

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

2 *Effective: 5/1/2021*

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

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

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

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

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

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

24 **(c) Response.** Any other party may file a response, consisting of any responsive memorandum,  
25 affidavit(s) or declaration(s). The response must be filed and served on the moving party at least  
26 14 days before the hearing.

27 **(d) Reply.** The moving party may file a reply, consisting of any reply memorandum, affidavit(s)  
28 or declaration(s). The reply must be filed and served on the responding party at least [seven](#)<sup>7</sup> days

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

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

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

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

50 **(h) Exhibits; objection to failure to attach.**

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

58 court orders (to the extent the law does not prohibit their filing), may be submitted as  
59 exhibits.

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

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

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

85 **(j) Late filings; sanctions.** If a party files or serves papers beyond the time required in this rule,  
86 the court commissioner may hold or continue the hearing, reject the papers, impose costs and

87 attorney fees caused by the failure and by the continuance, and impose other sanctions as  
88 appropriate.

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

95 **(l) Hearings.**

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

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

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

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

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