



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

Location: WebEx Meeting: [Link](#)

Date: May 22, 2024

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Update on New URCP Rule		Lauren DiFrancesco
Rule 18 – Back from public comment (<i>Discussion</i>)	Tab 2	Lauren DiFrancesco
Rule 4 – Conformity with UC §78B-8-302(7) for Process Servers (<i>Discussion</i>)	Tab 3	Lauren DiFrancesco
Rules 1 and 81 – Amend to exclude the Business and Chancery Court from URCP (<i>Discussion</i>)	Tab 4	Stacy Haacke
Rule 60 – Supreme Court opinion regarding fraud on the court (<i>Discussion</i>)	Tab 5	Judge Cornish
Rules 7A and 37 – Motions to enforce discovery orders (<i>Discussion</i>)	Tab 6	Judge Cornish
Rule 101 – Summary judgment motions heard by Commissioners (<i>Discussion</i>)	Tab 7	Jim Hunnicutt
Rule 63A - HJR008 – Joint Resolution Amending Rules of Civil Procedure on Change of Judge as a Matter of Right (<i>Information</i>)	Tab 8	Lauren DiFrancesco
Request from Advisory Committee on Utah Rules of Professional Conduct to review Standard 16 for incorporation into the URCP (<i>Discussion</i>)	Tab 9	Stacy Haacke
Summer Schedule		Lauren DiFrancesco

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

Upcoming Items:

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

URCP Committee Website: [Link](#)

Meeting Schedule:

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 – April 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		Crystal Powell, Recording Secretary
Ash McMurray	X		Mr. Jonathan Hanks
Michael Stahler	X		Mr. Nathaneal Player
Timothy Pack	X		Ms. Lacey Cherrington
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, <i>Emeritus</i>	X		
James Hunnicutt, <i>Emeritus</i>		X	

(1) INTRODUCTIONS

The meeting began at 4:05 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee Members.

(2) APPROVAL OF MINUTES

Ms. Di Francesco asked for approval of the March 2024 Minutes subject to amendments noted by the Minutes subcommittee. Commissioner Conklin moved to adopt the Minutes as amended. Mr. Ash McMurray seconded. The Minutes were unanimously approved.

(3) UPDATE ON NEW REMOTE HEARINGS RULE

Ms. DiFrancesco gave an update on the new remote hearings Rule. It will be going out for public comments. There are questions on where it should be placed in the Rule. Judge Pohlman suggested it goes into Part 10 under the general rules with a new proposed Rule 87 unless there is a strong reason to place it somewhere else.

(4) RULES 5.

Ms. Loni Page continued the discussion from the March meeting on Rule 5 as follows:

1. 5(a)(1). (Documents that must be served). One additional amendment was made according to the style guide. The Committee did not discuss and decided to accept the change. No vote was taken.
2. 5(b)(5)(C). (Who serves). This subparagraph was added to provide that every document signed by the court that was initially prepared and submitted by a party or attorney must be served by the party who prepared it. Every party or attorney preparing a judgment must promptly serve a copy of the signed judgment on the other parties. Ms. DiFrancesco questioned the use of “submitted” vs. “filed” and whether the party might be able to simply email it to the court. The language was changed to from “submitted” to “filed.” Ms. Page queried the use of “promptly” and suggested removing it. Ms. DiFrancesco questioned whether judgments needed to be specifically addressed. Ms. Keri Sargent suggested changing the language to documents so that it captures all

types including decrees. Ultimately the second sentence was removed entirely. Judge Adrew Stone wondered if the Rule was in the right place. He expressed that he doesn't mind the placement but questioned whether a clarification needed to be included that this Rule does not negate the provisions of Rule 7 that a judgment is effective regardless of when the notice of judgment is served. The Committee generally discussed the appropriate language based on various scenarios/experience. The Committee agreed upon language that "service under this rule does not alter the effectiveness. Mr. Trevor Lee moved to adopt the changes. Mr. Justin Toth seconded. The motion passed unanimously.

3. 5(d) (Certificate of service). Ms. Page included a provision for safeguarded contact/locating information. Mr. Ash McMurry moved to approve the amendments. Commissioner Conklin seconded the motion. The motion passed unanimously.
4. 5(e). (Filing). The suggested amendments make it clear how a self-represented party who is not an attorney may file. The options are by email, mail, the court's MyCase, or in person. Ms. Tonya Wright motioned to approve the change. Mr. Justin Toth approved. The motion unanimously.
5. 5(f). (Filing an affidavit or declaration). The Committee checked whether the amendments were cleared with Mr. McMurray who chairs the Affidavit or Declaration Subcommittee. Mr. Ash McMurray moved to approve the amendments. The motion was seconded by Mr. Toth. The motion passed unanimously.
6. The Committee reviewed the Advisory Committee Notes. Ms. DiFrancesco questioned whether the adoption notation needs to be included at all or whether it may be removed. Ms. Wright moved to approve the removing the adoption notation. Mr. Toth seconded. The motion passed unanimously.

Ms. DiFrancesco thanked the subcommittee for their diligent and hard work over the years on this Rule.

(5) RULE 3(a)(2). FILING OF COMPLAINT AFTER SERVICE

Mr. Trevor Lee reviewed the complaints that he has received from persons who have received the ten-day summons when a case has not been filed. Some of those included confusion on the summons that they get in the mail, stating that a law suit has been filed when it has not been; defendant's believing that they have 10 days to file an answer when it is the complaint that is due in 10 days; the direction to call the court to find out if a

complaint has been filed which usually only shows up in the docketing system after day 13 beyond the 10 day limit; and the filing fee in many cases being larger than the debt. He also noted the issues the courts have expressed concerning when the opposing party files an answer within the timeframe but there is no case to attach it to since none had yet been filed.

Mr. Lee relayed that the Subcommittee's suggestions are: (1) to take off the 10-day summons and extend the time to serve from 120 days to 150 days. (2) Waiving the filing fee until default judgment which would allow the debt collection bar to resolve low dollar debts without incurring a filing fee if they can't settle. Mr. Lee noted that if the Rule wanted to waive the filing fee until judgment, then that would require a legislative change as there is law that states that the fee must be paid at the time the clerk accepts the filing.

Mr. Jonathan Hanks who is a debt collection attorney noted that the current proposal from the perspective of the debt collection bar, though he was not speaking for everyone, seems like a workable solution to all parties. He expressed one concern of a pushback on the no filing fee until the judgment or order in the case. Ms. DiFrancesco clarified if the debt collection bar agreed with the amendments so long as the amendment on the filing fee was also included. Mr. Hanks noted that he believes it is a good solution and it is the consensus of those from the debt collection bar with whom he has spoken but the debt collection bar does not have the mechanism to speak as a unit and so he would note that he does not speak for all.

Mr. Nathaneal Player from the self-help center noted that the self-help center generally supports the proposal and believes it is workable. He questioned whether a legislative change would be needed and put forward that it seems the judicial council would have that power under the code of judicial administration. He noted that Rule 4 (b), 4(c)(1)(F) and 4(c)(2) might also need amendments which he didn't see in the materials and recommended that the Subcommittee look at that. The Committee compared the Federal Rules in discussing those changes. Ms. DiFrancesco questioned the definition of the term debt collection cases as applied in a broader sense in comparison to certain contract claims. Judge Scott explained that there is a case type which the attorney must select, and Ms. Wright also explained how the selection in e-filing works. Ms. DiFrancesco clarified she is wondering where the definition is that specifies which case falls under which selection. Mr. Hanks noted he hasn't seen such a definition in e-filing but expressed a common definition.

Ms. Stacy Haacke pointed out that there might be a conflict if a Rule was amended that changed the filing fee statutes under 78A-2-301(1)(e) and 78A-2-306(2). Judge Scott notes that under the Code of Judicial Administration the court is allowed to waive the fee and brainstormed whether the judge might sign an order deferring the payment of the filing fee and if that was an option then it might be a viable solution. Mr. Lee questioned whether it would be a standing order. Judge Scott noted that perhaps it might be a form filed with the case and signed off by the clerk rather than the judge. The Committee also generally

discussed whether the potential fee deferment should be based on the value of the debt. The Committee agreed that the Rule still needs more consideration before its implementation.

The Committee voted on whether to adopt the Rule as is without a monetary threshold. Seven Committee members agreed with a monetary threshold. The Committee then further discussed what the monetary threshold would look like and referred to Judge Parker's threshold in debt collection court and the tiers for damages under Rule 26.

Mr. Lee questioned whether Rule 3 (a)(1) is being used for high value debt collection cases. Ms. Lacey Cherrington noted that the Bar has done research on debt collection over the past few years and that could be a source of information for some of the concerns raised in the discussions. The Committee generally discussed what is filed in the debt collection case after an answer is filed. Ms. Cherrington noted that if the debt is paid in full then the case is dismissed; however, if the debt is not paid in full then the debt collector will file to continue the action. Ms. DiFrancesco asked for a vote on the concept of the Rule going to the supreme court. Mr. Rod Andreason motioned. Mr. Toth seconded. The motion passed unanimously.

(8) ADJOURNMENT

With no more time for new discussions, the meeting was adjourned at 5:58 p.m. The next meeting will be May 22, 2024, at 4:00 p.m.

Tab 2

UTAH COURT RULES – PUBLISHED FOR COMMENT

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

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

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

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[LINKS](#)

Posted: February 15, 2024	Utah Courts
<p>Rules of Civil Procedure – Comment Period Closed March 31, 2024</p> <p>URCP018. Joinder of claims and remedies. AMEND. The proposed amendments reflect the change in the statute using the language “voidable transaction” instead of “fraudulent conveyance.” Other changes were made to the gendered pronouns used in the rule, as well as to simplify the language of the rule.</p> <hr/> <p>This entry was posted in -Rules of Civil Procedure, URCP018.</p>	
« Code of Judicial Administration – Comment Period Closed April 11, 2024	Rules of Appellate Procedure – Comment Period Closed March 30, 2024 »

 SEARCH

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

- CATEGORIES**
- [-Alternate Dispute Resolution](#)
 - [-Code of Judicial Administration](#)
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 - [-Rules Governing Licensed Paralegal Practitioner](#)
 - [-Rules Governing the State Bar](#)

UTAH COURTS

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One thought on “Rules of Civil Procedure – Comment Period Closed March 31, 2024”

Leslie Slaugh
February 15, 2024 at 10:13 am

I suggest that “will” in line 12 be replaced with “may.” “Will” usually “expresses a future contingency” (Bryan Garner, Guidelines for Drafting and Editing Court Rules, sec 4.2). I don’t think any “future contingency” is contemplated by the rule. “May” indicates the court “has discretion to” or “is permitted to” and seems to better express what the rule intends.

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0302
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0101
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
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- CJA02-0212
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- CJA03-0107
- CJA03-0108
- CJA03-0109
- CJA03-0111
- CJA03-0111.01

1 **Rule 18. Joinder of claims and remedies.**

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

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

16 | Effective date:

Tab 3

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.

1 **Rule 4. Process.**

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

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

10 **(c) Contents of summons.**

11 (1) The summons must:

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

14 (B) be directed to the defendant;

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

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

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

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

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

25 (2) If the action is commenced under Rule [3\(a\)\(2\)](#), the summons must also:

26 (A) state that the defendant need not answer if the complaint is not filed within
27 10 days after service; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

105 **(3) Acceptance of service.**

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

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

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

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

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

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

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

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

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

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

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

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

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

149 **(5) Other service.**

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

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

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

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

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

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

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

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

182

183 *Effective: Nov. 1, 2023*

184

Effective 5/3/2023

78B-8-302 Process servers.

- (1) A complaint, a summons, or a subpoena may be served by a person who is:
 - (a) 18 years old or older at the time of service; and
 - (b) not a party to the action or a party's attorney.
- (2) Except as provided in Subsection (5), the following may serve all process issued by the courts of this state:
 - (a) a peace officer employed by a political subdivision of the state acting within the scope and jurisdiction of the peace officer's employment;
 - (b) a sheriff or appointed deputy sheriff employed by a county of the state;
 - (c) a constable, or the constable's deputy, serving in compliance with applicable law;
 - (d) an investigator employed by the state and authorized by law to serve civil process; and
 - (e) a private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act.
- (3) A private investigator licensed in accordance with Title 53, Chapter 9, Private Investigator Regulation Act, may not make an arrest pursuant to a bench warrant.
- (4) While serving process, a private investigator shall:
 - (a) have on the investigator's person a visible form of credentials and identification identifying:
 - (i) the investigator's name;
 - (ii) that the investigator is a licensed private investigator; and
 - (iii) the name and address of the agency employing the investigator or, if the investigator is self-employed, the address of the investigator's place of business;
 - (b) verbally communicate to the person being served that the investigator is acting as a process server; and
 - (c) print on the first page of each document served:
 - (i) the investigator's name and identification number as a private investigator; and
 - (ii) the address and phone number for the investigator's place of business.
- (5) Any service under this section when the use of force is authorized on the face of the document, or when a breach of the peace is imminent or likely under the totality of the circumstances, may only be served by:
 - (a) a law enforcement officer, as defined in Section 53-13-103; or
 - (b) a special function officer, as defined in Section 53-13-105, who is:
 - (i) employed as an appointed deputy sheriff by a county of the state; or
 - (ii) a constable.
- (6) The following may not serve process issued by a court:
 - (a) a person convicted of a felony violation of an offense listed in Subsection 77-41-102(18); or
 - (b) a person who is a respondent in a proceeding described in Title 78B, Chapter 7, Protective Orders and Stalking Injunctions, in which a court has granted the petitioner a protective order.
- (7) A person serving process shall:
 - (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.

Amended by Chapter 49, 2023 General Session
Amended by Chapter 123, 2023 General Session

Tab 4

Rules 1 and 81

New rules for Business and Chancery Court

With the drafting and presentation of rules for the Business and Chancery Court the Supreme Court noticed the rules regarding the scope of the URCP may need to be amended to reflect the creation of these separate procedural rules. Both rules are included in these materials, but the substantive change has been made to Rule 81. Specifically, a paragraph has been added to state:

“(d) Application to business and chancery court. These rules apply in the business and chancery court except where there is a rule of the same number in the Utah Rules of Business and Chancery Procedure, or the Utah Rules of Business and Chancery Procedure exclude application of these rules by specific rule number.”

1 **Rule 1. General provisions.**

2 *Effective: 11/1/2011*

3 **Scope of rules.** These rules govern the procedure in the courts of the state of Utah in all
4 actions of a civil nature, whether cognizable at law or in equity, and in all statutory
5 proceedings, except as governed by other rules promulgated by this court or statutes
6 enacted by the Legislature, and except as stated in Rule [81](#). They ~~shall~~ must be liberally
7 construed and applied to achieve the just, speedy, and inexpensive determination of
8 every action. These rules govern all actions brought after they take effect and all further
9 proceedings in actions then pending. If, in the opinion of the court, applying a rule in an
10 action pending when the rule takes effect would not be feasible or would be unjust, the
11 former procedure applies.

12

13 **Advisory Committee Notes**

14 These rules apply to court commissioners to the same extent as to judges.

15 A primary purpose of the 2011 amendments is to give effect to the long-standing but
16 often overlooked directive in Rule 1 that the Rules of Civil Procedure should be
17 construed and applied to achieve "the just, speedy and inexpensive determination of
18 every action." The amendments serve this purpose by limiting parties to discovery that
19 is proportional to the stakes of the litigation, curbing excessive expert discovery, and
20 requiring the early disclosure of documents, witnesses and evidence that a party
21 intends to offer in its case-in-chief. The committee's purpose is to restore balance to the
22 goals of Rule 1, so that a just resolution is not achieved at the expense of speedy and
23 inexpensive resolutions, and greater access to the justice system can be afforded to all
24 members of society.

25 Due to the significant changes in the discovery rules, the Supreme Court order adopting
26 the 2011 amendments makes them effective only as to cases filed on or after the effective

27 date, November 1, 2011, unless otherwise agreed to by the parties or ordered by the
28 court.
29

1 **Rule 81. Applicability of rules in general.**

2 *Effective:*

3 (a) Special statutory proceedings. These rules ~~shall~~ apply to all special statutory
4 proceedings, except insofar as such rules are by their nature clearly inapplicable. Where
5 a statute provides for procedure by reference to any part of the former Code of Civil
6 Procedure, such procedure ~~shall~~ must be in accordance with these rules.

7 (b) Probate and guardianship. These rules ~~shall~~ do not apply to proceedings in
8 uncontested probate and guardianship matters, but ~~shall~~ apply to all proceedings
9 subsequent to the joinder of issue therein, including the enforcement of any judgment
10 or order entered.

11 (c) Application to small claims. These rules ~~shall~~ do not apply to small claims
12 proceedings except as expressly incorporated in the Small Claims Rules.

13 (d) Application to business and chancery court. These rules apply in the business and
14 chancery court except where there is a rule of the same number in the Utah Rules of
15 Business and Chancery Procedure, or the Utah Rules of Business and Chancery
16 Procedure exclude application of these rules by specific rule number.

17 ~~(e)~~ On appeal from or review of a ruling or order of an administrative board or
18 agency. These rules ~~shall~~ apply to the practice and procedure in appealing from or
19 obtaining a review of any order, ruling or other action of an administrative board or
20 agency, except insofar as the specific statutory procedure in connection with any such
21 appeal or review is in conflict or inconsistent with these rules.

22 ~~(f)~~ Application in criminal proceedings. These rules of procedure ~~shall~~ also govern in
23 any aspect of criminal proceedings where there is no other applicable statute or rule,
24 provided, that any rule so applied does not conflict with any statutory or constitutional
25 requirement.

26

Tab 5

1 **Rule 60. Relief from judgment or order.**

2 *Effective: 5/1/2016*

3 (a) **Clerical mistakes.** The court may correct a clerical mistake or a mistake arising from
4 oversight or omission whenever one is found in a judgment, order, or other part of the
5 record. The court may do so on motion or on its own, with or without notice. After a
6 notice of appeal has been filed and while the appeal is pending, the mistake may be
7 corrected only with leave of the appellate court.

8 (b) **Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud,**
9 **etc.** On motion and upon just terms, the court may relieve a party or its legal
10 representative from a judgment, order, or proceeding for the following reasons:

11 | ~~(b)~~(1) mistake, inadvertence, surprise, or excusable neglect;

12 | ~~(b)~~(2) newly discovered evidence which by due diligence could not have been
13 discovered in time to move for a new trial under Rule 59(b);

14 | ~~(b)~~(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation or
15 other misconduct of an opposing party;

16 | ~~(b)~~(4) the judgment is void;

17 | ~~(b)~~(5) the judgment has been satisfied, released, or discharged, or a prior judgment
18 upon which it is based has been reversed or vacated, or it is no longer equitable that
19 the judgment should have prospective application; or

20 | ~~(b)~~(6) any other reason that justifies relief.

21 (c) **Timing and effect of the motion.** A motion under paragraph (b) must be filed
22 within a reasonable time and for reasons in paragraph (b)(1), (2), or (3), not more than
23 90 days after entry of the judgment or order or, if there is no judgment or order, from
24 the date of the proceeding. The motion does not affect the finality of a judgment or
25 suspend its operation.

26 (d) **Other power to grant relief.** This rule does not limit the power of a court to
27 entertain an independent action to relieve a party from a judgment, order or proceeding
28 or to set aside a judgment for fraud upon the court. The procedure for obtaining any
29 relief from a judgment shall be by motion as prescribed in these rules or by an
30 independent action.

31

32 **Advisory Committee Notes**

33 The 1998 amendment eliminates as grounds for a motion the following: "(4) when, for
34 any cause, the summons in an action has not been personally served upon the
35 defendant as required by Rule 4(e) and the defendant has failed to appear in said
36 action." This basis for a motion is not found in the federal rule. The committee
37 concluded the clause was ambiguous and possibly in conflict with rule permitting
38 service by means other than personal service.

39 [Note adopted \[YEAR\]](#)

40 2016 amendments

41 The deadlines for a motion are as stated in this rule, but if a motion under paragraph (b)
42 is filed within 28 days after the judgment, it will have the same effect on the time to
43 appeal as a motion under Rule [50](#), [52](#), or [59](#). See the 2016 amendments to Rule of
44 Appellate Procedure [4\(b\)](#).

45 [Note adopted \[YEAR\]](#)

46

Tab 6

1 **Rule 7A. Motion to enforce order and for sanctions.**

2 **(a) Motion.** To enforce a court order or to obtain a sanctions order for violation of an
3 order, including in supplemental proceedings under Rule 64, a party must file an ex
4 parte motion to enforce order and for sanctions (if requested), pursuant to this rule
5 and [Rule 7](#). The motion must be filed in the same case in which that order was entered.
6 The timeframes set forth in this rule, rather than those set forth in [Rule 7](#), govern
7 motions to enforce orders and for sanctions.

8 **(b) Affidavit.** The motion must state the title and date of entry of the order that the
9 moving party seeks to enforce. The motion must be verified, or must be accompanied
10 by at least one supporting affidavit or declaration that is based on personal knowledge
11 and shows that the affiant or declarant is competent to testify on the matters set forth.
12 The verified motion, affidavit, or declaration must set forth facts that would be
13 admissible in evidence and that would support a finding that the party has violated the
14 order.

15 **(c) Proposed order.** The motion must be accompanied by a request to submit for
16 decision and a proposed order to attend hearing, which must:

17 (1) state the title and date of entry of the order that the motion seeks to enforce;

18 (2) state the relief sought in the motion;

19 (3) state whether the motion is requesting that the other party be held in contempt
20 and, if so, state that the penalties for contempt may include, but are not limited to, a
21 fine of up to \$1000 and confinement in jail for up to 30 days;

22 (4) order the other party to appear personally or through counsel at a specific place
23 (the court's address) and date and time (left blank for the court clerk to fill in) to
24 explain whether the nonmoving party has violated the order; and

25 (5) state that no written response to the motion is required but is permitted if filed
26 within 14 days of service of the order, unless the court sets a different time, and that
27 any written response must follow the requirements of [Rule 7](#).

28 **(d) Service of the order.** If the court issues an order to attend a hearing, the moving
29 party must have the order, motion, and all supporting affidavits served on the
30 nonmoving party at least 28 days before the hearing. Service must be in a manner
31 provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If
32 the nonmoving party is represented by counsel in the case, service must be made on the
33 nonmoving party's counsel of record in a manner provided in [Rule 5](#). For purposes of
34 this rule, a party is represented by counsel if, within the last 120 days, counsel for that

35 party has served or filed any documents in the case and has not withdrawn. The court
36 may shorten the 28 day period if:

37 (1) the motion requests an earlier date; and

38 (2) it clearly appears from specific facts shown by affidavit that immediate and
39 irreparable injury, loss, or damage will result to the moving party if the hearing is
40 not held sooner.

41 **(e) Opposition.** A written opposition is not required, but if filed, must be filed within 14
42 days of service of the order, unless the court sets a different time, and must follow the
43 requirements of Rule 7.

44 **(f) Reply.** If the nonmoving party files a written opposition, the moving party may file a
45 reply within 7 days of the filing of the opposition to the motion, unless the court sets a
46 different time. Any reply must follow the requirements of [Rule 7](#).

47 **(g) Hearing.** At the hearing the court may receive evidence, hear argument, and rule
48 upon the motion, or may request additional briefing or hearings. The moving party
49 bears the burden of proof on all claims made in the motion. At the court's discretion, the
50 court may convene a telephone conference before the hearing to preliminarily address
51 any issues related to the motion, including whether the court would like to order a
52 briefing schedule other than as set forth in this rule.

53 **(h) Limitations.** This rule does not apply to proceedings instituted by the court on its
54 own initiative to enforce an order. This rule does not apply in criminal cases or motions
55 filed under [Rule 37](#). Nothing in this rule is intended to limit or alter the inherent power
56 of the court to initiate order to show cause proceedings to assess whether cases should
57 be dismissed for failure to prosecute or to otherwise manage the court's docket, or to
58 limit the authority of the court to hold a party in contempt for failure to appear
59 pursuant to a court order.

60 **(i) Orders to show cause.** The process set forth in this rule replaces and supersedes the
61 prior order to show cause procedure. An order to attend hearing serves as an order to
62 show cause as that term is used in Utah law.

63

64 Effective May 1, 2023

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

3 *Effective: 5/1/2021*

4 **(a) Statement of discovery issues.**

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

7 (A) failure to disclose under Rule [26](#);

8 (B) extraordinary discovery under Rule [26](#);

9 | (C) [seeking to compel compliance with](#) a subpoena under Rule [45\(e\)\(5\)](#);

10 (D) protection from discovery; or

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

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

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

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

21 (C) a statement regarding proportionality under Rule [26\(b\)\(2\)](#); and

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

24 **(3) Objection length and content.** No more than 7 days after the statement is filed,
25 any other party may file an objection to the statement of discovery issues. The

26 objection must be no more than 4 pages, not including permitted attachments, and
27 must address the issues raised in the statement.

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

31 **(5) Proposed order.** Each party must file a proposed order concurrently with its
32 statement or objection.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 77 (1) deem the matter or any other designated facts to be established in accordance
78 with the claim or defense of the party obtaining the order;
- 79 (2) prohibit the disobedient party from supporting or opposing designated claims or
80 defenses or from introducing designated matters into evidence;
- 81 (3) stay further proceedings until the order is obeyed;
- 82 (4) dismiss all or part of the action, strike all or part of the pleadings, or render
83 judgment by default on all or part of the action;
- 84 (5) order the party or the attorney to pay the reasonable costs, expenses, and
85 attorney fees, caused by the failure;
- 86 (6) treat the failure to obey an order, other than an order to submit to a physical or
87 mental examination, as contempt of court; and
- 88 (7) instruct the jury regarding an adverse inference.

89 **(c) Motion for costs, expenses and attorney fees on failure to admit.** If a party fails to
90 admit the genuineness of a document or the truth of a matter as requested under
91 Rule [36](#), and if the party requesting the admissions proves the genuineness of the
92 document or the truth of the matter, the party requesting the admissions may file a
93 motion for an order requiring the other party to pay the reasonable costs, expenses and
94 attorney fees incurred in making that proof. The court must enter the order unless it
95 finds that:

- 96 (1) the request was held objectionable pursuant to Rule [36\(a\)](#);
- 97 (2) the admission sought was of no substantial importance;
- 98 (3) there were reasonable grounds to believe that the party failing to admit might
99 prevail on the matter;
- 100 (4) that the request was not proportional under Rule [26\(b\)\(2\)](#); or
- 101 (5) there were other good reasons for the failure to admit.

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

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

116

117 **Advisory Committee Notes**

118 The 2011 amendments to Rule 37 make two principal changes. First, the amended Rule
119 37 consolidates provisions for motions for a protective order (formerly set forth in Rule
120 26(c)) with provisions for motions to compel.

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

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

128

Tab 7

Rule 101

Subcommittee: Jim Hunnicutt, Susan Vogel, Commissioner Conklin, Tonya Wright, Keri Sargent, Samantha Parmley

Included is the latest suggested edits from the Rule 101 subcommittee.

One topic that arose was summary judgment motions being heard by commissioners. Commissioners hear Rule 56 motions for summary judgment, and there has been some confusion regarding which parts of Rule 56 vs. which parts of Rule 101 take precedence.

The subcommittee thought about adding a new subpart to Rule 101, but ultimately decided not to. Instead, the subcommittee wanted to run past the main Committee the idea of a new "Rule 56B" analogous to Rule 7B, creating a new rule that blends 56 and 101 so the process is more clear when someone files a motion for summary judgment to the commissioner.

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

2 *Effective: 5/1/2021*

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

6 (1) ~~A-Except as noted here, a~~ motion must be in writing and state succinctly and with
7 particularity the relief sought and the grounds for the relief sought. Any evidence necessary
8 to support the moving party's position must be presented by way of one or more affidavits or
9 declarations or other admissible evidence. The motion may also include a supporting
10 memorandum. Motions made in court during a hearing are disfavored, but the court
11 commissioner shall have discretion to consider such oral motions based on good cause.

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

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

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

22 (5) Stipulated motions under Rule 7(k), motions that may be acted on without waiting for a
23 response under Rule 7(l), ex parte motions under Rule 7(m), and statements of discovery
24 issues under Rule 37(a) must be made by motion in accordance with their respective rules
25 rather than this Rule 101. Rule 7(j) applies to preparing a proposed order after a hearing
26 before a court commissioner. Otherwise, Rule 101 should be followed rather than Rule 7
27 respecting motions before court commissioners.

28 **(b) Time to file and serve.** The moving party must file the motion and any supporting papers
29 with the court clerk ~~of the court~~ and obtain a hearing date and time. The moving party must have

30 ~~the motion and all supporting papers~~ served on the ~~responding nonmoving~~ party ~~with the motion~~
31 ~~and supporting papers~~, together with notice of the hearing at least 28 days before the hearing.
32 Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by
33 counsel in the case. If the nonmoving party is represented by counsel in the case, service must be
34 made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes
35 of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party
36 has served or filed any documents in the case and has not withdrawn. ~~If service is more than 90~~
37 ~~days after the date of entry of the most recent appealable order, service may not be made through~~
38 ~~counsel.~~

39 **(c) Response.** Any other party may file a response, consisting of any responsive memorandum,
40 affidavit(s) or declaration(s). The response must be filed and served on the moving party at least
41 14 days before the hearing.

42 **(d) Reply.** The moving party may file a reply, consisting of any reply memorandum, affidavit(s)
43 or declaration(s). The reply must be filed and served on the responding party at least seven⁷ days
44 before the hearing. The contents of the reply must be limited to rebuttal of new matters raised in
45 the response to the motion.

46 **(e) Counter motion.** Responding to a motion is not sufficient to grant relief to the responding
47 party. A responding party may request affirmative relief by way of a counter motion. A counter
48 motion need not be limited to the subject matter of the original motion. All of the provisions of
49 this rule apply to counter motions except that a counter motion must be filed and served with the
50 response. Any response to the counter motion must be filed and served no later than the reply to
51 the motion. Any reply to the response to the counter motion must be filed and served at least
52 three³ business days before the hearing. The reply must be served in a manner that will cause the
53 reply to be actually received by the party responding to the counter motion (i.e. hand-delivery,
54 fax or other electronic delivery as allowed by rule or agreed by the parties) at least three³
55 business days before the hearing. A separate notice of hearing on counter motions is not
56 required.

57 **(f) Necessary documentation.** Motions and responses regarding temporary orders concerning
58 alimony, child support, division of debts, possession or disposition of assets, or litigation
59 expenses, appointment of a court-annexed professional (such as, but not limited to, guardian ad

60 | litem, custody evaluator, special master, parenting coordinator, etc.) must be accompanied by
61 | verified financial declarations with documentary income verification attached as exhibits, unless
62 | financial declarations and documentation are already in the court's file and remain current.
63 | Attachments for motions and responses regarding child support and child custody must also
64 | include a child support worksheet.

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

67 | **(h) Exhibits; ~~objection to failure to attach.~~**

68 | (1) ~~Except as provided in paragraph (h)(3) of this rule, Exhibits must be attached to an~~
69 | ~~affidavit, declaration, verified motion or verified memorandum any documents such as tax~~
70 | ~~returns, bank statements, receipts, photographs, correspondence, calendars, medical records,~~
71 | ~~forms, or photographs must be supplied to the court as exhibits to one or more affidavits (as~~
72 | ~~appropriate) establishing the exhibits' necessary foundational requirements. &&& waive~~
73 | ~~803?~~

74 | (2) Copies of court papers such as decrees, orders, minute entries, motions, or affidavits,
75 | already in the court's case file, ~~may~~must not be filed as exhibits. Court papers from cases
76 | other than that before the court, such as protective orders, prior divorce decrees from
77 | different cases, criminal orders, information or dockets, and juvenile court orders (to the
78 | extent the law does not prohibit their filing), may be submitted as exhibits.

79 | ~~(2) If papers or exhibits referred to in a motion or necessary to support the moving party's~~
80 | ~~position are not served with the motion, the responding party may file and serve an objection~~
81 | ~~to the defect with the response. If papers or exhibits referred to in the response or necessary~~
82 | ~~to support the responding party's position are not served with the response, the moving party~~
83 | ~~may file and serve an objection to the defect with the reply. The defect must be cured within~~
84 | ~~two2 business days after notice of the defect or at least three3 business days before the~~
85 | ~~hearing, whichever is earlier.~~

86 | (3) Voluminous exhibits. ~~Voluminous exhibits which cannot conveniently be examined in~~
87 | ~~court Exhibits beyond the pages limits set forth below~~ may not be filed ~~as exhibits~~, but the
88 | contents of such documents may be presented in the form of a summary, chart, or calculation

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89 under Rule 1006 of the Utah Rules of Evidence. A summary is a statement outlining the
 90 content of the voluminous exhibits, and not simply a list identifying exhibits. Affidavits and
 91 declarations may not be summarized. Collections of documents, such as bank statements,
 92 checks, receipts, medical records, photographs, e-mails, text messages, calendars, and journal
 93 entries that collectively exceed ten pages in length must be presented in summary form.

94 ~~(a) Unless they have been previously supplied through discovery or otherwise and are~~
 95 ~~readily identifiable, e~~Copies of any such ~~voluminous~~ documents beyond the page limits
 96 must be supplied to the other parties at the time of the filing of the summary, chart, or
 97 calculation.

98 (b) The originals or duplicates of the documents must be available at the hearing for
 99 examination by the parties and the commissioner.

100 ~~(i) Length. Initial and responding memoranda may not exceed ten 10 pages of argument without~~
 101 ~~leave of the court. Reply memoranda may not exceed five 5 pages of argument without leave of~~
 102 ~~the court.~~The total number of pages submitted to the court by each party may not exceed 25 total
 103 pages per hearing regardless of the number of motions to be heard. This page limit applies to the
 104 total of all motions, responses, counter-motions, replies, memoranda, including affidavits,
 105 declarations, exhibits, attachments, and summaries submitted by each party for a hearing, but
 106 ~~excluding financial declarations and income verification.~~

107 ~~The court commissioner may permit the party to file an over length memorandum upon~~
 108 ~~ex parte application and showing of good cause.~~

109 (1) Individual documents with specific legal significance, such as the following, are
 110 exempt from the page limits and must be submitted in their entirety:

111 (a) financial declarations,

112 (b) income verification,

113 (c) tax returns,

114 (d) appraisals,

115 (e) financial statements and reports prepared by an accountant,

116 (f) wills,

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- 117 (g) trust documents,
- 118 (h) contracts, or
- 119 (i) settlement agreements.

120 (2) The page limits in this rule exclude the following:

- 121 (a) caption,
- 122 (b) table of contents,
- 123 (c) table of authorities,
- 124 (d) signature block,
- 125 (e) certificate of service,
- 126 (f) verification,
- 127 (g) bilingual notice, and
- 128 (h) other notice required by these rules.

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129 (3) A party may file a motion under Rule 7(l) asking the court commissioner for
130 permission to exceed the 25-page limit based on a showing of extenuating circumstances.

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

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

141 **(l) Hearings.**

142 (1) A hearing may be scheduled but may not be held ~~The court commissioner may not hold a~~
143 ~~hearing~~ on a motion for temporary orders before the deadline for an appearance by the
144 respondent under Rule 12.

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

152 **(m) Motions to judge.** The following motions must be to the judge to whom the case is
153 assigned:

- 154 (1) motion for alternative service;
- 155 (2) motion to waive 30-day waiting period for divorces;
- 156 (3) motion to waive ~~divorce-parenting~~ education ~~class~~ courses;
- 157 (4) ~~motion for leave to withdraw after a case has been certified as ready for trial; and~~
- 158 (5) ~~motions~~ in limine; and
- 159 (6) post-trial motion under Rules 58A, 58B, 58C or 59 for those trials held before the
160 judge.

161 A court may provide that other motions be considered by the judge.

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

165

Tab 8

1 **JOINT RESOLUTION AMENDING RULES OF CIVIL**
2 **PROCEDURE ON CHANGE OF JUDGE AS A MATTER OF RIGHT**

3 2024 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Stephanie Gricius**

6 Senate Sponsor: Keith Grover

8 **LONG TITLE**

9 **General Description:**

10 This joint resolution amends Rule 63A of the Utah Rules of Civil Procedure regarding
11 the change of judge as a matter of right.

12 **Highlighted Provisions:**

13 This resolution:

- 14 ▶ amends Rule 63A of the Utah Rules of Civil Procedure to allow for a change of
15 judge by a party in a civil action; and
- 16 ▶ makes technical and conforming changes.

17 **Special Clauses:**

18 This resolution provides a special effective date.

19 **Utah Rules of Evidence Affected:**

20 AMENDS:

21 **Rule 63A**, Utah Code of Evidence Procedure, as Utah Rules of Civil Procedure

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

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

28 Section 1. **Rule 63A** Utah Rules of Civil Procedure is amended to read:

29 **Rule 63A. Change of judge as a matter of right.**

30 **(a) Change of judge by one side of an action.**

31 **(a) (1) Right to change a judge by one side of an action.**

32 **(a) (1) (A) In a civil action pending in a court in a county with seven or more district**

33 court judges, each side is entitled to one change of judge as a matter of right under this
34 paragraph (a).

35 (a) (1) (B) Even if two or more parties on one side of a civil action have adverse or
36 hostile interests, the action, whether single or consolidated, must be treated as only having two
37 sides for purposes of a changing judge under this paragraph (a).

38 (a) (1) (C) A side is not entitled to more than one change of judge under this paragraph
39 (a).

40 (a) (1) (D) Regardless of when a party joins a civil action, a party is not entitled to a
41 change of judge as a matter of right under this paragraph (a) if the notice of a change of judge
42 is untimely under paragraph (a)(2).

43 **(a) (2) Notice of a change of judge.**

44 (a) (2) (A) A party seeking a change of judge under this paragraph (a) must file a notice
45 of a change of judge with the clerk of the court.

46 (a) (2) (B) If the notice of a change of judge is timely under this paragraph (a)(2), the
47 notice must be granted.

48 (a) (2) (C) In filing a notice of a change of judge under this paragraph (a), a party is not
49 required to state any reason for seeking a change of judge, but the party must attest in good
50 faith that the notice is not being filed:

51 (a) (2) (C) (i) for the purpose to delay any action or proceeding; or

52 (a) (2) (C) (ii) to change the judge on the grounds of race, gender, or religious
53 affiliation.

54 (a) (2) (D) The notice must be filed:

55 (a) (2) (D) (i) on the side of a plaintiff or petitioner, within seven days after the day on
56 which a judge is first assigned to the action or proceeding; or

57 (a) (2) (D) (ii) on the side of a defendant or respondent, within seven days after the day
58 on which the defendant or respondent is served the complaint or petition, or at the time of the
59 first filing by the defendant or respondent with the court, whichever occurs first.

60 (a) (2) (E) Failure to file a timely notice of a change of judge under this rule precludes
61 a change of judge under this paragraph (a).

62 **(a) (3) Assignment of action.**

63 (a) (3) (A) Upon the filing of a notice under this paragraph (a), the judge assigned to

64 the action must take no further action in the case.

65 (a) (3) (B) The action must be promptly reassigned to another judge within the county.

66 (a) (3) (C) If the action is unable to be reassigned to another judge within the county,

67 the action may be transferred to a court in another county in accordance with Rule 42.

68 (a) (4) Exceptions. A party, or a side, is not entitled to change a judge as a matter of
69 right under this paragraph (a):

70 (a) (4) (A) in any proceeding regarding a petition for post-conviction relief under Rule
71 65C;

72 (a) (4) (B) on a petition to modify child custody, child support, or alimony, unless the
73 judge assigned to the action is not the same judge assigned to any of the previous actions
74 between the parties;

75 (a) (4) (C) in an action before the juvenile court or the Business and Chancery Court;

76 (a) (4) (D) in an action in which the judge is sitting as a water or tax judge;

77 (a) (4) (E) in an action on remand from an appellate court; or

78 (a) (4) (F) if an action is unable to be transferred under paragraph (a)(3)(C) to another
79 county in accordance with Rule 42.

80 ~~[(a) Notice of change.]~~ **(b) Right to change a judge by agreement of the parties.**

81 **(b) (1) Notice of a change of judge.**

82 (b) (1) (A) Except in actions with only one party, all parties joined in the action may,
83 by unanimous agreement and without cause, change the judge assigned to the action by filing a
84 notice of change of judge.

85 (b) (1) (B) The parties shall send a copy of the notice to the assigned judge and the
86 presiding judge.

87 (b) (1) (C) The notice shall be signed by all parties and shall state: (1) the name of the
88 assigned judge; (2) the date on which the action was commenced; (3) that all parties joined in
89 the action have agreed to the change; (4) that no other persons are expected to be named as
90 parties; and (5) that a good faith effort has been made to serve all parties named in the
91 pleadings.

92 (b) (1) (D) The notice shall not specify any reason for the change of judge.

93 (b) (1) (E) Under no circumstances shall more than one change of judge be allowed
94 under this ~~rule~~ paragraph (b) in an action.

95 **(b) (2) Time for filing a notice.**

96 **(b) (2) (A)** Unless extended by the court upon a showing of good cause, the notice
97 must be filed within 90 days after commencement of the action or prior to the notice of trial
98 setting, whichever occurs first.

99 **(b) (2) (B)** Failure to file a timely notice precludes any change of judge under this
100 ~~[rule]~~ paragraph (b).

101 ~~[(c)]~~ **(b) (3) Assignment of action.**

102 **(b) (3) (A)** Upon the filing of a notice of change, the assigned judge shall take no
103 further action in the case.

104 **(b) (3) (B)** The presiding judge shall promptly determine whether the notice is proper
105 and, if so, shall reassign the action.

106 **(b) (3) (C)** If the presiding judge is also the assigned judge, the clerk shall promptly
107 send the notice to the associate presiding judge, to another judge of the district, or to any judge
108 of a court of like jurisdiction, who shall determine whether the notice is proper and, if so, shall
109 reassign the action.

110 ~~[(d)]~~ **(b) (4) Nondisclosure to court.** No party shall communicate to the court, or
111 cause another to communicate to the court, the fact of any party's seeking consent to a notice of
112 change.

113 ~~[(e)]~~ **(c) Rule 63 unaffected.** ~~[This rule does not affect any rights under Rule 63.]~~
114 Nothing in this rule precludes the right of any party to seek disqualification of a judge under
115 Rule 63.

116 Section 2. **Effective date.**

117 (1) In accordance with Utah Constitution, Article VIII, Section 4, the amendments in
118 this resolution pass upon approval by a two-thirds vote of all members elected to each house.

119 (2) After passage of this resolution under Subsection (1), the amendments in this
120 resolution take effect on January 1, 2025.

Tab 9

**Request regarding the Standards of Professionalism and Civility
From the Supreme Court Advisory Committee on the Rules of Professional Conduct**

At the request of the Supreme Court, the Advisory Committee on the Utah Rules of Professional Conduct reviewed the Standards of Professionalism and Civility for any proposed incorporation into other rules. The Committee is requesting the Advisory Committee on the Utah Rules of Civil Procedure review Standard #16 for incorporation into the Utah Rules of Civil Procedure. Included below is the language of Standard 16, along with Utah Supreme Court reference to Standard 16 with the Utah Rules of Civil Procedure. Additionally, the Committee found an example of default language in rules from the State of Arizona. The Committee on the Rules of Professional Conduct appreciates the URCP Committee's review of this issue and looks forward to feedback.

Standard 16 states:

Lawyers shall not cause the entry of a default without first notifying other counsel whose identity is known, unless their clients' legitimate rights could be adversely affected.

Cross-References: R. Prof. Cond. 8.4; R. Civ. P. 55(a); Fed. R. Civ. P. 55(b)(2).

Supreme Court Discussion on Standard #16 and its interplay with the Rules of Civil Procedure
Arbogast Family Trust ex rel. Arbogast v. River Crossings, LLC, 2010 UT 40.

¶ 40 We agree with the court of appeals' assessment. A party's counsel can and should simultaneously comply with the rules of civil procedure and the standards of professionalism and civility. Our standards of professionalism and civility often promulgate guidelines that are more rigorous than those required by the Utah Rules of Civil Procedure and the Utah Code of Professional Conduct. Adherence to those standards promotes cooperation and resolution of matters in a "rational, peaceful, and efficient manner." Utah Standards of Professionalism and Civility pmb1. The rules of civil procedure establish minimum requirements that litigants must follow; the standards of professionalism supplement those rules with aspirational guidelines that encourage legal professionals to act with the utmost integrity at all times. *See* Gus Chin, Utah Standards of Professionalism and Civility: *Standard 2—Civility, Courtesy and Fairness*, 18 Utah Bar Journal 34, 35 (2005) (quoting Chief Justice E. Norman Veasey, *Making it Right: Veasey Plans Action to Reform Lawyer Conduct*, Bus. L. Today, Mar.–Apr. 1998, 42, 44) ("Ethics is a set of rules that lawyers must obey. Violations of these rules can result in disciplinary action or disbarment. Professionalism, however, is not what a lawyer must do or must not do. It is a higher calling of what a lawyer should do to serve a client and the public.").

¶ 41 In this case, we interpret Utah Rule of Civil Procedure 5(a) to require parties to serve notice of pleadings and papers to all parties who have formally appeared before the court in which the matter is pending. Although not required by rule 5, our standards of professionalism and civility further advise lawyers to give notice of default to *known parties* before entering notice of default, whether or not the parties have made a formal appearance. Utah Standards of Professionalism and Civility 14–301(16). Adhering to

such a practice is easy, promotes fairness, and reduces the number of motions to set aside default judgments filed under Utah Rule of Civil Procedure 60.

...

¶ 43 We find that requiring attorneys to give opposing parties a final opportunity to make a formal appearance before entering default judgment is urged by our Standards of Professionalism and Civility and is a simple step that promotes fairness and efficiency in our judicial system. We encourage lawyers and litigants to follow this standard, and we caution that lawyers who fail to do so without justification may open themselves to bar complaints or other disciplinary consequences if their conduct also runs afoul of the Utah Rules of Professional Conduct.

Arizona default judgment rule

Link to rule – [here](#)

(3) *Notice.* For any default entered under Rule 55(a)(1), notice must be provided as follows:

...

(B) To the Attorney for a Represented Party. If the party requesting the entry of default knows that the party claimed to be in default is represented by an attorney in the action in which default is sought or in a related matter, a copy of the application also must be mailed to that attorney, whether or not that attorney has formally appeared in the action. A party requesting the entry of default is not required to make affirmative efforts to determine the existence or identity of an attorney representing the party claimed to be in default.