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

Location: WebEx Meeting: Link

Date: February 28, 2024

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Rules 7, 37, 45, and 30 from the Omnibus Subcommittee (*Continued discussion*)	Tab 2	Justin Toth
Rule 42 – Filings when cases are consolidated. (*Continued discussion / Motion for public comment*)	Tab 3	Lauren DiFrancesco
Rule 4 – Conformity with UC §78B-8-302(7) for Process Servers (*Discussion*)	Tab 4	Lauren DiFrancesco
Rule 107 – Conformity with statutory language on adult adoptees (*Discussion*)	Tab 5	Stacy Haacke
Update on New URCP Rule		Lauren DiFrancesco

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

Upcoming Items:
- Rule 3(a)(2) – *April Meeting*
- Standard POs Subcommittee – *Additional members?*
- Rule 47 Attorney Voir Dire
- Third Party Financing
- Rule 76 Subcommittee
- Rule 62 Subcommittee
- Removal of gendered pronouns by Plain Language Subcommittee
- Rule 7A and 37 Motion for Sanctions Subcommittee
- Rule 101 Subcommittee

- Rule 60 Subcommittee
- Rule 5 Subcommittee
- Affidavit and Declarations Subcommittee
- Rule 74 Subcommittee
- Rule 5(a)(2) and (b)(3) Subcommittee

URCP Committee Website: Link

Meeting Schedule:

March 27

April 24

May 22

June 26

July 17

August 28

September 25

October 23

November 20

December 18

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – January 24, 2024
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		Samatha Parmley
Ash McMurray	X		Crystal Powell, Recording Secretary
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 began at 4:02 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee members.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the minutes subject to amendments noted by the Minutes subcommittee and further revisions from Ms. Susan Vogel and Mr. Jim Hunnicutt. Mr. Ash McMurray moved to adopt the Minutes as amended. Mr. Justin Toth seconded. The Minutes were unanimously approved.

(3) RULE 56. REVISIONS FROM PUBLIC COMMENT AND SUPREME COURT FEEDBACK

Mr. Rod Andreason opened the discussion by briefly summarizing the history of amendments to the Rule and the current issue. He explained that the initial input was that we have a rule in Rule 56 as to when motions for summary judgment may be filed at the latest: which is 28 days after the close of all discovery. He explained that the issue then becomes a question of when does "all discovery" close? He explained that that date varies based on Rule 26 thereby creating ambiguity. He noted that the Subcommittee proposed amending Rule 26 to identify when the close of expert discovery occurs so that Rule 56 would align; but the Committee decided instead to modify Rule 56 to take away the 28-day deadline and to state that the court may set a deadline under Rule 16 to file motions for summary judgment.

He relayed that the comments from public feedback were split. Two commenters agreed and expressed the desire to be able to file motions for summary judgment at any point; while six commenters strongly disagreed because in general, they felt that it eliminated any timeline and allowed parties file a motion for summary judgment without any regulation creating a free- for-all. The Utah Supreme Court also provided feedback that they would like to see a deadline or any language that establishes a timeline to move the case forward. The Supreme Court also added that they would like a deadline for submission of certificates of readiness for trial.

Mr. Andreason reported that the Subcommittee does not yet have any language to satisfy the concerns of the Utah Supreme Court and is discussing going back to an amendment on Rule 26 rather than an amendment in Rule 56. He noted that that decision is one for the Committee to make and then they will draft the amendment.

Ms. DiFrancesco added that the Supreme Court wanted the Committee to look at Rule 16 and propose procedure on how to move cases forward and that her impression was not that

they are insisting upon seeing a deadline that could be calculated but have concerns about cases lingering at the end of expert discovery.

Mr. Micheal Stahler noted that the notice of events is automatically created with default dates from the date of the first answer and in practice they are routinely stipulated and extended which just kills that notice of expert discovery deadline. He raised that the issue is ultimately what happens when the opposing party does not make any expert disclosures. Ms. DiFrancesco expressed that that issue originates from Rule 16(b) and that is also what the Supreme Court wants to be addressed.

The Committee reviewed Rule 16(b). Ms. DiFrancesco noted that her surprise was that she thought the rules surrounding certification for trial were different and required that there were no pending motions whereas Rule 16(b) creates a gap where a party is certifying a case for trial when the summary judgment deadline is still 28 days away. Other Committee members expressed that they have filed the certificate of readiness with the calculation of the 28 days in mind and having an eye on the trial regardless of a motion for summary judgment might be wise. Judge Scott noted that she would not be inclined to set a trial date for a case that might be resolved by motion because it blocks the court calendar creating backlog. She noted however that motions for partial summary judgment are different. She also notes that she sets a pretrial conference whenever she gets a certificate of readiness for trial to discuss the status of the case with the parties.

Ms. DiFrancesco questioned whether it would be burdensome to have a Rule 16 conference in every case that gets past expert discovery. Judge Stone noted that he sets up pretrial conferences before trial as well and only forgoes them in license revocation challenges where all parties are aware of the case progression. He questioned whether the Rule should be changed to require parties to identify if there are any pending dispositive motions at the pretrial conference and if the party does not then that party is past the deadline. Judge Scott expressed that the pretrial conference serves a useful purpose in anticipating the progress towards trial or disposition and setting deadlines accordingly. Ms. DiFrancesco questioned whether it should be a request for a certificate of readiness or a request for a pretrial conference. Judge Stone noted that a party can ask for a pretrial conference at any point, but the certificate of readiness tells the court that at least one party thinks that they are done and that does changes how he prepares for the hearing.

Ms. Susan Vogel questioned whether judges have observed self-represented parties appreciating the difference that Judge Stone pointed out. Judge Stone noted that he has never had a self- represented party ask for a Rule 16(b) conference other than to set the trial and have done the certificate of readiness. Mr. Rod Andreason joined in Judge Scott's views and expressed that there should be no scheduling of trial until the parties are aware of partial motions for summary judgment or after the resolution of summary judgment motions because even though it is slower it is ultimately more efficient. Ms. Vogel noted that that procedure also saves money for the parties. Ms. Rachel Sykes noted that she agrees that trial dates

should not be set until the close of all discovery because trial dates are difficult to secure and should not be easily lost because of nebulous summary judgement deadlines. Ms. DiFrancesco asked if the Committee was ready to take a vote on an approach. Hearing no input, Mr. Andreason suggested that the Subcommittee take back all the thoughts and present a solution at the next meeting.

The Committee discussed other approaches such as requiring scheduling conferences at regular intervals or looking at the federal practices. Commissioner Conklin suggested there may be lessons to learn from Rule 101 procedure in having cases pushed along where that Rule was not impactful. Judge Stone related his experience in the pilot project on Rule 101 surrounding the enormous scope of resources that were needed to effectuate the Rule. Commissioner Conklin also questioned whether there is value in having a conference after the close of fact discovery and the Committee briefly discussed that issue. Judge Stone also wondered what the institutional interest is in pushing parties to move a case forward. Mr. Andreason opined that the sentiment might have come from legislative criticism of divorce cases taking too long and that sentiment trickling over into other areas of civil practice. The Subcommittee took the feedback and discussion and will present a new proposal at a future meeting.

(4) RULE 6. LANGUAGE ON HOLIDAYS

Ms. DiFrancesco noted that the Rule went out for public comment, and none were given. Ms. Susan Vogel moved to adopt the Rule without further amendment. Judge Stone seconded. The motion passed unanimously.

(5) RULE 12. ANSWERS FILED AND SERVED

Ms. DiFrancesco recapped that this amendment fixes the confusion in Rule 12 whether filing a Rule 12 motion in domestic relations actions negated the obligation to file an answer. One public Comment was received. Commissioner Conklin moved to adopt the rule change. Mr. Trevor Lee seconded. The motion passed unanimously.

(6) RULE 83. VEXATIOUS LITIGANTS

Ms. DiFrancesco recapped that this rule change clarifies the right to appeal for vexatious litigants and reported that no public comments were received. Mr. Michael Stahler moved to adopt the change. Judge Cornish seconded. The motion passed unanimously.

(7) RULE 101. MOTIONS TO ENFORCE ORDER AND FOR SANCTIONS

Ms. DiFrancesco explained that this rule changes the language to match amendments made to Rule 7A and 7B and there are no public comments. Ms. Vogel suggested changing the word "application" to "request" on lines 88 and 91. The Committee reviewed the language in Rules 7A and 7B to see what words were used. Ms. DiFrancesco suggested that the current changes be approved, and the suggestion be reserved until the other amendments to Rule 101 are made. Mr. Toth moved to approve the amendment as is. Judge Stucki seconded. The motion passed unanimously.

(8) RULES 64, 66, 69, 69B, 69C.

Ms. DiFrancesco reported that they were no public comments on changing the language to "file" instead of "record." Mr. Toth moved for final approval of the amendment. Judge Stucki seconded the motion. The motion was approved unanimously.

(9) RULE 74. CONTACT INFORMATION WHEN ATTORNEY WITHDRAWS

Mr. Stahler summarized the issue of what to do when one attorney withdraws when the party is still being represented by another attorney. He explained that there isn't a substitution of counsel where the party isn't being represented by a newly hired counsel but the way that Rule 74 reads, the problem that comes up is that an opposing party can object and hold up that process. The proposal that Mr. Stahler received was to amend Rule 74 to allow for withdrawal when the party continues to be represented by counsel that has already filed a notice of appearance. Mr. Stahler suggested that federal rule 83 be looked to as guidance and to draft a similar Rule. Ms. DiFrancesco noted that it sounds like a good idea and would like to see a redline.

The Committee discussed service of that information under Rule 76 where addresses are protected, or one party has a protective order restricting the notification of certain information concerning a party. Ms. Loni Page noted that the court has been filling the gap but may not have the bandwidth to review every certificate of service to see that something was not served because there is a safeguarded party. Commissioner Conklin also referred to the change in law that allowed the state entity to accept the service of documents for participants in the safe at home program and wondered how that law might be utilized in this situation. After a lengthy discussion, the Committee formed a Subcommittee to address the issues on how attorneys move around on cases. The Subcommittee will be led by Mr. Stahler and other members include Ms. Rachel Sykes, Ms. Crystal Powell, Ms. Susan Vogel, Ms. Heather Lester, Keri Sargent, and Ms. Loni Page.

(10) RULE 101. PLAIN LANGUAGE FOR APPLICATION TO THE COURT.

Ms. Vogel suggested removing the words "an application to the court" and "for" in lines 88, 90, and 91 of Rule 101 in keeping with the mandate to use plain language in the Rules. Commissioner Conklin agreed with the proposed change. No motion to adopt the change was made as this rule will be addressed on the agenda again with Ms. Samantha Parmley.

(11) RULE 18. VOIDABLE TRANSACTIONS LANGUAGE

Judge Scott noted that this issue came up in a case where the parties were referring to the Rule and realized it did not match up with the statute. Ms. Stacy Haacke prepared the proposed amendment to change "voidable transactions" to "fraudulent conveyance" in line with the statutory language change in 2017. Judge Cornish moved to approve the draft changes. Commissioner Conklin seconded. The motion passed unanimously.

(12) RULE 7(k), (l), (m), AND 37. APPLYING IN FAMILY CASES

Ms. Parmley summarized the issue surrounding statements of discovery issues when it is a domestic case in front of a commissioner. Ms. Parmley noted that some commissioners are treating it as the judges do where the party has seven days to respond, and both sides may submit a proposed order and then the commissioner either grants the order or sets it for a hearing. Ms. Parmley noted however that in some districts, a hearing is set for every statement of discovery issue whether or not a hearing is appropriate, causing cases to drag on for months extra. They realized when discussing the issue that technically in Rule 101, every motion for relief except for the exceptions must go to a commissioner and must follow Rule 101. They are looking for clarity on whether it is the intent of the Rules Committee that in family law cases nothing is ever decided on the papers or if things can be moved along under Rule 37. Ms. Parmley highlighted that ex parte and stipulated motions cannot be ruled on under Rule 7 without a hearing. Ms. Parmley presented the redline of amendments that would allow for such motions to be ruled by a commissioner without a hearing.

Ms. Rachel Sykes noted that she agrees with the changes, especially given that Rule 101 state that commissioners shall hold hearings. She noted that the purpose of the statement of discovery issues is to quickly resolve discovery disputes but in family law cases, hearings are usually set two months out. She noted that commissioners need to have the authority to just make a ruling. Ms. Susan Vogel also agreed that the Rule should be clearer and facilitate speedy disposition and suggested that "application" should be changed to "request." Mr. Ash McMurray also suggested to change the language to "a request must be made by motion…"

Ms. Keri Sargent highlighted that paragraph three may impact the default language on those motions so that language needs to be changed as well. Mr. Jim Hunnicut suggested putting subsection (a) (5) (written options required) under sub part (m) which is an exception to Rule 101 where this amendment will also carve out another type of exception. Ms. Parmley noted that the thought process in putting the exception close to the beginning of the Rule would decrease confusion. Ms. DiFrancesco opinion that Justice Pohlman also likes when the subject matter is kept together in the Rules so things relating to commissioners should be placed where the Rule refers specifically to commissioners.

Commissioner Conklin also suggested making it clear that all requests are made by motion but not all motions will have a hearing according to their respective rules. Commissioner Conklin noted that she always sets a hearing for statement of discovery issues and that while ruling on the paper may be beneficial for some issues and in many circumstances, a hearing is advantageous for two reasons. First, many self-represented parties do not understand initial disclosures and second, the technological aspect of the court's signing system does not allow for docket notes for changes made to a proposed order thereby making it difficult to notify of changes in the final order.

After more general discussion on the intent of the amendment and the intent of the Rules, the Committee recommended that Ms. Parmley, Mr. Hunnicut, and Commissioner Conklin get together and think about the best way to make the Rules work together. Mr. Hunnicut noted that he would be happy to put together a Subcommittee. Ms. Keri Sargent also offered to help the Subcommittee to look more closely at Rule 101 in relation to Rules 7(k), (l), and (m). The Subcommittee will include Mr. Hunnicutt, Ms. Vogel, Ms. Tonya Wright, Ms. Parmley, and Commissioner Conklin.

(13) RULE 5. SERVICE

Ms. Loni Page summarized that they want to make sure the timing of Rule 5 becomes effective when MyCase is implemented. She noted that one project deliverable in MyCase that allows parties to acknowledge that notification in MyCase is effective service is tied up until April 2024 and another point is that the other party needs to know that they can serve within MyCase, and the programming is not completed. The Subcommittee is tracking the MyCase implementation and in the meantime has tackled some of the plain language in the Rule to coincide with the processes of MyCase. The Subcommittee would like feedback and direction from the Committee on those issues. She also noted that there is not a huge rush to amend Rule 5 but described what some of the changes would be. Ms. DiFrancesco questioned whether the Rule contemplates what happens before a party signs up for MyCase. Ms. Page explained that if a party is not on MyCase then that method of service cannot be used. She added that the system also needs to set up a notification that that MyCase can be used for service in appropriate circumstances.

Ms. Page questioned if the Subcommittee should make it clearer who exactly serves orders and noted that they added a paragraph to say that every paper signed by the court but not prepared by the court will be served by the party who prepared it. Ms. Page noted that she would like to know the timing for amending the Rules if they should be addressed now or addressed to coincide with MyCase rollout. Ms. DiFrancesco suggested that the Committee move forward with anything that can be changed now and to the extent necessary the Rules should precede MyCase.

Ms. DiFrancesco asked if MyCase will still notify persons years into the future or changes to a case assuming that the party's email address is active. Ms. Vogel responded that it would.

(14) ADJOURNMENT

Ms. DiFrancesco noted that there was no time left for any other agenda issues but reminded the Committee that the legislative session has commenced and reminded the Committee to keep their eyes out for rapid response issues that would need the attention of the Committee. The meeting was adjourned at 5:57 p.m. The next meeting will be February 28, at 4:00 p.m.

Tab 2

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

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 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.

Tab 3

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 4

Rule 4. Process.

There was a request indicating that the requirements for a person serving process found in Utah Code §78B-8-302(7) are not found in the process outlined by URCP Rule 4. Specifically. the statute requires the following:

(a) legibly document the date and time of service on the front page of the document being served;
(b) legibly print the process server's name, address, and telephone number on the return of service;
(c) sign the return of service in substantial compliance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act;
(d) if the process server is a peace officer, sheriff, or deputy sheriff, legibly print the badge number of the process server on the return of service; and
(e) if the process server is a private investigator, legibly print the private investigator's identification number on the return of service.

And Rule 4(e) requires the following:

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

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

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

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

Rule 4. Process.

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

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

(c) Contents of summons.

(1) The summons must:

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

(B) be directed to the defendant;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Service by mail or commercial courier service.

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

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

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

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

(3) Acceptance of service.

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Other service.

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

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

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

(e) Proof of service.

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

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

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

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

Effective: Nov. 1, 2023

Tab 5

Rule 107. Decree of adoption; Petition to open adoption records.

The Utah Code of Judicial Administration Rule 4-202.03 and Utah Court website were recently amended to more accurately reflect the statute regarding access to adoption records (UC §78B-6-141). While CJA Rule 4-202.03(2)(A) addresses access to adoption records in detail, some of the provisions of Rule 107 may not be procedurally consistent with the statute. For example, rule 107(a) states an adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification. However, U.C. 78B-6-141(3) states adoption records are only open for inspection and copying while the proceeding is pending or within six months after the day on which the adoption decree is entered. Furthermore, pursuant to U.C. 78B-6-101(4) an adult adoptee may only access adoption documents without a court order to the extent a birth parent has consented or if the listed birth parents are deceased.

Also, the Supreme Court recently issued an opinion, *In re Adoption of M.A.*, which addresses adoption records and Rule 107, and the Court notes "extra-textual gloss" in footnote 5.

Stylistic amendments have been made to the attached redline of rule 107, but I would request at least paragraph (a) be removed or amended so the requirements in the statute are not overlooked or confused.

Rule 107. Decree of adoption; Petition to open adoption records.

(a) Adoption records may be released by the court pursuant to the requirements of statute or court rule. ~~An adoptive parent or adult adoptee may obtain a certified copy of the adoption decree upon request and presentation of positive identification.~~

(b) A petition to open the court's adoption records ~~shall~~ must identify the type of information sought and ~~shall~~ state good cause for access, and, in the following circumstances, ~~shall~~ must provide the information indicated below:

~~(b)~~(1) If the petition seeks health, genetic or social information, the petition ~~shall~~ must state why the health history, genetic history or social history of the Bureau of Vital Statistics is insufficient for the purpose.

~~(b)~~(2) If the petition seeks identifying information, the petition ~~shall~~ must state why the voluntary adoption registry of the Bureau of Vital Statistics is insufficient for the purpose.

(c) The court may order the petition served on any person having an interest in the petition, including the placement agency, the attorney handling a private placement, or the birth parents. If the court orders the petition served on any person whose identity is confidential, the court ~~shall~~ will proceed in a manner that gives that person notice and the opportunity to be heard without revealing that person's identity or location.

(d) The court ~~shall~~ will determine whether the petitioner has shown good cause and whether the reasons for disclosure outweigh the reasons for non-disclosure.

(e) If the court grants the petition, the court ~~shall~~ will permit the petitioner to inspect and copy only those records that serve the purpose of the petition. The order ~~shall~~ will expressly permit the petitioner to inspect and copy such records.

(f) The clerk of the court ~~shall~~ must reseal the records after the petitioner has inspected and copied them.

Effective date:

Rule 4-202.03. Records Access.

Effective: 1/1/2024

Intent:

To identify who may access court records.

Applicability:

This rule applies to the judicial branch.

Statement of the Rule:

(1) **Public Court Records.** Any person may access a public court record.

(2) **Sealed Court Records.** No one may access a sealed court record except as authorized below or by order of the court. A judge may review a sealed record when the circumstances warrant.

(2)(A) **Adoption records.** Upon request and presentation of positive identification, an adoption petition, and any other documents filed in connection with the adoption, may be open to inspection and copying:

(2)(A)(i) by a party to the adoption proceeding while the proceeding is pending or within six months after the day on which the adoption decree is entered;

(2)(A)(ii) when the adoption document becomes public on the one hundredth anniversary of the date of the final decree of adoption was entered;

(2)(A)(iii) when the birth certificate becomes public on the one hundredth anniversary of the date of birth;

(2)(A)(iv) by an attorney who is not the attorney of record with a release from an individual authorized access under this rule that is signed and notarized not more than 90 days before the date of the request for the records;

(2)(A)(v) by an individual who was 18 years of age or older at the time of adoption or their adoptive parent, without a court order, unless the final decree of adoption was entered by the juvenile court; and

(2)(A)(vi) by an individual who was a minor at the time of adoption, if the individual is 18 years of age or older and was born in the state of Utah, but only to the extent the birth parent consented

to access under the Utah Adoption Act or if the birth parents listed on the original birth certificate are deceased.

(2)(B) **Expunged records.**

(2)(B)(i) The following may obtain certified copies of the expungement order and the case history upon request and presentation of positive identification:

(2)(B)(i)(a) the petitioner or an individual who receives an automatic expungement under Utah Code Chapter 40a or Section 77-27-5.1;

(2)(B)(i)(b) a law enforcement officer involved in the case, for use solely in the officer's defense of a civil action arising out of the officer's involvement with the petitioner in that particular case;

(2)(B)(i)(c) parties to a civil action arising out of the expunged incident, if the information is kept confidential and utilized only in the action; and

(2)(B)(i)(d) an attorney who is not the attorney of record with a release from an individual authorized access under this rule that is signed and notarized not more than 90 days before the date of the request.

(2)(B)(ii) Information contained in expunged records may be accessed by qualifying individuals and agencies under Utah Code Section 77-40a-403 upon written request and approval by the state court administrator in accordance with Rule 4-202.05. Requests must include documentation proving that the requester meets the conditions for access and a statement that the requester will comply with all confidentiality requirements in Rule 4-202.05 and Utah Code.

(2)(C) **Video records.** An official court transcriber may obtain a video record of a court proceeding for the purposes outlined in Rule 5-202. A court employee may obtain a video record of a court proceeding if needed to fulfill official court duties.

(3) **Private Court Records.** The following may access a private court record:

(3)(A) the subject of the record;

(3)(B) the parent or guardian of the subject of the record if the subject is an unemancipated minor or under a legal incapacity;

(3)(C) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;

(3)(D) an interested person to an action under the Uniform Probate Code;

(3)(E) the person who submitted the record;

(3)(F) the attorney or licensed paralegal practitioner for a person who may access the private record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(3)(G) an individual with a release from a person who may access the private record signed and notarized no more than 90 days before the date the request is made;

(3)(H) anyone by court order;

(3)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(3)(J) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(3)(K) a governmental entity with which the record is shared under Rule 4-202.10.

(4) **Protected Court Records.** The following may access a protected court record:

(4)(A) the person or governmental entity whose interests are protected by closure;

(4)(B) the parent or guardian of the person whose interests are protected by closure if the person is an unemancipated minor or under a legal incapacity;

(4)(C) the person who submitted the record;

(4)(D) the attorney or licensed paralegal practitioner for the person who submitted the record or for the person or governmental entity whose interests are protected by closure or for the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity or an individual who has a power of attorney from such person or governmental entity;

(4)(E) an individual with a release from the person who submitted the record or from the person or governmental entity whose interests are protected by closure or from the parent or guardian of the person if the person is an unemancipated minor or under a legal incapacity signed and notarized no more than 90 days before the date the request is made;

(4)(F) a party, attorney for a party, or licensed paralegal practitioner for a party to litigation in which the record is filed;

(4)(G) anyone by court order;

(4)(H) court personnel, but only to achieve the purpose for which the record was submitted;

(4)(I) a person provided the record under Rule 4-202.04 or Rule 4-202.05; and

(4)(J) a governmental entity with which the record is shared under Rule 4-202.10.

(5) **Juvenile Court Social Records.** The following may access a juvenile court social record:

(5)(A) the subject of the record, if 18 years of age or over;

(5)(B) a parent or guardian of the subject of the record, or their attorney, if the subject is an unemancipated minor;

(5)(C) an attorney or person with power of attorney for the subject of the record;

(5)(D) a person with a notarized release from the subject of the record or the subject's legal representative dated no more than 90 days before the date the request is made;

(5)(E) the subject of the record's therapists and evaluators;

(5)(F) a self-represented litigant, a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(G) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(H) the Department of Human Services, school districts and vendors with whom they or the courts contract (who shall not permit further access to the record), but only for court business;

(5)(I) court personnel, but only to achieve the purpose for which the record was submitted;

(5)(J) a governmental entity with which the record is shared under Rule 4-202.10;

(5)(K) the person who submitted the record;

(5)(L) public or private individuals or agencies providing services to the subject of the record or to the subject's family, including services provided pursuant to a nonjudicial adjustment, if a probation officer determines that access is necessary to provide effective services; and

(5)(M) anyone by court order.

(5)(N) Dispositional reports on delinquency cases may be accessed by the minor's counsel, the prosecuting attorney, the guardian ad litem, and the counsel for the parent, guardian, or custodian of a child. When a minor or minor's parent, guardian, or custodian is not represented by counsel the court may limit inspection of reports by the minor or the minor's parent, guardian, or custodian if the court determines it is in the best interest of the minor.

(5)(O) Juvenile court competency evaluations, psychological evaluations, psychiatric evaluations, psychosexual evaluations, sex behavior risk assessments, and other sensitive mental health and medical records may be accessed only by:

(5)(O)(i) a prosecuting attorney, a defense attorney, a Guardian ad Litem, and an Attorney General involved in the litigation in which the record is filed;

(5)(O)(ii) a governmental entity charged with custody, guardianship, protective supervision, probation or parole of the subject of the record including juvenile probation, Division of Child and Family Services and Juvenile Justice Services;

(5)(O)(iii) court personnel, but only to achieve the purpose for which the record was submitted; and

(5)(O)(iv) anyone by court order.

(5)(P) When releasing records under (5)(O)(iv), the court should consider whether releasing the records to the subject of the record would be detrimental to the subject's mental health or the safety of any individual, or would constitute a violation of normal professional practice and medical ethics.

(5)(Q) When records may be accessed only by court order, a juvenile court judge will permit access consistent with Rule 4-202.04 as required by due process of law in a manner that serves the best interest of the child.

(6) **Juvenile Court Legal Records.** The following may access a juvenile court legal record:

(6)(A) all who may access the juvenile court social record;

(6)(B) a law enforcement agency;

(6)(C) a children's justice center;

(6)(D) public or private individuals or agencies providing services to the subject of the record or to the subject's family;

(6)(E) the victim of a delinquent act may access the disposition order entered against the minor; and

(6)(F) the parent or guardian of the victim of a delinquent act may access the disposition order entered against the minor if the victim is an unemancipated minor or under legal incapacity.

(7) **Safeguarded Court Records.** The following may access a safeguarded record:

(7)(A) the subject of the record;

(7)(B) the person who submitted the record;

(7)(C) the attorney or licensed paralegal practitioner for a person who may access the record or an individual who has a written power of attorney from the person or the person's attorney or licensed paralegal practitioner;

(7)(D) an individual with a release from a person who may access the record signed and notarized no more than 90 days before the date the request is made;

(7)(E) anyone by court order;

(7)(F) court personnel, but only to achieve the purpose for which the record was submitted;

(7)(G) a person provided the record under Rule 4-202.04 or Rule 4-202.05;

(7)(H) a governmental entity with which the record is shared under Rule 4-202.10; and

(7)(I) a person given access to the record in order for juvenile probation to fulfill a probation responsibility.

(8) Records prepared and maintained by juvenile court probation that are not filed in a juvenile court case are not open for inspection except by order of the court.

(9) Court personnel shall permit access to court records only by authorized persons. The court may order anyone who accesses a non-public record not to permit further access, the violation of which may be contempt of court.

(10) If a court or court employee in an official capacity is a party in a case, the records of the party and the party's attorney are subject to the rules of discovery and evidence to the same extent as any other party.

This opinion is subject to revision before final publication in the Pacific Reporter

2024 UT 6

IN THE

SUPREME COURT OF THE STATE OF UTAH

In the matter of the adoption of M.A.

MARIANNE TYSON,
Appellant.

No. 20221097
Heard November 8, 2023
Filed February 22, 2024

On Certification from the Court of Appeals

Third District, Salt Lake County
The Honorable Laura S. Scott
No. 223902369

Attorney:

David Pedrazas, Millcreek, for appellant

ASSOCIATE CHIEF JUSTICE PEARCE authored the opinion of the Court, in which CHIEF JUSTICE DURRANT, JUSTICE PETERSEN, JUSTICE HAGEN, and JUSTICE POHLMAN joined.

ASSOCIATE CHIEF JUSTICE PEARCE, opinion of the Court:

INTRODUCTION

¶1 Marianne Tyson wants to see the court records that memorialized her 1978 adoption.[1] Tyson does not know who her

[1] In juvenile matters, we typically refer to the subject of the case by their initials. Tyson used her name in the district court briefing and in the briefing before this court. We acknowledge the importance of maintaining confidentiality in juvenile cases, but because Tyson is an adult who uses her full name in court documents, we do so as well.

birth parents are but hopes to learn "health, genetic, or social information" about them to inform her doctors about any medical predispositions she may have.

¶2 The Utah Legislature has made a number of policy choices concerning adoption records. "An adoption document and any other documents filed in connection with a petition for adoption are sealed" and closed from public view for a century following the adoption. UTAH CODE § 78B-6-141(2), (3)(e). The Legislature has also decided that those sealed adoption records can be inspected or copied when a petitioner has shown "good cause." *See id.* § 78B-6-141(3)(c). The Legislature has not, however, defined good cause. This court has implemented the Legislature's "good cause" directive through Utah Rule of Civil Procedure 107(d). That rule instructs a court to determine "whether the petitioner has shown good cause and whether the reasons for disclosure outweigh the reasons for non-disclosure." UTAH R. CIV. P. 107(d).

¶3 The district court denied Tyson's petition to examine her adoption records. The court reasoned that good cause "require[d] something more than a desire to obtain health or genetic or social information unrelated to a specific medical condition of [Tyson]" and that to require less would "severely undermine[]" the "Legislature's policy determination that adoption records should be sealed for 100 years."

¶4 Tyson appeals, arguing in part that the district court misinterpreted the statute. We agree and remand to permit the district court to reassess Tyson's petition under the correct standard.

BACKGROUND

¶5 Tyson was less than a year old when she was adopted in 1978. Some four decades later, she petitioned the district court to unseal her adoption file to discover "health, genetic, or social information" about her birth parents. Before her petition, Tyson had requested records from Utah's voluntary adoption registry, which could not find a parental match.[2] In her petition, Tyson claimed that her doctors had requested family medical history regarding "menopause, high blood pressure and/or stroke" and

[2] The Utah Adoption Registry is a voluntary, mutual-consent registry that helps adult adoptees born in Utah and their birth parents and blood-related siblings reunite with one another. *See* UTAH CODE § 78B-6-144.

that she could not provide the history because of her lack of access to her birth parents' records. Tyson argued that her lack of family medical history was sufficient good cause to unseal her record under section 78B-6-141(3)(c). With respect to rule 107's balancing requirement, she contended that her desire to understand her family medical history forty-four years after her adoption outweighed any interest in keeping the record sealed from her view.

¶6 Before the district court, Tyson admitted she was not aware that she suffered from any genetic condition for which it would be beneficial to have a better understanding of her family's medical history. The court asked for additional briefing on the question of how it should interpret good cause. The court noted that "as I interpret the statute correctly or incorrectly, good cause is something more than simply the adult adoptee's desire to have a general understanding of health or background or ethnicity or who the parents are."

¶7 At the next hearing, Tyson continued to argue that her right to know her birth parents and their respective medical histories outweighed the birth parents' privacy interests. The district court denied Tyson's petition. It recognized that "good cause" is not defined in the statute nor in rule 107. The court also noted that there was no controlling precedent to provide a definition. The court nonetheless concluded that good cause "require[d] something more than a desire to obtain health or genetic or social information unrelated to a specific medical condition of [a] [p]etitioner." The court reasoned that to require less would "severely undermine[]" the "Legislature's policy determination that adoption records should be sealed for 100 years. "

¶8 The district court acknowledged that Tyson correctly asserted that "[i]t is the intent and desire of the Legislature that in every adoption the best [interest] of the child should govern and be of foremost concern in the court's determination." (First referencing UTAH CODE § 78B-6-102; and then citing *In re Adoption of B.B.*, 2017 UT 59, ¶ 35, 417 P.3d 1.) But the court also noted that the Legislature has decided that an unmarried mother is entitled to privacy regarding her pregnancy and adoption plan and that it protected this right through the one-hundred-year seal and the good cause requirement for unsealing. (Citing UTAH CODE § 78B-6-102(5)(b), (7).) The court refused to use the best interest of the child

standard for its inquiry, instead adhering to the good cause standard it had outlined.

¶9 The district court next conducted the balancing that rule 107 contemplates and determined that Tyson's proffered reasons for unsealing her adoption records did not outweigh her birth mother's privacy interests. The court found this was especially true "given the confidentiality that the statute afforded [the birth mother] when she made the decision to place [Tyson] for adoption over 40 years ago." The court also noted that "in the absence of good cause, the court is required to guard the confidentiality of adoption records consistent with the Utah Legislature's policy that such records be sealed." In accordance with this analysis, the court determined that Tyson was not entitled to obtain the requested records and denied her petition.

STANDARD OF REVIEW

¶10 The Legislature has given district courts discretion to decide if good cause exists to unseal adoption records. We review that decision for an abuse of that discretion. But "[w]hen district courts have discretion to weigh factors[] [or] balance competing interests, . . . those discretionary determinations must rest upon sound legal principles." *State v. Boyden*, 2019 UT 11, ¶ 21, 441 P.3d 737. A "[m]isapplication of the law constitutes an abuse of discretion." *Id.* ¶ 19. Thus, "when a legal conclusion is embedded in a district court's discretionary determination, we peel back the abuse of discretion standard and look to make sure that the court applied the correct law." *Id.* ¶ 21. We review a lower court's statutory interpretation for correctness. *Scott v. Benson*, 2023 UT 4, ¶ 25, 529 P.3d 319.

ANALYSIS

¶11 Tyson raises three arguments on appeal. She first claims that the best interest of the child is the overriding consideration in all adoption cases. And therefore, Tyson contends, the district court abused its discretion when it failed to consider whether the unsealing of her adoption records was in her best interest. Tyson next argues that the district court abused its discretion when it concluded that she was not entitled to obtain the records under Utah Code section 78B-6-141(3)(c). Finally, she contends that the district court abused its discretion when it held that the interest in

non-disclosure outweighed Tyson's justifications to unseal the records under Utah Rule of Civil Procedure 107.[3]

I. THE GOOD CAUSE STANDARD, NOT THE BEST INTEREST OF THE CHILD STANDARD, APPLIES TO PETITIONS TO UNSEAL ADOPTION RECORDS

¶12 Tyson first asserts that the district court erred because it failed to afford primacy to the "child's best interest" in its analysis. Before the district court, Tyson argued that the Legislature has recognized that "in every adoption the best interest of the child should govern" and that standard should apply to her petition. (Quoting UTAH CODE § 78B-6-102(1).) The court refused to apply that standard and instead analyzed Tyson's petition using what it understood to be the good cause standard found in Utah Code section 78B-6-141(3)(c).

¶13 Tyson argues that as an adult who was adopted as a minor, she maintains the protections that the law affords to adopted children.[4] Tyson advocates that the Legislature's mandate—that "in every adoption the best interest of the child should govern"—applies to all proceedings related to a child's adoption, regardless

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[3] On appeal, Tyson asserts that "[e]very person has the constitutional and natural right to know their health, genetic or social information" and that by denying her that right and refusing to unseal her adoption records, we are denying her equal protection under the law as guaranteed by the Fourteenth Amendment. But Tyson has failed to offer any authority or legal basis to support that argument. Advancing a successful argument requires more than dangling an interesting soundbite. "A party may not simply point toward a pile of sand and expect the court to build a castle." *Salt Lake City v. Kidd*, 2019 UT 4, ¶ 35, 435 P.3d 248. Tyson has inadequately briefed her constitutional argument, and we will leave the question for a case in which it has been fully briefed.

[4] Tyson cites the District of Columbia high court to support her proposition that the legal protections afforded to children should extend to minor adoptees who have become adults. (Citing *In re G.D.L.*, 223 A.3d 100 (D.C. 2020).) That case is not helpful because the District of Columbia's unsealing statute is significantly different from Utah's. The D.C. statute provides that adoption records may only be unsealed "when the court is satisfied that the welfare of the child will . . . be promoted or protected." D.C. CODE § 16-311.

of when the proceedings occur. Tyson further argues that because "the best interests of the child are paramount[,] . . . [w]hen the interests of a child and an adult are in conflict, the conflict must be resolved in favor of the child." (Citing *In re Adoption of B.B.*, 2017 UT 59, ¶ 35 n.14, 417 P.3d 1.) Tyson contends we should categorically consider her interest, "as the adult adoptee, over the interest of her birth parents."

¶14 Even assuming, without deciding, that the child's best interest standard would otherwise apply to this proceeding, a basic canon of statutory interpretation defeats Tyson's argument. "When we interpret a statute, we start with the plain language of the provision, reading it in harmony with other statutes in the same chapter and related chapters." *Buck v. Utah State Tax Comm'n*, 2022 UT 11, ¶ 27, 506 P.3d 584 (cleaned up). "And where there is an inconsistency between related statutory provisions, the specific provision controls over the general." *Latham v. Off. of Recovery Servs.*, 2019 UT 51, ¶ 35, 448 P.3d 1241.

¶15 Here, Tyson wants us to promote the general over the specific. Section 78B-6-102(1) speaks about the "intent and desire of the Legislature" generally regarding adoptions, in that "in every adoption the best interest of the child should govern." Section 78B-6-141(3)(c) speaks directly to the issue presented here—what a petitioner must show to unseal adoption records. We presume that the Legislature intended the more specific provision to control over the general statement. Therefore, the district court did not err when it applied the good cause standard instead of examining what was in Tyson's best interest.

II. THE DISTRICT COURT ERRED WHEN IT RELIED ON THE LEGISLATURE'S DECISION TO SEAL ADOPTION RECORDS FOR ONE HUNDRED YEARS TO DERIVE THE MEANING OF "GOOD CAUSE"

¶16 The district court concluded that a desire to obtain health information "unrelated to a specific medical condition" was categorically insufficient to make a good cause showing under section 78B-6-141(3)(c). The court relied on what it perceived as the Legislature's strong emphasis on privacy in adoption statutes to reach that conclusion. Tyson's desire to provide family medical history to her doctors regarding "menopause, high blood pressure and/or stroke" did not, in the court's eyes, constitute good cause to unseal her adoption records.

¶17 Tyson challenges the district court's definition of good cause. She argues that the privacy concerns the Legislature addresses lose their potency over time. Tyson claims her birth mother has enjoyed over forty years of privacy and that affording her further confidentiality cannot outweigh Tyson's desire to know her family medical history. Specifically, Tyson states that the only reason the Legislature protects a birth mother's privacy is to assure "the permanence of an adoptive placement." (Quoting UTAH CODE § 78B-6-102(5)(b).) Tyson argues that "once the Adoptee is an adult, there is no other interest in protecting the privacy of the mother and/or adoptee" because permanence has been achieved. In other words, "once the adoptee has become an adult, the legislative intent has been met and satisfied." So, according to Tyson, "[t]he interest of Adult Adoptee[s] [like Tyson] should outweigh whatever interest the [S]tate has in protecting . . . [the] privacy of the mother from an Adult Adoptee."

¶18 Utah Code section 78B-6-141(3)(c) states that an adoption petition and all other documents filed in connection with a petition for adoption "may only be open to inspection and copying . . . upon order of the court expressly permitting inspection or copying, after good cause has been shown." When it applied this provision to Tyson's petition, the district court stated that good cause required Tyson to show "something more than a desire to obtain health or genetic or social information unrelated to a specific medical condition." The court further reasoned that "if this was all that was required to show good cause, the Utah Legislature's policy determination that adoption records should be sealed for 100 years would be severely undermined." In essence, the court concluded that a desire to see one's medical record unrelated to a specific medical condition could not constitute good cause as a matter of law because it would weaken the privacy protections the statute affords to birth parents.

¶19 The Legislature did not define good cause in the context of section 78B-6-141(3)(c). This stands in contrast to other statutory provisions where the Legislature makes clear what it intends good cause to mean. For example, in Utah Code section 32B-14-102(3), the Legislature tells us that good cause equates to "the material failure by a supplier or a wholesaler to comply with an essential, reasonable, and lawful requirement imposed by a distributorship agreement if the failure occurs after the supplier or wholesaler acting in good faith provides notice of deficiency and an opportunity to correct."

¶20 At times, the Legislature has granted courts broad discretion by not defining good cause, only to add a definition after it sees how the courts have applied the standard. We noted in *State v. Ruiz* that, under a prior version of the plea withdrawal statute, judges "had broad discretion to determine the scope of circumstances that constituted 'good cause' and warranted withdrawal of a plea." 2012 UT 29, ¶ 31, 282 P.3d 998. But we also noted that the Legislature had amended the statute so that "judges may now grant a motion to withdraw *only* when they determine that a defendant's plea was not knowingly and voluntarily entered." *Id.* ¶ 32.

¶21 When a court deals with an undefined good cause standard, it has discretion to look to the facts and arguments presented to decide the question. Although it deals with a rule and not a statute, *Reisbeck v. HCA Health Services of Utah, Inc.* is instructive. *See* 2000 UT 48, ¶¶ 5–15, 2 P.3d 447. The appellant in *Reisbeck* failed to file her notice of appeal within the thirty days that Utah Rule of Appellate Procedure 4(a) requires and sought a discretionary extension from the trial court for "good cause" under Utah Rule of Appellate Procedure 4(e). *Id.* ¶¶ 5, 7. We refused to "establish any specific criteria for determining good cause" because "the assessment of the justifications offered by a moving party will remain highly fact-intensive, and because any given justification may entail aspects both within and beyond the moving party's control." *Id.* ¶¶ 14–15 (cleaned up). That is, an undefined good cause standard provides courts with discretion to consider the merits of individual cases.

¶22 Here, the district court attempted to breathe a more specific meaning into the phrase "good cause." Although it is understandable that the court would want more guidance than the statute provides, it interpreted the statute in a fashion that rewrote the law. The district court opined that good cause must mean "something more than a desire to obtain health or genetic or social information unrelated to a specific medical condition of [Tyson]." The court reasoned that to require less would "severely undermine[]" the "Legislature's policy determination that adoption records should be sealed for 100 years."

¶23 But the statute already balances the policy determination that records be sealed for one hundred years against a petitioner's desire to see those records. The Legislature resolved the question of when a petitioner can have access to those records by stating that a petitioner can unseal those records whenever she can show a

court that good cause exists to do so. To impose additional requirements—such as more than a general desire to know one's medical history—is inconsistent with the statute's language. Stated differently, if the Legislature had wanted to impose a requirement that a petitioner point to something more than wanting to know her medical history, it could have put that in the statute. It did not, and it was error for the court to do so.

III. THE DISTRICT COURT DID NOT CONSIDER THE REASONS FOR DISCLOSURE IN ITS RULE 107 DETERMINATION

¶24 The district court not only concluded that Tyson had failed to establish good cause under section 78B-6-141(3)(c), it also determined that she could not meet the showing Utah Rule of Civil Procedure 107(d) requires.

¶25 Rule 107 provides, in relevant part, that: (i) a petition to open adoption records "shall identify the type of information sought and shall state good cause for access"; (ii) if seeking "health, genetic or social information, the petition shall state why the health history, genetic history or social history of the Bureau of Vital Statistics is insufficient for the purpose"; and (iii) in its resolution of the petition, "[t]he court shall determine whether the petitioner has shown good cause and whether the reasons for disclosure outweigh the reasons for non-disclosure." [5] UTAH R. CIV. P. 107(b), (d).

¶26 Here, the district court ruled that Tyson's "reasons for wanting access to the adoption records" did not "outweigh her birth mother's interest in privacy." But instead of balancing both interests under rule 107, the court focused solely on the birth mother's privacy interests. The court did not consider the reasons for disclosure. This is likely because the court had already discounted Tyson's desire to see her adoption records when it interpreted "good cause." In other words, once the court determined that Tyson could not show good cause under section

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[5] At first blush, Utah Rule of Civil Procedure 107 appears to smear some extra-textual gloss on the statute when it requires a petitioner to state why she cannot get medical information from the Bureau of Vital Statistics, and when it instructs a court to assess whether the "reasons for disclosure outweigh the reasons for non-disclosure." Tyson does not challenge rule 107 and we will leave that question for another case.

78B-6-141(3)(c), it may have concluded that it had nothing to put on the disclosure side of the scale when the court balanced disclosure against non-disclosure.

¶27 We remand to permit the district court to evaluate Tyson's petition under a correct interpretation of section 78B-6-141(3)(c) and to conduct a rule 107 balancing that gives weight to both the birth mother's privacy interests and Tyson's reasons for wanting to see her adoption records.
