to" in these sentences. Furthermore, an amendment is proposed to add the language "after notice and an opportunity to be heard" to subparagraph (b) to clarify the vexatious litigants' right to notice and an opportunity to be heard on these issues.

This entry was posted in -Rules of Civil Procedure, URCP012, URCP083.

« Rule of Criminal Procedure – Comment Period Closes

Rules of Appellate Procedure – Comment Period Closed

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- -Alternate Dispute Resolution
- -Code of Judicial Administration
- -Code of Judicial Conduct
- -Fourth District Court Local Rules
- -Licensed Paralegal Practitioners Rules of Professional Conduct
- -Rules Governing Licensed Paralegal Practitioner
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UTAH COURTS

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One thought on "Rules of Civil Procedure – Comment Period Closed November 18, 2023"

Justin Heideman
October 4, 2023 at 9:05 pm

I believe that it would be appropriate to note that a 12(b) Motion to Dismiss precludes the requirement that an answer be filed. As the rule currently reads it could be interpreted to require the filing of an answer even if a 12(b) motion were filed.

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0302
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Rule 12. Defenses and objections.

(a) When presented.

(1) ~~**In actions other than domestic relations.**~~ Unless otherwise provided by statute or order of the court, a defendant must file and 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. A party served with ~~a pleading stating~~ a cross-claim must file and serve an answer ~~there~~to the crossclaim within 21 days after ~~the~~ service. The plaintiff must file and serve an answer to a counterclaim ~~in the answer~~ within 21 days after service of the counterclaim~~answer or, if a reply is ordered by the court, within 21 days after service of the order~~, unless the court orders otherwise ~~directs~~. The service of a motion under this rule alters these periods of time as follows, unless a different time is ~~fixed by~~ ordered by ~~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.~~ For purposes of domestic relations actions as defined in Rule 26.1, and as used in this rule, the terms "plaintiff" means petitioner,

the term "defendant" means respondent, the term "complaint" means petition, and the term "counterclaim" means 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.

Effective: 11/1/2021

Tab 5

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, after notice and an opportunity to be heard, 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 or petition for permission to 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 or petition for permission to 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

Rule 101. Motion practice before court commissioners.

Effective: 5/1/2021

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

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

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

(3) Each motion to a court commissioner must include the following caution language at the top right corner of the first page, in bold type: **This motion will be decided by the court commissioner at an upcoming hearing. If you do not appear at the hearing, the Court might make a decision against you without your input. In addition, you may file a written response at least 14 days before the hearing.**

(4) Failure to provide the bilingual Notice to Responding Party or to include the caution language may provide the non-moving party with a basis under Rule 60(b) for excusable neglect to set aside any resulting order or judgment.

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

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

(d) Reply. The moving party may file a reply, consisting of any reply memorandum, affidavit(s) or declaration(s). The reply must be filed and served on the responding party at least 7 days

before the hearing. The contents of the reply must be limited to rebuttal of new matters raised in the response to the motion.

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

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

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

(h) Exhibits; objection to failure to attach.

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

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

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

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

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

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

(l) Hearings.

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

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

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

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

Tab 7

Rule 64. Writs in general.

(a) Definitions. As used in Rules 64, 64A, 64B, 64C, 64D, 64E, 69A, 69B and 69C:

~~(a)~~(1) "Claim" means a claim, counterclaim, cross claim, third party claim or any other claim.

~~(a)~~(2) "Defendant" means the party against whom a claim is filed or against whom judgment has been entered.

~~(a)~~(3) "Deliver" means actual delivery or to make the property available for pick up and give to the person entitled to delivery written notice of availability.

~~(a)~~(4) "Disposable earnings" means that part of earnings for a pay period remaining after the deduction of all amounts required by law to be withheld.

~~(a)~~(5) "Earnings" means compensation, however denominated, paid or payable to an individual for personal services, including periodic payments pursuant to a pension or retirement program. Earnings accrue on the last day of the period in which they were earned.

~~(a)~~(6) "Notice of exemptions" means a form that advises the defendant or a third person that certain property is or may be exempt from seizure under state or federal law. The notice shall list examples of exempt property and indicate that other exemptions may be available. The notice shall instruct the defendant of the deadline for filing a reply and request for hearing.

~~(a)~~(7) "Officer" means any person designated by the court to whom the writ is issued, including a sheriff, constable, deputy thereof or any person appointed by the officer to hold the property.

~~(a)~~(8) "Plaintiff" means the party filing a claim or in whose favor judgment has been entered.

~~(a)~~(9) "Property" means the defendant's property of any type not exempt from seizure. Property includes but is not limited to real and personal property, tangible

and intangible property, the right to property whether due or to become due, and an obligation of a third person to perform for the defendant.

~~(a)~~(10) "Serve" with respect to parties means any method of service authorized by Rule 5 and with respect to non-parties means any manner of service authorized by Rule 4.

(b) Security.

~~(b)~~**(1) Amount.** When security is required of a party, the party shall provide security in the sum and form the court deems adequate. For security by the plaintiff the amount should be sufficient to reimburse other parties for damages, costs and attorney fees incurred as a result of a writ wrongfully obtained. For security by the defendant, the amount should be equivalent to the amount of the claim or judgment or the value of the defendant's interest in the property. In fixing the amount, the court may consider any relevant factor. The court may relieve a party from the necessity of providing security if it appears that none of the parties will incur damages, costs or attorney fees as a result of a writ wrongfully obtained or if there exists some other substantial reason for dispensing with security. The amount of security does not establish or limit the amount of damages, costs or attorney fees recoverable if the writ is wrongfully obtained.

~~(b)~~**(2) Jurisdiction over surety.** A surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as agent upon whom papers affecting the surety's liability may be served. The surety shall file with the clerk of the court the address to which the clerk may mail papers. The surety's liability may be enforced on motion without the necessity of an independent action. If the opposing party recovers judgment or if the writ is wrongfully obtained, the surety will pay the judgment, damages, costs and attorney fees not to exceed the sum specified in the contract. The surety is responsible for return of property ordered returned.

~~(b)~~**(3) Objection.** The court may issue additional writs upon the original security subject to the objection of the opposing party. The opposing party may object to the sufficiency of the security or the sufficiency of the sureties within five days after service of the writ. The burden to show the sufficiency of the security and the sufficiency of the sureties is on the proponent of the security.

~~(b)~~**(4) Security of governmental entity.** No security is required of the United States, the State of Utah, or an officer, agency, or subdivision of either, nor when prohibited by law.

(c) Procedures in aid of writs.

~~(c)~~**(1) Referee.** The court may appoint a referee to monitor hearings under this subsection.

~~(c)~~**(2) Hearing; witnesses; discovery.** The court may conduct hearings as necessary to identify property and to apply the property toward the satisfaction of the judgment or order. Witnesses may be subpoenaed to appear, testify and produce records. The court may permit discovery.

~~(c)~~**(3) Restraint.** The court may forbid any person from transferring, disposing or interfering with the property.

(d) Issuance of writ; service

~~(d)~~**(1) Clerk to issue writs.** The clerk of the court shall issue writs. A court in which a transcript or abstract of a judgment or order has been filed has the same authority to issue a writ as the court that entered the judgment or order. If the writ directs the seizure of real property, the clerk of the court shall issue the writ to the sheriff of the county in which the real property is located. If the writ directs the seizure of personal property, the clerk of the court may issue the writ to an officer of any county.

~~(d)~~**(2) Content.** The writ may direct the officer to seize the property, to keep the property safe, to deliver the property to the plaintiff, to sell the property, or to take

other specified actions. If the writ is to enforce a judgment or order for the payment of money, the writ shall specify the amount ordered to be paid and the amount due.

~~(d)(2)~~(A) If the writ is issued ex parte before judgment, the clerk shall attach to the writ plaintiff's affidavit, detailed description of the property, notice of hearing, order authorizing the writ, notice of exemptions and reply form.

~~(d)(2)~~(B) If the writ is issued before judgment but after a hearing, the clerk shall attach to the writ plaintiff's affidavit and detailed description of the property.

~~(d)(2)~~(C) If the writ is issued after judgment, the clerk shall attach to the writ plaintiff's application, detailed description of the property, the judgment, notice of exemptions and reply form.

~~(d)~~**(3) Service.**

~~(d)(3)~~**(A) Upon whom; effective date.** The officer shall serve the writ and accompanying papers on the defendant, and, as applicable, the garnishee and any person named by the plaintiff as claiming an interest in the property. The officer may simultaneously serve notice of the date, time and place of sale. A writ is effective upon service.

~~(d)(3)~~**(B) Limits on writs of garnishment.**

~~(d)(3)(B)~~(i) A writ of garnishment served while a previous writ of garnishment is in effect is effective upon expiration of the previous writ; otherwise, a writ of garnishment is effective upon service.

~~(d)(3)(B)~~(ii) Only one writ of garnishment of earnings may be in effect at one time. One additional writ of garnishment of earnings for a subsequent pay period may be served on the garnishee while an earlier writ of continuing garnishment is in effect.

~~(d)(3)~~**(C) Return; inventory.** Within 14 days after service, the officer shall return the writ to the court with proof of service. If property has been seized, the officer

shall include an inventory of the property and whether the property is held by the officer or the officer's designee. If a person refuses to give the officer an affidavit describing the property, the officer shall indicate the fact of refusal on the return, and the court may require that person to pay the costs of any proceeding taken for the purpose of obtaining such information.

~~(d)(3)~~**(D) Service of writ by publication.** The court may order service of a writ by publication upon a person entitled to notice in circumstances in which service by publication of a summons and complaint would be appropriate under Rule 4.

(d)(3)(D)(i) If service of a writ is by publication, substantially the following shall be published under the caption of the case:

To _____, [Defendant/Garnishee/Claimant]:

A writ of _____ has been issued in the above-captioned case commanding the officer of _____ County as follows:

[Quoting body of writ]

Your rights may be adversely affected by these proceedings. Property in which you have an interest may be seized to pay a judgment or order. You have the right to claim property exempt from seizure under statutes of the United States or this state, including Utah Code, Title 78B, Chapter 5, Part 5.

(d)(3)(D)(ii) The notice shall be published in a newspaper of general circulation in each county in which the property is located at least 14 days prior to the due date for the reply or at least 14 days prior to the date of any sale, or as the court orders. The date of publication is the date of service.

(e) Claim to property by third person.

~~(e)~~**(1) Claimant's rights.** Any person claiming an interest in the property has the same rights and obligations as the defendant with respect to the writ and with respect to providing and objecting to security. Any claimant named by the plaintiff

and served with the writ and accompanying papers shall exercise those rights and obligations within the same time allowed the defendant. Any claimant not named by the plaintiff and not served with the writ and accompanying papers may exercise those rights and obligations at any time before the property is sold or delivered to the plaintiff.

~~(e)~~**(2) Join claimant as defendant.** The court may order any named claimant joined as a defendant in interpleader. The plaintiff shall serve the order on the claimant. The claimant is thereafter a defendant to the action and shall answer within 14 days, setting forth any claim or defense. The court may enter judgment for or against the claimant to the limit of the claimant's interest in the property.

~~(e)~~**(3) Plaintiff's security.** If the plaintiff requests that an officer seize or sell property claimed by a person other than the defendant, the officer may request that the court require the plaintiff to file security.

(f) Discharge of writ; release of property.

~~(f)~~(1) **By defendant.** At any time before notice of sale of the property or before the property is delivered to the plaintiff, the defendant may file security and a motion to discharge the writ. The plaintiff may object to the sufficiency of the security or the sufficiency of the sureties within 7 days after service of the motion. At any time before notice of sale of the property or before the property is delivered to the plaintiff, the defendant may file a motion to discharge the writ on the ground that the writ was wrongfully obtained. The court shall give the plaintiff reasonable opportunity to correct a defect. The defendant shall serve the order to discharge the writ upon the officer, plaintiff, garnishee and any third person claiming an interest in the property.

~~(f)~~**(2) By plaintiff.** The plaintiff may discharge the writ by filing a release and serving it upon the officer, defendant, garnishee and any third person claiming an interest in the property.

~~(f)~~**(3) Disposition of property.** If the writ is discharged, the court shall order any remaining property and proceeds of sales delivered to the defendant.

~~(f)~~**(4) Copy ~~filed~~ recorded with county recorder.** If an order discharges a writ upon property seized by ~~filing~~ recording with the county recorder, the officer or a party shall ~~file~~ record a certified copy of the order with the county recorder.

~~(f)~~**(5) Service on officer; disposition of property.** If the order discharging the writ is served on the officer:

~~(f)(5)~~(A) before the writ is served, the officer shall return the writ to the court;

~~(f)(5)~~(B) while the property is in the officer's custody, the officer shall return the property to the defendant; or

~~(f)(5)~~(C) after the property is sold, the officer shall deliver any remaining proceeds of the sale to the defendant.

Effective date:

Rule 66. Receivers.

(a) **Grounds for appointment.** The court may appoint a receiver:

~~(a)~~(1) in any action in which property is in danger of being lost, removed, damaged or is insufficient to satisfy a judgment, order or claim;

~~(a)~~(2) to carry the judgment into effect, to dispose of property according to the judgment and to preserve property during the pendency of an appeal;

~~(a)~~(3) when a writ of execution has been returned unsatisfied or when the judgment debtor refuses to apply property in satisfaction of the judgment;

~~(a)~~(4) when a corporation has been dissolved or is insolvent or in imminent danger of insolvency or has forfeited its corporate rights; or

~~(a)~~(5) in all other cases in which receivers have been appointed by courts of equity.

(b) **Appointment of receiver.** No party or attorney to the action, nor any person who is not impartial and disinterested as to all the parties and the subject matter of the action may be appointed receiver without the written consent of all interested parties.

(c) The court may require security from a receiver in accordance with Rule 64.

(d) **Oath.** A receiver shall swear or affirm to perform duties faithfully.

(e) **Powers of receivers.** A receiver has, under the direction of the court, power to bring and defend actions, to seize property, to collect, pay and compromise debts, to invest funds, to make transfers and to take other action as the court may authorize.

(f) **Payment of taxes before sale or pledge of personal property.** Before the receiver may sell, transfer or pledge personal property, the receiver shall pay applicable taxes and shall file receipts showing payment of taxes. If there are insufficient assets to pay the taxes, the court may authorize the sale, transfer or pledge with the proceeds to be used to pay taxes. Within 14 days after payment, the receiver shall file receipts showing payment of taxes.

(g) **Real property.** Before a receiver is vested with real property, the receiver shall ~~file~~ record a certified copy of the appointment order in the office of the county recorder of the county in which the real property is located.

Effective date:

Rule 69A. Seizure of property.

Unless otherwise directed by the writ, the officer shall seize property as follows:

(a) **Debtor's preference.** When there is more property than necessary to satisfy the amount due, the officer shall seize such part of the property as the defendant may indicate. If the defendant does not indicate a preference, the officer shall first seize personal property, and if sufficient personal property cannot be found, then the officer shall seize real property.

(b) **Real property.** Real property shall be seized by ~~filing~~ recording the writ and a description of the property with the county recorder and leaving the writ and description with an occupant of the property. If there is no occupant of the property, the officer shall post the writ and description in a conspicuous place on the property. If another person claims an interest in the real property, the officer shall serve the writ and description on the other person.

(c) **Personal property.**

~~(c)~~(1) Farm products, as that term is defined in Utah Code Section 70A-9a-102, may be seized by filing the writ and description of the property with the central filing system established by Utah Code Section 70A-9a-320.

~~(c)~~(2) Securities shall be seized as provided in Utah Code Section 70A-8-111.

~~(c)~~(3) In the discretion of the officer, property of extraordinary size or bulk, property that would be costly to take into custody or to store and property not capable of delivery may be seized by serving the writ and a description of the property on the person holding the property. The officer shall request of the person holding the property an affidavit describing the nature, location and estimated value of the property.

~~(c)~~(4) Otherwise, personal property shall be seized by serving the writ and a description of the property on the person holding the property and taking the property into custody.

Effective date:

Rule 69B. Sale of property; delivery of property.

(a) Sale before judgment. The officer may sell the property before judgment if it is perishable or likely to decline speedily in value. The court may order the officer to sell the property before judgment if the court finds that the interest of the parties will be served by sale. The officer shall keep safe the proceeds of the sale subject to further order of the court.

(b) Notice of sale. The officer shall set the date, time and place for sale and serve notice thereof on the defendant and on any third party named by the plaintiff or garnishee. Service shall be not later than the initial publication of notice of the sale. The officer shall publish notice of the date, time and place of sale as follows:

~~(b)~~(1) If the property is perishable or likely to decline speedily in value, the officer shall post written notice of the date, time and place of sale and a general description of the property to be sold (A) in the courthouse from which the writ was issued and (B) in at least three other public places in the county or city in which the sale is to take place. The officer shall post the notice for such time as the officer determines is reasonable, considering the character and condition of the property.

~~(b)~~(2) If the property is personal property, the officer shall post written notice of the date, time and place of sale and a general description of the property to be sold (A) in the courthouse from which the writ was issued and (B) in at least three other public places in the county or city in which the sale is to take place. The officer shall post the notice for at least seven days and publish the notice at least one time not less than one day preceding the sale in a newspaper of general circulation, if there is one, in the county in which the sale is to take place.

~~(b)~~(3) If the property is real property, the officer shall post written notice of the date, time and place of sale and a particular description of the property to be sold (A) on the property, (B) at the place of sale, (C) at the district courthouse of the county in which the real property is located, and (D) in at least three other public places in the

county or city in which the real property is located. The officer shall post the notice for at least 21 days and publish the notice at least once a week for three successive weeks immediately preceding the sale in a newspaper of general circulation, if there is one, in the county in which the real property is located.

(c) Postponement. If the officer finds sufficient cause, the officer may postpone the sale. The officer shall declare the postponement at the time and place set for the sale. If the postponement is longer than 72 hours, notice of the rescheduled sale shall be given in the same manner as the original notice of sale.

(d) Conduct of sale. All sales shall be at auction to the highest bidder, Monday through Saturday, legal holidays excluded, between the hours of 9 o'clock a.m. and 8 o'clock p.m. at a place reasonably convenient to the public. Real property shall be sold at the district courthouse of the county in which the property is located. The officer shall sell only so much property as is necessary to satisfy the amount due. The officer shall not purchase property or be interested in any purchase. Property capable of delivery shall be within view of those who attend the sale. The property shall be sold in such parcels as are likely to bring the highest price. Severable lots of real property shall be sold separately. Real property claimed by a third party shall be sold separately if requested by the third party. The defendant may direct the order in which the property is sold.

(e) Accounting. Upon request of the defendant, the plaintiff shall deliver an accounting of the sale. The officer is entitled to recover the reasonable and necessary costs of seizing, transporting, storing and selling the property. The officer shall apply the property in the following order up to the amount due or the value of the property, whichever is less:

~~(e)~~(1) pay the reasonable and necessary costs of seizing, transporting, storing and selling the property;

~~(e)~~(2) deliver to the plaintiff the remaining proceeds of the sale;

~~(e)~~(3) deliver to the defendant the remaining property and proceeds of the sale.

(f) Purchaser refusing to pay. Every bid is an irrevocable offer. If a person refuses to pay the amount bid, the person is liable for the difference between the amount bid and the ultimate sale price. If a person refuses to pay the amount bid, the officer may:

~~(f)~~(1) offer the property to the next highest bidder;

~~(f)~~(2) renew bidding on the property; and

~~(f)~~(3) reject any other bid of such person.

(g) Property capable of delivery. Upon payment of the amount bid, the officer shall deliver to the purchaser of property capable of delivery the property and a certificate of sale stating that all right, title and interest which the defendant had in the property is transferred to the purchaser.

(h) Property not capable of delivery. Upon payment of the amount bid, the officer shall deliver to the purchaser of property not capable of delivery a certificate of sale describing the property and stating that all right, title and interest which the defendant had in the property is transferred to the purchaser. The officer shall serve a duplicate of the certificate on the person controlling the property.

(i) Real property. Upon payment of the amount bid, the officer shall deliver to the purchaser of real property a certificate of sale for each parcel containing:

~~(i)~~(1) a description of the real property;

~~(i)~~(2) the price paid;

~~(i)~~(3) a statement that all right, title, interest of the defendant in the property is conveyed to the purchaser; and

~~(i)~~(4) a statement whether the sale is subject to redemption.

The officer shall ~~file~~ record a duplicate of the certificate in the office of the county recorder.

(j) The officer shall deliver the property as directed by the writ.

Effective date:

Rule 69C. Redemption of real property after sale.

(a) **Right of redemption.** Real property may be redeemed unless the estate is less than a leasehold of a two-years' unexpired term, in which case the sale is absolute.

(b) **Who may redeem.** Real property subject to redemption may be redeemed by the defendant or by a creditor having a lien on the property junior to that on which the property was sold or by their successors in interest. If the defendant redeems, the effect of the sale is terminated and the defendant is restored to the defendant's estate. If the property is redeemed by a creditor, any other creditor having a right of redemption may redeem.

(c) **How made.** To redeem, the redemptioner shall pay the amount required to the purchaser and shall serve on the purchaser:

~~(c)~~(1) a certified copy of the judgment or lien under which the redemptioner claims the right to redeem;

~~(c)~~(2) an assignment, properly acknowledged if necessary to establish the claim; and

~~(c)~~(3) an affidavit showing the amount due on the judgment or lien.

(d) **Time for redemption.** The property may be redeemed within 180 days after the sale.

(e) **Redemption price.** The price to redeem is the sale price plus six percent. The price for a subsequent redemption is the redemption price plus three percent. If the purchaser or redemptioner ~~files~~ records with the county recorder notice of the amounts paid for taxes, assessments, insurance, maintenance, repair or any lien other than the lien on which the redemption was based, the price to redeem includes such amounts plus six percent for an initial redemption or three percent for a subsequent redemption. Failure to ~~file~~ record notice of the amounts with the county recorder waives the right to claim such amounts.

(f) **Dispute regarding price.** If there is a dispute about the redemption price, the redemptioner shall within 21 days of the redemption pay into court the amount

necessary for redemption less the amount in dispute and file and serve upon the purchaser a petition setting forth the items to which the redemptioner objects and the grounds for the objection. The petition is deemed denied. The court may permit discovery. The court shall conduct an evidentiary hearing and enter an order determining the redemption price. The redemptioner shall pay to the clerk any additional amount within seven days after the court's order.

(g) **Certificate of redemption.** The purchaser shall promptly execute and deliver to the redemptioner, or the redemptioner to a subsequent redemptioner, a certificate of redemption containing:

~~(g)~~(1) a detailed description of the real property;

~~(g)~~(2) the price paid;

~~(g)~~(3) a statement that all right, title, interest of the purchaser in the property is conveyed to the redemptioner; and

~~(g)~~(4) if known, whether the sale is subject to redemption.

The redemptioner or subsequent redemptioner shall ~~file~~ record a duplicate of the certificate with the county recorder.

(h) **Conveyance.** The purchaser or last redemptioner is entitled to conveyance upon the expiration of the time permitted for redemption.

(i) **Rents and profits, request for accounting, extension of time for redemption.**

~~(i)~~(1) Subject to a superior claim, the purchaser is entitled to the rents of the property or the value of the use and occupation of the property from the time of sale until redemption. Subject to a superior claim, a redemptioner is entitled to the rents of the property or the value of the use and occupation of the property from the time of redemption until a subsequent redemption. Rents and profits are a credit upon the redemption price.

~~(i)~~(2) Upon written request served on the purchaser before the time for redemption expires, the purchaser shall prepare and serve on the requester a written and verified account of rents and profits. The period for redemption is extended to 7 days after the accounting is served. If the purchaser fails to serve the accounting within 30 days after the request, the redemptioner may, within 60 days after the request, bring an action to compel an accounting. The period for redemption is extended to 21 days after the order of the court.

(j) **Remedies.**

~~(j)~~(1) **For waste.** A purchaser or redemptioner may file a motion requesting the court to restrain the commission of waste on the property. After the estate has become absolute, the purchaser or redemptioner may file an action to recover damages for waste.

~~(j)~~(2) **Failure to obtain property.**

~~(j)(2)~~(A) A purchaser or redemptioner who fails to obtain the property or who is evicted from the property because the judgment against the defendant is reversed or discharged may file a motion for judgment against the plaintiff for the purchase price plus amounts paid for taxes, assessments, insurance, maintenance and repair plus interest.

~~(j)(2)~~(B) A purchaser or redemptioner who fails to obtain the property or who is evicted from the property because of an irregularity in the sale or because the property is exempt may file a motion for judgment against the plaintiff or the defendant for the purchase price plus amounts paid for taxes, assessments, insurance, maintenance and repair plus interest. If the court enters judgment against the plaintiff, the court shall revive the plaintiff's judgment against defendant for the amount of the judgment against plaintiff.

~~(j)(2)~~(C) Interest on a judgment in favor of a purchaser or redemptioner is governed by Utah Code Section 15-1-4. Interest on a revived judgment in favor of

the plaintiff against the defendant is at the rate of the original judgment. The effective date of a revived judgment in favor of plaintiff against defendant is the date of the original judgment except as to an intervening purchaser in good faith.

(k) **Contribution and reimbursement.** A defendant may claim contribution or reimbursement from other defendants by filing a motion.

Effective date:

Tab 8

URCP Rule 74
Contact information upon withdrawal of counsel

First Request:

Judge Holmberg noticed the mailing address for a client may not be sufficient contact information when an attorney withdraws from a case. The proposal is to add that an attorney provide the physical mailing address, the email address, and the cell phone number of the client in the withdrawal of counsel.

Second Request:

Michael Stahler submitted a request regarding the withdrawal of counsel. As background, an attorney practices a lot in Federal Court and has been active in their Rule Committee. As part of his job, he supervises our first-year lawyers who work with us for usually one year. This attorney is always listed as the first chair on these cases, so the withdrawal/substitution involves the second chair attorney. Recently, we had a transition and it occurred when our new first-year lawyer was still awaiting admission after taking the bar exam. Accordingly, our office could not file a "substitution of counsel" under Rule 74(d) because the new attorney was still awaiting admission. Accordingly, they had to file a "Notice of Withdrawal" under Rule 74 (a).

Rule 74 (a) appears to address a situation in which a party loses **its only attorney**, as the rule only allows for withdrawal without a motion only when there is no pending motion or trial date. In our case, there was a pending motion for summary judgment. Accordingly, the attorney "may not withdraw except upon motion and order of the court." In this case, the opposing party objected to the second-chair attorney withdrawing absent a motion and order from the court. It resulted in a lot more work and expense, especially considering that an attorney remained as the first chair and the client was always represented (and would be).

There is a suggestion that we amend Rule 74 to mirror the local Federal Rule. That proposed language addresses the situation when only **one** attorney is withdrawing while the other remains on the case. In my experience, even in private practice, a lot of firms assign two attorneys to a matter, so this amendment would save judicial resources and prevent unnecessary motion practice.

DUCivR 83-1.4 (b) provides:

Withdrawal When the Party Continues to Be Represented by Counsel. An attorney may withdraw from representing a party if the party continues to be represented by other counsel who has already entered an appearance. The attorney seeking to withdraw must file a Notice of Withdrawal of Counsel stating that the party continues to be represented by counsel who is aware of the pending deadlines and trial dates. Upon filing the notice, the Clerk's Office will terminate the attorney from the case.

Rule 74. Withdrawal of counsel.

(a) **Notice of withdrawal.** An attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the physical mailing address, email address and cell phone number of the attorney's client and a statement that no motion is pending and no hearing or trial has been set. If a motion is pending or a hearing or trial has been set, an attorney may not withdraw except upon motion and order of the court. The motion to withdraw shall describe the nature of any pending motion and the date and purpose of any scheduled hearing or trial.

(b) **Withdrawal of limited appearance.** An attorney who has entered a limited appearance under Rule 75 shall withdraw from the case upon the conclusion of the purpose or proceeding identified in the Notice of Limited Appearance:

~~(b)~~(1) by filing and serving a notice of withdrawal; or

~~(b)~~(2) if permitted by the judge, by orally announcing the withdrawal on the record in a proceeding.

An attorney who seeks to withdraw before the conclusion of the purpose or proceeding shall proceed under subdivision (a).

(c) **Notice to Appear or Appoint Counsel.** If an attorney withdraws other than under subdivision (b), dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, the opposing party shall serve a Notice to Appear or Appoint Counsel on the unrepresented party, informing the party of the responsibility to appear personally or appoint counsel. A copy of the Notice to Appear or Appoint Counsel must be filed with the court. No further proceedings shall be held in the case until 21 days after filing the Notice to Appear or Appoint Counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.

(d) **Substitution of counsel.** An attorney may replace the counsel of record by filing and serving a notice of substitution of counsel signed by former counsel, new counsel and the client. Court approval is not required if new counsel certifies in the notice of substitution that counsel will comply with the existing hearing schedule and deadlines.

Effective date:

Tab 9

URCP 101

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

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

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

(3) Each motion to a court commissioner must include the following caution language at the top right corner of the first page, in bold type: **This motion will be decided by the court commissioner at an upcoming hearing. If you do not appear at the hearing, the Court might make a decision against you without your input. In addition, you may file a written response at least 14 days before the hearing.**

(4) Failure to provide the bilingual Notice to Responding Party or to include the caution language may provide the non-moving party with a basis under Rule 60(b) for excusable neglect to set aside any resulting order or judgment.

(5) Stipulated motions under Rule 7(k), motions that may be acted on without waiting for a response under Rule 7(l), ex parte motions under Rule 7(m), and statements of discovery issues under Rule 37(a) must be made in accordance with their respective rules.

Commented [S(P1]: Motions for discovery sanctions should probably still follow Rule 101 given the number of self-represented litigants involved in domestic matters. SoDIs need to get ruled on quickly to keep things moving, but requiring a hearing before levying sanctions acts as a safety valve for pro se folks who may not have understood what they were supposed to do.

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

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

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

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

as allowed by rule or agreed by the parties) at least 3 business days before the hearing. A separate notice of hearing on counter motions is not required.

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

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

(h) Exhibits; objection to failure to attach.

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

(2) If papers or exhibits referred to in a motion or necessary to support the moving party's position are not served with the motion, the responding party may file and serve

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

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

(i) Length. Initial and responding memoranda may not exceed 10 pages of argument without leave of the court. Reply memoranda may not exceed 5 pages of argument without leave of the court. The total number of pages submitted to the court by each party may not exceed 25 pages, including affidavits, attachments and summaries, but excluding financial

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

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

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

(l) Hearings.

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

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

(m) Motions to judge. The following motions must be to the judge to whom the case is assigned: motion for alternative service; motion to waive 30-day waiting period; motion to waive divorce education class; motion for leave to withdraw after a case has been certified

as ready for trial; and motions in limine. A court may provide that other motions be considered by the judge.

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

Tab 10

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.

~~(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 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 file and serve a responsive pleading or otherwise appear 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

Comment [LP1]: Oct 2023 Civ Rules Committee Mtg: Sub "papers" for "documents"?

Comment [LP2]: We changed the list from what must be served to only those that are an exception as stated in other rules or as directed by the court.

Comment [LP3]: Summons must now include the bilingual notice (Rule 4 c1g) which is the court's form. Attorneys are supposed to attach the notice to their summons templates.

Comment [LP4]: 3-2023 Committee Mtg: hesitant to narrowly define what it means to appear so we added language instead of replacing "appear."

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:

(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;

(B) **Email.** If the party serving or being served a paper does not have an electronic filing account, 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 an attorney licensed in Utah, to the email address on their pleadings and/or on file with the Utah State Bar; or

Comment [LP5]: Added clarity for parties self-represented.

Comment [LP6]: From Lauren: I think the new URCP 5(b)(3) was meant to allow electronic service wherever possible. But I came across a scenario today that did not allow for electronic service on opposing counsel – and that is a request for a foreign subpoena to be served in Utah. So Florida case needing discovery in Utah, and I have to serve opposing counsel in FL via mail because they don't meet either URCP 5(b)(3)(A) or (B). Could you all please take a look at how to encompass this scenario into the language of 5(b)(3)?

Comment [LP7]: Committees suggestion: (b)(3)(B)(ii) and (iii)

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(iii) if service is to an attorney licensed outside of Utah, to the email address on their pleadings and/or on file with the attorney licensing entity in the state the attorney is licensed in.

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

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

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

~~(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:

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(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). 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~~ Attorneys 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.

Comment [LP8]: Our initial change is probably premature for service by and on MyCase users so we will return to previous language for the time being.

(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/November 2024

Advisory Committee Notes

Note adopted ~~2015~~20---

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

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

Comment [LP9]: Track changes with Aff/Dec sub-committee

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 11

Rules 7, 30, 37 and 45
Amendment and discussion history

These rules were last discussed at the May 2023 meeting, after which there was some feedback from Justice Pohlman. The May minutes included the following discussion:

Mr. Justin Toth reported on the omnibus amendments to Rules 7, 30, 37, and 45. He expressed that their first question was solidifying the problem to be cured by the amendment. He noted that the issue is that the current Rules 37 and 45 are not clear about whether Rule 37 statement of discovery issues process applies to persons seeking relief from subpoena or whether Rule 45(e) objection process should control that—which path controls and who are required to take each path. He advised that the best process is amend the rules to clarify that Rule 45 is one process for subpoenas specifically and Rule 37 exists for parties to resolve discovery issues including potentially asking a court for an order to enforce a subpoena but is not a method for objecting to a subpoena under Rule 45. Ultimately, Rule 37 would be used to resolve discovery issues including enforcing a subpoena; but Rule 45 (e)(3) would be the controlling Rule to object to a subpoena.

The Committee discussed the proposed amendments. The subcommittee suggested adding ―party‖ under Rule 45(e)(3) and once a party objects under Rule 45 that ends the obligation to comply with the subpoena. The subcommittee also suggested to delete ―or the person from whom discovery is sought‖ from Rule 37(a)(1) to make it clear Rule 37 process applies to parties; and add ―seeking to compel compliance with.‖ Under Rule 7 (b), add an additional amendment to Rule 7(b)(4) to make it clear that the party seeking an order to compel compliance must follow Rule 37 such as ―a request for an order to compel compliance under Rule 45(e) must follow Rule 37(a).

Ms. DiFrancesco highlighted that the primary difference between the suggested amendments and prior discussions of the Committee is that Rule 45 objection process was for non-parties while the Rule 37 process was for parties because of the difference in time required for compliance between parties and non-parties. Mr. Hunnicut likes the recommendation and believes it comports with how subpoenas work. Judge Stucki also favors the amendment. Ms. Vogel also favors the amendment because it makes it easy for nonparties to object, especially when a non-party does not have a big stake in the case. Mr. Michael Stahler pointed out that 45(e) (4)(A) needs to also have an addition of ―party.‖ Judge Holmberg asked whether a party can make an objection and then a subpoena has no effect after unless a motion to compel is filed. Ms. DiFrancesco noted that that will be the exact effect of the Rule change. Judge Holmberg pointed out that under Rule 37, the first step of the party was to request a protective order, but the Rule change would allow for simply objecting. Mr. Toth noted that the language that a party requests a protective order under is slightly different than the objection process under Rule 45(e) and that the distinction is that Rule 37 could contemplate seeking a protective order based on the discovery standards under Rule 26 that are not contemplated within the objection process within Rule 45. Mr. Toth questioned what the import of requesting a protective order in limiting the scope of a subpoena in a way that is different from objecting and noted that that is something the subcommittee may need to address.

Ms. DiFrancesco questioned whether the rule should make it that easy for a party to invalidate a subpoena, especially if the subpoena is directed to a non-party. She also wondered if the Rule change will increase the burden on the judiciary where once an objection is made, the subpoena becomes invalid and the party must go the court for an order, rather than resolve issues at a meet-and-confer. Mr. Toth noted that all the points are well taken, but suggested the Committee refocus on the issues that they are trying to solve. Ms. DiFrancesco noted that the initial problem was solved by deleting ―under Rule 37‖ in Rule 45 so that a written objection from non-parties would be a sufficient method of objecting. However, the supreme court added to the mission. Justice Cornish pointed out that Rule 45 (e) (5) does not stop the other party from complying, it only ends an obligation to comply. Ms. DiFrancesco and Mr. Toth suggested that another meeting with the supreme court is needed to solidify the objectives the Committee should be seeking to accomplish. Ms. DiFrancesco noted that she wanted to have some consensus before that meeting on whether a party should have to file a statement of discovery issues or whether the written objection alone should be enough. The Committee took a vote to either leave the status quo or to amend the Rule to serve written objections. Six voted in favor of leaving the status quo. Eight voted in favor to serve written objections. Ms. DiFrancesco will report to Justice Pohlman and seek further instructions.

Rule 30. Depositions upon oral questions.

(a)When depositions may be taken; when leave required. A party may depose a party or witness by oral questions. A witness may not be deposed more than once in standard discovery. An expert who has prepared a report disclosed under Rule 26(a)(4)(B) may not be deposed.

(b)Notice of deposition; general requirements; special notice; non-stenographic recording; production of documents and things; deposition of organization; deposition by telephone.

~~(b)~~(1) The party deposing a witness shall give reasonable notice in writing to every other party. The notice shall state the date, time and place for the deposition and the name and address of each witness. If the name of a witness is not known, the notice shall describe the witness sufficiently to identify the person or state the class or group to which the person belongs. The notice shall designate any documents and tangible things to be produced by a witness. The notice shall designate the officer who will conduct the deposition.

~~(b)~~(2) The notice shall designate the method by which the deposition will be recorded. With prior notice to the officer, witness and other parties, any party may designate a recording method in addition to the method designated in the notice. Depositions may be recorded by sound, sound-and-visual, or stenographic means, and the party designating the recording method shall bear the cost of the recording. The appearance or demeanor of witnesses or attorneys shall not be distorted through recording techniques.

~~(b)~~(3) A deposition shall be conducted before an officer appointed or designated under Rule 28 and shall begin with a statement on the record by the officer that includes (A) the officer's name and business address; (B) the date, time and place of the deposition; (C) the name of the witness; (D) the administration of the oath or affirmation to the witness; and (E) an identification of all persons present. If the deposition is recorded other than stenographically, the officer shall repeat items (A)

through (C) at the beginning of each unit of the recording medium. At the end of the deposition, the officer shall state on the record that the deposition is complete and shall state any stipulations.

~~(b)~~(4) The notice to a party witness may be accompanied by a request under Rule 34 for the production of documents and tangible things at the deposition. The procedure of Rule 34 shall apply to the request. The attendance of a nonparty witness may be compelled by subpoena under Rule 45. Documents and tangible things to be produced shall be stated in the subpoena.

~~(b)~~(5) A deposition may be taken by remote electronic means. A deposition taken by remote electronic means is considered to be taken at the place where the witness is located.

~~(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. Prior to the deposition, the serving party and the organization must confer in good faith about the matters for examination if any objections are raised, or those objections are waived. If the parties are unable to resolve the objections prior to the date of the deposition, either party may seek resolution from the court in accordance with Rule 37, or if the notice seeks a deposition of a non-party organization, the non-party organization may seek resolution in accordance with Rule 45(e). If the objections are not resolved before the set date of the deposition, the deposition may proceed on the matters not addressed by the statement of discovery issues. 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.

(c)Examination and cross-examination; objections.

~~(c)~~(1) Questioning of witnesses may proceed as permitted at the trial under the Utah Rules of Evidence, except Rules 103 and 615.

~~(c)~~(2) All objections shall be recorded, but the questioning shall proceed, and the testimony taken subject to the objections. Any objection shall be stated concisely and in a non-argumentative and non-suggestive manner. A person may instruct a witness not to answer only to preserve a privilege, to enforce a limitation on evidence directed by the court, or to present a motion for a protective order under Rule 37. Upon demand of the objecting party or witness, the deposition shall be suspended for the time necessary to make a motion. The party taking the deposition may complete or adjourn the deposition before moving for an order to compel discovery under Rule 37.

(d)Limits. During standard discovery, oral questioning of a nonparty shall not exceed four hours, and oral questioning of a party shall not exceed seven hours.

(e)Submission to witness; changes; signing. Within 28 days after being notified by the officer that the transcript or recording is available, a witness may sign a statement of changes to the form or substance of the transcript or recording and the reasons for the changes. The officer shall append any changes timely made by the witness.

(f)Record of deposition; certification and delivery by officer; exhibits; copies.

~~(f)~~(1) The officer shall record the deposition or direct another person present to record the deposition. The officer shall sign a certificate, to accompany the record, that the witness was under oath or affirmation and that the record is a true record of the deposition. The officer shall keep a copy of the record. The officer shall securely seal the record endorsed with the title of the action and marked "Deposition of (name). Do not open." and shall promptly send the sealed record to the attorney or the party who designated the recording method. An attorney or party receiving the record shall store it under conditions that will protect it against loss, destruction, tampering, or deterioration.

~~(f)~~(2) Every party may inspect and copy documents and things produced for inspection and must have a fair opportunity to compare copies and originals. Upon the request of a party, documents and things produced for inspection shall be marked for identification and added to the record. If the witness wants to retain the originals, that person shall offer the originals to be copied, marked for identification and added to the record.

~~(f)~~(3) Upon payment of reasonable charges, the officer shall furnish a copy of the record to any party or to the witness.

(g)Failure to attend or to serve subpoena; expenses. If the party giving the notice of a deposition fails to attend or fails to serve a subpoena upon a witness who fails to attend, and another party attends in person or by attorney, the court may order the party giving the notice to pay to the other party the reasonable costs, expenses and attorney fees incurred.

(h)Deposition in action pending in another state. Any party to an action in another state may take the deposition of any person within this state in the same manner and subject to the same conditions and limitations as if such action were pending in this state. Notice of the deposition shall be filed with the clerk of the court of the county in which the person whose deposition is to be taken resides or is to be served. Matters required to be submitted to the court shall be submitted to the court in the county where the deposition is being taken.

(i)Stipulations regarding deposition procedures. The parties may by written stipulation provide that depositions may be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions.

Rule 37. Statement of discovery issues; Sanctions; Failure to admit, to attend deposition or to preserve evidence.

Effective: 5/1/2021

(a) Statement of discovery issues.

(1) A party or the person from whom discovery is sought may request that the judge enter an order regarding any discovery issue, including:

(A) failure to disclose under Rule 26;

(B) extraordinary discovery under Rule 26;

(C) a subpoena under Rule 45;

(D) protection from discovery; or

(E) compelling discovery from a party who fails to make full and complete discovery.

(2) Statement of discovery issues length and content. The statement of discovery issues must be no more than 4 pages, not including permitted attachments, and must include in the following order:

(A) the relief sought and the grounds for the relief sought stated succinctly and with particularity;

(B) a certification that the requesting party has in good faith conferred or attempted to confer with the other affected parties in person or by telephone in an effort to resolve the dispute without court action;

(C) a statement regarding proportionality under Rule 26(b)(2); and

(D) if the statement requests extraordinary discovery, a statement certifying that the party has reviewed and approved a discovery budget;

(E) that the statement of discovery issues has been served on the person subject to the subpoena or a non-party affected by the subpoena in objection was made under Rule 45(e)(4) .

(3) Objection length and content. No more than 7 days after the statement is filed, any other party may file an objection to the statement of discovery issues. If the person subject to the subpoena or a non-party affected by the subpoena timely filed an objection under Rule 45(e)(4), the person subject to the subpoena or a non-party affected by the subpoena may file an objection to the statement of discovery issues. The objection must be no more than 4 pages, not including permitted attachments, and must address the issues raised in the statement.

(4) Permitted attachments. The party filing the statement must attach to the statement only a copy of the disclosure, request for discovery or the response at issue.

(5) Proposed order. Each party, or the person subject to the subpoena or a non-party affected by the subpoena, must file a proposed order concurrently with its statement or objection.

(6) Decision. Upon filing of the objection or expiration of the time to do so, either party may and the party filing the statement must file a Request to Submit for Decision under Rule 7(g). The court will promptly:

(A) decide the issues on the pleadings and papers;

(B) conduct a hearing, preferably remotely and if remotely, then consistent with the safeguards in Rule 43(b); or

(C) order additional briefing and establish a briefing schedule.

(7) Orders. The court may enter orders regarding disclosure or discovery or to protect a party or person from discovery being conducted in bad faith or from annoyance, embarrassment, oppression, or undue burden or expense, or to achieve proportionality under Rule 26(b)(2), including one or more of the following:

(A) that the discovery not be had or that additional discovery be had;

(B) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(C) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(D) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(E) that discovery be conducted with no one present except persons designated by the court;

(F) that a deposition after being sealed be opened only by order of the court;

(G) that a trade secret or other confidential information not be disclosed or be disclosed only in a designated way;

(H) that the parties simultaneously deliver specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

(I) that a question about a statement or opinion of fact or the application of law to fact not be answered until after designated discovery has been completed or until a pretrial conference or other later time;

(J) that the costs, expenses and attorney fees of discovery be allocated among the parties as justice requires; or

(K) that a party pay the reasonable costs, expenses, and attorney fees incurred on account of the statement of discovery issues if the relief requested is granted or denied, or if a party provides discovery or withdraws a discovery request after a statement of discovery issues is filed and if the court finds that the party, witness, or attorney did not act in good faith or asserted a position that was not substantially justified.

(8) Request for sanctions prohibited. A statement of discovery issues or an objection may include a request for costs, expenses and attorney fees but not a request for sanctions.

(9) Statement of discovery issues does not toll discovery time. A statement of discovery issues does not suspend or toll the time to complete standard discovery.

(b) Motion for sanctions. Unless the court finds that the failure was substantially justified, the court, upon motion, may impose appropriate sanctions for the failure to follow its orders, including the following:

(1) deem the matter or any other designated facts to be established in accordance with the claim or defense of the party obtaining the order;

(2) prohibit the disobedient party from supporting or opposing designated claims or defenses or from introducing designated matters into evidence;

(3) stay further proceedings until the order is obeyed;

(4) dismiss all or part of the action, strike all or part of the pleadings, or render judgment by default on all or part of the action;

(5) order the party or the attorney to pay the reasonable costs, expenses, and attorney fees, caused by the failure;

(6) treat the failure to obey an order, other than an order to submit to a physical or mental examination, as contempt of court; and

(7) instruct the jury regarding an adverse inference.

(c) Motion for costs, expenses and attorney fees on failure to admit. If a party fails to admit the genuineness of a document or the truth of a matter as requested under Rule 36, and if the party requesting the admissions proves the genuineness of the document or the truth of the matter, the party requesting the admissions may file a motion for an order requiring the other party to pay the reasonable costs, expenses and

attorney fees incurred in making that proof. The court must enter the order unless it finds that:

(1) the request was held objectionable pursuant to Rule 36(a);

(2) the admission sought was of no substantial importance;

(3) there were reasonable grounds to believe that the party failing to admit might prevail on the matter;

(4) that the request was not proportional under Rule 26(b)(2); or

(5) there were other good reasons for the failure to admit.

(d) Motion for sanctions for failure of party to attend deposition. If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) to testify on behalf of a party fails to appear before the officer taking the deposition after service of the notice, any other party may file a motion for sanctions under paragraph (b). The failure to appear may not be excused on the ground that the discovery sought is objectionable unless the party failing to appear has filed a statement of discovery issues under paragraph (a).

(e) Failure to preserve evidence. Nothing in this rule limits the inherent power of the court to take any action authorized by paragraph (b) if a party destroys, conceals, alters, tampers with or fails to preserve a document, tangible item, electronic data or other evidence in violation of a duty. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Advisory Committee Notes

The 2011 amendments to Rule 37 make two principal changes. First, the amended Rule 37 consolidates provisions for motions for a protective order (formerly set forth in Rule 26(c)) with provisions for motions to compel.

Second, the amended Rule 37 incorporates the new Rule 26 standard of "proportionality" as a principal criterion on which motions to compel or for a protective order should be evaluated.

Paragraph (a) adopts the expedited procedures for statements of discovery issues formerly found in Rule 4-502 of the Code of Judicial Administration. Statements of discovery issues replace discovery motions, and paragraph (a) governs unless the judge orders otherwise.

Rule 45. Subpoena.

(a) Form; issuance.

(1) Every subpoena shall:

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

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

(C) command each person to whom it is directed

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

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

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

(iv) to appear and to permit inspection of premises;

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

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

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

(b) **Service; fees; prior notice.**

(1) A subpoena may be served by any person who is at least 18 years of age and not a party to the case. Service of a subpoena upon the person to whom it

is directed shall be made as provided in Rule 4(d).

(2) If the subpoena commands a person's appearance, the party or attorney responsible for issuing the subpoena shall tender with the subpoena the fees for one day's attendance and the mileage allowed by law. When the subpoena is issued on behalf of the United States, or this state, or any officer or agency of either, fees and mileage need not be tendered.

(3) If the subpoena commands a person to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things for inspection, copying, testing or sampling or to permit inspection of premises, the party or attorney responsible for issuing the subpoena shall serve each party with the subpoena by delivery or other method of actual notice before serving the subpoena.

(c) **Appearance; resident; non-resident.**

(1) A person who resides in this state may be required to appear:

(A) at a trial or hearing in the county in which the case is pending; and

(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county in which the person resides, is employed, or transacts business in person, or at such other place as the court may order.

(2) A person who does not reside in this state but who is served within this state may be required to appear:

(A) at a trial or hearing in the county in which the case is pending; and

(B) at a deposition, or to produce documents, electronically stored information or tangible things, or to permit inspection of premises only in the county in which the person is served or at such other place as the court may order.

(d) Payment of production or copying costs. The party or attorney responsible for issuing the subpoena shall pay the reasonable cost of producing or copying documents, electronically stored information, or tangible things. Upon the request of any other party and the payment of reasonable costs, the party or attorney responsible for issuing the subpoena shall provide to the requesting party copies of all documents, electronically stored information or tangible things

obtained in response to the subpoena or shall make the tangible things available for inspection.

(e) **Protection of persons subject to subpoenas; objection.**

(1) The party or attorney responsible for issuing a subpoena shall take reasonable steps to avoid imposing an undue burden or expense on the person subject to the subpoena. The court shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney fee.

(2) A subpoena to copy and mail or deliver documents or electronically stored information, to produce documents, electronically stored information or tangible things, or to permit inspection of premises shall comply with Rule 34(a) and (b)(1), except that the person subject to the subpoena must be allowed at least 14 days after service to comply.

(3) The person subject to the subpoena or a non-party affected by the subpoena may object ~~under Rule 37~~ if the subpoena:

(A) fails to allow reasonable time for compliance;

(B) requires a resident of this state to appear at other than a trial or hearing in a county in which the person does not reside, is not employed, or does not transact business in person;

(C) requires a non-resident of this state to appear at other than a trial or hearing in a county other than the county in which the person was served;

(D) requires the person to disclose privileged or other protected matter and no exception or waiver applies;

(E) requires the person to disclose a trade secret or other confidential research, development, or commercial information;

(F) subjects the person to an undue burden or cost;

(G) requires the person to produce electronically stored information in a form or forms to which the person objects;

(H) requires the person to provide electronically stored information from sources that the person identifies as not reasonably accessible

because of undue burden or cost; or

(I) requires the person to disclose an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study that was not made at the request of a party.

(4) T**iming and form of objections.**

(A) If the person subject to the subpoena or a non-party affected by the subpoena objects, the objection must be ~~made~~ in writing and made before the date for compliance.

(B) The objection shall be stated in a concise, non-conclusory manner.

(C) If the objection is that the information commanded by the subpoena is privileged or protected and no exception or waiver applies, or requires the person to disclose a trade secret or other confidential research, development, or commercial information, the objection shall sufficiently describe the nature of the documents, communications, or things not produced to enable the party or attorney responsible for issuing the subpoena to contest the objection.

(D) If the objection is that the electronically stored information is from sources that are not reasonably accessible because of undue burden or cost, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost.

(E) The objection shall be served on the party or attorney responsible for issuing the subpoena. The party or attorney responsible for issuing the subpoena shall serve a copy of the objection on the other parties.

(5) **Response to objections and compliance.**

(A) If objection is made, or if a party requests a protective order, the party issuing the subpoena is not entitled to compliance on any topic for which an objection has been made but may request an order to compel compliance under Rule 37(a).

(B) The objection or request shall be served on the other parties and on the person subject to the subpoena.

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(C) If the party issuing the subpoena seeks to obtain compliance with the subpoena through Rule 37(a), the person subject to the subpoena or a non-party affected by the subpoena must respond as required by Rule 37(a)(3).

(D) An order compelling compliance shall protect the person subject to or affected by the subpoena from significant expense or harm. The court may quash or modify the subpoena. If the party shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions.

~~(5) If objection is made, or if a party requests a protective order, the party or attorney responsible for issuing the subpoena is not entitled to compliance but may request an order to compel compliance under Rule 37(a). The objection or request shall be served on the other parties and on the person subject to the subpoena. An order compelling compliance shall protect the person subject to or affected by the subpoena from significant expense or harm. The court may quash or modify the subpoena. If the party or attorney responsible for issuing the subpoena shows a substantial need for the information that cannot be met without undue hardship, the court may order compliance upon specified conditions.~~

(f) **Duties in responding to subpoena.**

(1) A person commanded to copy and mail or deliver documents or electronically stored information or to produce documents, electronically stored information or tangible things shall serve on the party or attorney responsible for issuing the subpoena a declaration under penalty of law stating in substance:

(A) that the declarant has knowledge of the facts contained in the declaration;

(B) that the documents, electronically stored information or tangible things copied or produced are a full and complete response to the subpoena;

(C) that the documents, electronically stored information or tangible things are the originals or that a copy is a true copy of the original; and

(D) the reasonable cost of copying or producing the documents, electronically stored information or tangible things.

(2) A person commanded to copy and mail or deliver documents or

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electronically stored information or to produce documents, electronically stored information or tangible things shall copy or produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena.

(3) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in the form or forms in which the person ordinarily maintains it or in a form or forms that are reasonably usable.

(4) If the information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party who received the information of the claim and the basis for it. After being notified, the party must promptly return, sequester, or destroy the specified information and any copies of it and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

(g) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon that person is punishable as contempt of court.

(h) **Procedure when witness evades service or fails to attend.** If a witness evades service of a subpoena or fails to attend after service of a subpoena, the court may issue a warrant to the sheriff of the county to arrest the witness and bring the witness before the court.

(i) **Procedure when witness is an inmate.** If the witness is an inmate as defined in Rule 6(e)(1), a party may move for an order to examine the witness in the institution or to produce the witness before the court or officer for the purpose of being orally examined.

(j) **Subpoena unnecessary.** A person present in court or before a judicial officer may be required to testify in the same manner as if the person were in attendance upon a subpoena.

Effective ~~May 1, 2021~~

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 for an order related to a subpoena under Rule 45 must follow Rule 37(a). ~~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.

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(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.

(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.

(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.

(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.

(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 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.

(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 for Rule 16 conference;

(E) motion to strike a document filed by a vexatious litigant in violation of rule 83(d);

(F) motion to appear remotely; and

~~(E)~~(G) 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.

(q) Length of Filings.

(1) Unless one of the following filings complies with the page limits set forth below, it must comply with the corresponding word limits:

Type of Filing	**Page Limit**	**Word Limit**
Motion for Relief Authorized by Rule 12(b), 12(c), 56, or 65A	25	9,000
All Other Motions	15	5,400
Memorandum Opposing Motion Authorized by Rule 12(b), 12(c), 56, or 65A	25	9,000
Memorandum Opposing All Other Motions	15	5,400
Reply Memorandum Supporting Motion for Relief Authorized by Rule 12(b), 12(c), 56, or 65A	15	5,400
Reply Memorandum Supporting All Other Motions	10	3,600
Objection and Response under Rule 7(f)	3	1,100
Notice of Supplemental Authority and Response under Rule 7(i)	2	700
Statement of Discovery Issues and Objection under	4	1,500

Rule 37(a)(2) and 37(a)(3)		

(2) The word and page limits in this rule exclude the following: caption, table of contents, table of authorities, signature block, certificate of service, certification, exhibits, and attachments.

(3) Any filer relying on the word limits in this rule must include a certification that the document complies with the applicable word limit and must state the number of words in the document.

Effective May 1, 2023

Tab 12

Rule 42. Consolidation; separate trials; venue transfers.
Amendment history and request from Supreme Court.

The amendments to this rule started with a change from "new" to "single" in (a)(3). After further discussions there was also an addition made to (a)(2) that would allow any party "to either action to be consolidated" could file or oppose a motion to consolidate. These changes to (a)(2) and (a)(3) were presented to the Supreme Court and were acceptable, along with the suggested language that a party need not seek to intervene.

After the last comment period and discussion with the Justices, alternative language was proposed to be added to (a)(2), and this suggestion is being sent back to the Committee for consideration.

Rule 42. Consolidation; separate trials; venue transfer.

(a) Consolidation. When actions involving a common question of law or fact or arising from the same transaction or occurrence are pending before the court in one or more judicial districts, the court may, on motion of any party or on the court's own initiative: order that the actions are consolidated in whole or in part for any purpose, including for discovery, other pretrial matters, or a joint hearing or trial; stay any or all of the proceedings in any action subject to the order; transfer any or all further proceedings in the actions to a location in which any of the actions is pending after consulting with the presiding judge of the transferee court; and make other such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(1) In determining whether to order consolidation and the appropriate location for the consolidated proceedings, the court may consider, among other factors: the complexity of the actions; the importance of any common question of fact or law to the determination of the actions; the risk of duplicative or inconsistent rulings, orders, or judgments; the relative procedural postures of the actions; the risk that consolidation may unreasonably delay the progress, increase the expense, or complicate the processing of any action; prejudice to any party that far outweighs the overall benefits of consolidation; the convenience of the parties, witnesses, and counsel; and the efficient utilization of judicial resources and the facilities and personnel of the court.

(2) A motion to consolidate may be filed or opposed by any party to either action to be consolidated, without seeking permission to intervene. The motion must be filed in and heard by the judge assigned to the first action filed and must be served on all parties in each action pursuant to Rule 5. ~~A~~The movant must file notice of the motion ~~must be filed~~ in each action. The movant must, and any party may, file in each action notice of the order denying or granting the motion. ALTERNATE LANGUAGE: The movant must file in each other action notice of the motion and notice of the order denying or granting the motion. Once the court rules on the

motion in the first action the movant must file in each other action a notice of the order denying or granting the motion.

(3) If the court orders consolidation, a ~~new~~ single case number will be used for all subsequent filings in the consolidated case. The court may direct that specified parties pay the expenses, if any, of consolidation. The presiding judge of the transferee court may assign the consolidated case to another judge for good cause.

(b) Separate trials. The court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, cross claim, counterclaim, or third party claim, or of any separate issue or of any number of claims, cross claims, counterclaims, third party claims, or issues.

(c) Venue Transfer.

(1) On timely motion of any party, where transfer to a proper venue is available, the court must transfer any action filed in an improper venue.

(2) The court must give substantial deference to a plaintiff's choice of a proper venue. On timely motion of any party, a court may: transfer venue of any action, in whole or in part, to any other venue for any purpose, including for discovery, other pretrial matters, or a joint hearing or trial; stay any or all of the proceedings in the action; and make other such orders concerning proceedings therein to pursue the interests of justice and avoid unnecessary costs or delay. In determining whether to transfer venue and the appropriate venue for the transferred proceedings, the court may consider, among other factors, whether transfer will: increase the likelihood of a fair and impartial determination in the action; minimize expense or inconvenience to parties, witnesses, or the court; decrease delay; avoid hardship or injustice otherwise caused by venue requirements; and advance the interests of justice.

(3) The court may direct that specified parties pay the expenses, if any, of transfer.

Advisory Committee Notes

Note adopted 2020

The addition of paragraph (c) arose in part from the Supreme Court's decision in *Davis County v. Purdue Pharma, L.P*, 2020 UT 17.

~~Effective January 1, 2020.~~ *Effective: May/Nov. 1, 20__*

Tab 13

Rule 18. Joinder of claims and remedies.

Based upon the current language in the statute that refers to “voidable transactions” instead of “fraudulent conveyance” there is a request to update the language in Rule 18. It appears the statutory language was changed in 2017 by SB 0058.

Additionally, this rule includes a gendered pronoun “him” in subparagraph (b), which has been stricken. The Supreme Court has recommended not using gendered pronouns in the rules and to amend the rules to omit pronouns, repeat the noun, use plural antecedents, use an article, use the neutral singular pronoun “one,” use the relative pronoun “who,” or revising the sentence so personal pronouns are not needed.

Rule 18. Joinder of claims and remedies.

(a) **Joinder of claims.** The plaintiff in his complaint or in a reply setting forth a counterclaim and the defendant in an answer setting forth a counterclaim may join either as independent or as alternate claims as many claims either legal or equitable or both as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties if the requirements of Rules 19, 20, and 22 are satisfied. There may be a like joinder of cross-claims or third-party claims if the requirements of Rules 13 and 14 respectively are satisfied.

(b) **Joinder of remedies; ~~fraudulent conveyances~~voidable transactions.** Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a ~~conveyance fraudulent to him~~voidable transaction, without first having obtained a judgment establishing the claim for money.

Effective date: