Rule 12. Motions.

(a) Motions. An application to the court for an order shall be by motion, which, unless made during a trial or hearing, shall be in writing and in accordance with this rule. A motion shall state succinctly and with particularity the grounds upon which it is made and the relief sought. A motion need not be accompanied by a memorandum unless required by the court.

(b) Request to Submit for Decision. If neither party has advised the court of the filing nor requested a hearing, when the time for filing a response to a motion and the reply has passed, either party may file a request to submit the motion for decision. If a written Request to Submit is filed it shall be a separate pleading so captioned. The Request to Submit for Decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. The notification shall contain a certificate of mailing to all parties. If no party files a written Request to Submit, or the motion has not otherwise been brought to the attention of the court, the motion will not be considered submitted for decision.

(c) Time for filing specified motions. Any defense, objection or request, including request for rulings on the admissibility of evidence, which is capable of determination without the trial of the general issue may be raised prior to trial by written motion.

(c)(1) The following shall be raised at least 7 days prior to the trial:

(c)(1)(A) defenses and objections based on defects in the indictment or information ;

(c)(1)(B) motions to suppress evidence;

(c)(1)(C) requests for discovery where allowed;

(c)(1)(D) requests for severance of charges or defendants;

(c)(1)(E) motions to dismiss on the ground of double jeopardy ; or

(c)(1)(F) motions challenging jurisdiction, unless good cause is shown why the issue could not have been raised at least 7 days prior to trial.

(c)(2) Motions for a reduction of criminal offense at sentencing pursuant to Utah Code Section 76-3-402(1) shall be in writing and filed at least 14 days prior to the date of sentencing unless the court sets the date for sentencing within ten days of the entry of conviction. Motions for a reduction of criminal offense pursuant to Utah Code Section 76-3-402(2) may be raised at any time after sentencing upon proper service of the motion on the appropriate prosecuting entity.

(d) Motions to Suppress. A motion to suppress evidence shall:

(d)(1) describe the evidence sought to be suppressed;

(d)(2) set forth the standing of the movant to make the application; and

(d)(3) specify sufficient legal and factual grounds for the motion to give the opposing party reasonable notice of the issues and to enable the court to determine what proceedings are appropriate to address them.

If an evidentiary hearing is requested, no written response to the motion by the non-moving party is required, unless the court orders otherwise. At the conclusion of the evidentiary hearing, the court may provide a

reasonable time for all parties to respond to the issues of fact and law raised in the motion and at the hearing.

(e) A motion made before trial shall be determined before trial unless the court for good cause orders that the ruling be deferred for later determination. Where factual issues are involved in determining a motion, the court shall state its findings on the record.

(f) Failure of the defendant to timely raise defenses or objections or to make requests which must be made prior to trial or at the time set by the court shall constitute waiver thereof, but the court for cause shown may grant relief from such waiver.

(g) A verbatim record shall be made of all proceedings at the hearing on motions, including such findings of fact and conclusions of law as are made orally.

(h) If the court grants a motion based on a defect in the institution of the prosecution or in the indictment or information, it may also order that bail be continued for a reasonable and specified time pending the filing of a new indictment or information. Nothing in this rule shall be deemed to affect provisions of law relating to a statute of limitations.

Rule 24. Intervention.

(a) Intervention of right. Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so situated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

(b) Permissive intervention. Upon timely application anyone may be permitted to intervene in an action: (1) when a statute confers a conditional right to intervene; or (2) when an applicant's claim or defense and the main action have a question of law or fact in common. When a party to an action relies for ground of claim or defense upon any statute or executive order administered by a governmental officer or agency or upon any regulation, order, requirement, or agreement issued or made pursuant to the statute or executive order, the officer or agency upon timely application may be permitted to intervene in the action. In exercising its discretion the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

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

(d) Constitutionality of statutes and ordinances.

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

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

(d)(3) Failure of a party to provide notice as required by this rule is not a waiver of any constitutional challenge otherwise timely asserted.

Rule 24. Motion for new trial.

(a) The court may, upon motion of a party or upon its own initiative, grant a new trial in the interest of justice if there is any error or impropriety which had a substantial adverse effect upon the rights of a party.

(b) A motion for a new trial shall be made in writing and upon notice. The motion shall be accompanied by affidavits or evidence of the essential facts in support of the motion. If additional time is required to procure affidavits or evidence the court may postpone the hearing on the motion for such time as it deems reasonable.

(c)(1) A motion for a new trial shall be made not later than 14 days after entry of the sentence, or within such further time as the court may fix before expiration of the ~~time~~ 14-day period for filing a motion for new trial.

(c)(2) ~~Provided, however, a~~ A motion for new trial based solely on newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at trial, shall be made within 60 days of discovery or within such further time as the court may fix for good cause shown, but no later than up to the date of oral argument, or up to the date of disposition of the appeal if no oral argument is scheduled, if a direct appeal is pending in the case.

(d) If a new trial is granted, the party shall be in the same position as if no trial had been held and the former verdict shall not be used or mentioned either in evidence or in argument.

Purpose of the proposed amendment: To address the Utah Supreme Court's concerns expressed in *Logue v. State*, 2016 UT 44, that defendants who discover new evidence beyond the time for filing a new trial motion "must await the conclusion of their appeal before attempting to seek relief based on this new evidence, even if it would likely entitle them to a new trial." *Id.* at ¶5.

Anticipated procedure: While a defendant's direct appeal is pending, if new evidence is discovered that could not have been discovered by the time of trial through the exercise of reasonable diligence, then the defendant may file a new trial motion with the trial court at any time ~~prior~~ up to the date of oral argument in the pending appeal.

1. The defendant is not required to seek permission from the appellate court to file the new trial motion. *See White v. State*, 795 P.2d 648, 649-50 (Utah 1990); *Baker v. Western Sur. Co.*, 757 P.2d 878, 880 (Utah Ct. App. 1988).
2. The appeal is not automatically stayed. A party may, however, request a stay. ~~if doing so is necessary for the new trial motion to be properly adjudicated before the date of oral argument.~~
3. The trial court has jurisdiction to consider the new trial motion~~, and also has power to deny it~~. *See White*, 757 P.2d at 649; *Baker*, 757 P.2d at 880.
4. If the motion is denied, the defendant may file a separate appeal challenging the trial court's order~~may challenge the trial court's order by raising the issue in the pending appeal~~. *See Baker*, 757 P.2d at 880.
5. If "the motion has merit, the trial court must so advise the appellate court, and

Comment [J1]: This more accurately reflects the language in Baker and makes it consistent with number 6 below: "We further hold that if the district court finds the motion to be without merit, it may enter an order denying the motion, and the parties may appeal from that order." Baker v. Western Sur. Co., 757 P.2d 878, 880 (Utah Ct. App. 1988).

the moving party may then request a remand." *White*, 795 P.2d at 650.

6. If the motion is granted, the State may file a separate appeal challenging the trial court's order. *See* Utah Code Ann. § 77-18a-1(3)(f).