

JULY 8, 2015

IN THE SUPREME COURT OF THE STATE OF UTAH

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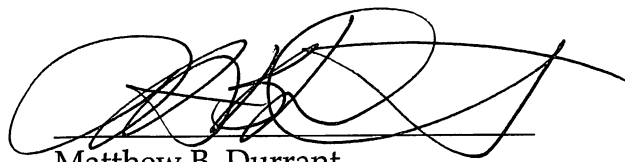
In re: Proposed Amendments
to Rule 101 of the
UTAH RULES OF CIVIL PROCEDURE

ORDER

IT IS HEREBY ORDERED that the proposed amendments to Rule 101 of the Utah Rules of Civil Procedure are adopted and promulgated effective November 1, 2015.

FOR THE COURT:

7-8-15
Date


Matthew B. Durrant
Chief Justice

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

2 (a) **Written motion required.** An application to a court commissioner for an order ~~shall~~must be by
3 motion which, unless made during a hearing, ~~shall~~must be made in accordance with this rule. A motion
4 ~~shall~~must be in writing and state succinctly and with particularity the relief sought and the grounds for the
5 relief sought. Any evidence necessary to support the moving party's position must be presented by way of
6 one or more affidavits or declarations or other admissible evidence. The moving party may also file a
7 supporting memorandum.

8 (b) **Time to file and serve.** The moving party ~~shall~~must file the motion and ~~attachments any~~
9 supporting papers with the clerk of the court and obtain a hearing date and time. The moving party ~~shall~~
10 must serve the responding party with the motion and ~~attachments and supporting papers, together with~~
11 notice of the hearing at least ~~14~~28 days before the hearing. ~~A party may file and serve with the motion a~~
12 ~~memorandum supporting the motion.~~ If service is more than 90 days after the date of entry of the most
13 recent appealable order, service may not be made through counsel.

14 (c) **Response; reply.** ~~The responding~~Any other party may file a response, consisting of any
15 responsive memorandum, affidavit(s) or declaration(s). shall file The response must be filed and ~~serve~~
16 served on the moving party ~~with a response and attachments~~ at least ~~7~~14 days before the hearing. ~~A~~
17 ~~party may file and serve with the response a memorandum opposing the motion. The moving party may~~
18 ~~file and serve the responding party with a reply and attachments at least 3 business days before the~~
19 ~~hearing. The reply is limited to responding to matters raised in the response.~~

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

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

34 (d) **Attachments; objection to failure to attach.**

35 (d)(1) ~~As used in this rule "attachments" includes all records, forms, information and affidavits~~
36 ~~necessary to support the party's position. Attachments for motions(f) Necessary documentation.~~
37 Motions and responses regarding temporary orders concerning alimony shall include, child support,

38 ~~division of debts, possession or disposition of assets, or litigation expenses, must be accompanied by~~
39 ~~verified financial declarations with documentary income verification and a financial declaration attached~~
40 ~~as exhibits, unless financial declarations and documentation are already in the court's file and remain~~
41 ~~current.~~ Attachments for motions and responses regarding child support and child custody ~~shall~~ must also
42 include ~~income verification, a financial declaration and~~ a child support worksheet. ~~A financial declaration~~
43 ~~shall be verified.~~

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

46 (h) Exhibits; objection to failure to attach.

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

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

62 ~~(e) Courtesy copy. Parties shall deliver to the court commissioner a courtesy copy of all papers filed~~
63 ~~with the clerk of the court within the time required for filing with the clerk. The courtesy copy shall state the~~
64 ~~name of the court commissioner and the date and time of the hearing.~~

65 ~~(f)(h)(3) Voluminous exhibits which cannot conveniently be examined in court may not be filed as~~
66 ~~exhibits, but the contents of such documents may be presented in the form of a summary, chart or~~
67 ~~calculation under Rule 1006 of the Utah Rules of Evidence. Unless they have been previously~~
68 ~~supplied through discovery or otherwise and are readily identifiable, copies of any such voluminous~~
69 ~~documents must be supplied to the other parties at the time of the filing of the summary, chart or~~
70 ~~calculation. The originals or duplicates of the documents must be available at the hearing for~~
71 ~~examination by the parties and the commissioner. Collections of documents, such as bank~~
72 ~~statements, checks, receipts, medical records, photographs, e-mails, calendars and journal entries,~~
73 ~~that collectively exceed ten pages in length must be presented in summary form. Individual~~
74 ~~documents with specific legal significance, such as tax returns, appraisals, financial statements and~~

75 reports prepared by an accountant, wills, trust documents, contracts, or settlement agreements must
76 be submitted in their entirety.

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

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

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93 ~~(h) **Limit on hearing.** The court commissioner shall not hold a hearing on a motion before the~~
94 ~~deadline for an appearance by the respondent under Rule 12.~~

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

99 ~~(l) **Hearings.**~~

100 ~~(l)(1) The court commissioner may not hold a hearing on a motion for temporary orders before the~~
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102 ~~(l)(2) Unless the court commissioner specifically requires otherwise, when the statement of a~~
103 ~~person is set forth in an affidavit, declaration or other document accepted by the commissioner, that~~
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107 ~~(m) **Motions to judge.** The following motions shall must be to the judge to whom the case is~~
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111 (n) **Objection to court commissioner's recommendation.** A recommendation of a court
112 commissioner is the order of the court until modified by the court. A party may object to the
113 recommendation by filing an objection under Rule 108.

114 **Committee Notes**

115 ~~The 2014 amendments changed the deadline in paragraph (c) from 5 business days to 7 days as part~~
116 ~~of the adoption of the federal "days-are-days" approach to calculating time. That is, intervening weekends~~
117 ~~and holidays are included in the calculation even for relatively short periods of time. The amendments~~
118 ~~also deleted "calendar" from paragraph (b), but the application of the 2014 reenactment of Rule 6 yields~~
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