

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

2 *Effective: 5/1/2021*

3 **(a) Scope.** A request to a court commissioner for an order must be made by motion in
4 accordance with this rule, except ~~for the following:~~

5 (1) A request under Rule 26 for extraordinary discovery must follow Rule 37(a);

6 (2) A request under Rule 37 for a protective order or an order compelling disclosure
7 or discovery—but not a motion for sanctions—must follow Rule 37(a);

8 (3) A request under Rule 45 to quash a subpoena must follow Rule 37(a);

9 (4) A stipulated motion must follow Rule 7(k); and

10 (5) An ex parte motion must follow Rule 7(m).

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

14 (1) A motion must be in writing and state succinctly and with particularity the relief
15 sought and the grounds for the at relief ~~sought~~. Any evidence necessary to support
16 the moving party's position must be presented by ~~way of affidavit, one or more~~
17 ~~affidavits or~~ declarations or other admissible evidence. The motion may also
18 include a supporting memorandum.

19 (2) ~~All~~ motions must include or attach ~~provide~~ the bilingual Notice to Responding
20 Party approved by the Judicial Council.

21 (3) ~~A~~ Each motion ~~to a court commissioner~~ must include the following caution
22 ~~language statement~~ at the top right corner of the first page, in bold type: **This**
23 **motion will be decided by the court commissioner at an upcoming hearing. If you**
24 **do not appear at the hearing, the cCourt commissioner might make a decision**
25 **against you without your input. YIn addition, you may file a written response to**
26 **the motion. Any response must be filed** at least 14 days before the hearing.

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

31 ~~(c)(e)~~ ~~(6)~~ **Oral motion.** ~~Oral motions~~ An oral motions made before a court commissioner
32 in court during a hearing are disfavored, but the court commissioner ~~shall have~~
33 discretion to consider an ~~such~~ oral motions for ~~based on~~ good cause shown.

34 ~~(d)~~ **Time to file and serve.** The moving party must file the motion and any supporting
35 papers with the court clerk ~~of the court~~ and obtain a hearing date and time. The moving
36 party must serve on all other parties the motion, any supporting papers, and ~~serve the~~
37 ~~responding party with the motion and supporting papers, together with the~~ notice of
38 the hearing at least 28 days before the hearing. ~~If service is more than 90 days after the~~
39 ~~date of entry of the most recent appealable order, service may not be made through~~
40 ~~counsel.~~ If the nonmoving party is not represented by counsel in the case, service must
41 be made as provided in Rule 4 unless the nonmoving party has filed or served a
42 document in the case within the last 120 days.

43 ~~(e)~~ **Response.** Any other party may file a response, consisting of any responsive
44 memorandum, affidavit, ~~(s) or~~ declaration, ~~(s) or~~ other admissible evidence. The response
45 must be filed and served on the moving party at least 14 days before the hearing.

46 ~~(f)~~ **Reply.** The moving party may file a reply, ~~consisting of any reply memorandum,~~
47 and attach any affidavit, ~~(s) or~~ declaration, ~~(s) or~~ other admissible evidence(s). The reply
48 must be filed and served on the responding party at least seven⁷ days before the
49 hearing. The ~~contents of the~~ reply must be limited to rebuttal of new matters raised in
50 the response to the motion.

51 ~~(g)~~ **Counter-motion.** A r ~~R~~ esponding party may not seek affirmative relief in a
52 response. to a motion is not sufficient to grant relief to the responding party. ~~A~~
53 responding party may request affirmative relief by ~~way of~~ a counter-motion. A counter

54 motion need not be limited to the subject matter of the original motion. All of the
55 provisions of this rule apply to counter-motions, except that a counter-motion must be
56 filed and served with the response. Any response to the counter-motion must be filed
57 and served no later than the reply to the motion. Any reply to the response to the
58 counter-motion must be filed and served at least three business days before the
59 hearing. The reply must be served ~~in a manner that will cause the reply to be actually~~
60 ~~received by the party responding to the counter motion (i.e. by hand-delivery, fax or~~
61 ~~other~~ electronic delivery ~~as~~ allowed by rule, or as agreed ~~to~~ by the parties) at least
62 three business days before the hearing. A separate notice of hearing on a counter
63 motions is not required.

64 **(h) Necessary documentation.** Motions and responses regarding temporary orders
65 concerning alimony, child support, division of debts, possession or disposition of assets,
66 ~~or~~ litigation expenses, or appointment of a court-annexed professional (including, but
67 not limited to, a guardian ad litem, custody evaluator, special master, or parenting
68 coordinator) must be accompanied by verified financial declarations with documentary
69 income verification attached as exhibits, unless financial declarations and
70 documentation are already in the court's file and remain current. Attachments for
71 motions and responses regarding child support and child custody must also include a
72 child support worksheet.

73 **(i) No other papers.** No other moving or responding papers ~~other than those specified~~
74 ~~in this rule~~ are permitted.

75 **(j) Exhibits; objection to failure to attach.**

76 (1) ~~Except as provided in paragraph (h)(3) of this rule,~~ Each exhibit must be attached
77 to an affidavit, declaration, verified motion, or verified memorandum ~~any~~
78 ~~documents such as tax returns, bank statements, receipts, photographs,~~
79 ~~correspondence, calendars, medical records, forms, or photographs must be~~
80 ~~supplied to the court as exhibits to one or more affidavits (as appropriate)~~
81 establishing the exhibit's necessary foundation for the exhibit ~~al requirements.~~

82 ~~(2) Copies of court papers~~documents that are already included ~~filed~~such as decrees,
83 orders, minute entries, motions, or affidavits, already filed with their or included in
84 the court's docket's case file, may not be filed as exhibits. Court papers from other
85 ~~cases other than the case at before the court~~, such as protective orders, prior divorce
86 decrees, criminal orders, information or dockets, and juvenile court orders (to the
87 extent the law does not prohibit their filing), may be submitted as exhibits.

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

95 (3) Voluminous exhibits. ~~Voluminous exhibits which cannot conveniently be~~
96 ~~examined in court~~Exhibits beyond the page limits set forth below may not be filed
97 ~~as exhibits~~, but the contents of such documents may be presented in the form of a
98 summary, chart, or calculation under Rule 1006 of the Utah Rules of Evidence. A
99 summary is a statement describing the content of each voluminous exhibit and is not
100 simply a list identifying exhibits. Affidavits and declarations may not be
101 summarized. Collections of documents, such as bank statements, checks, receipts,
102 medical records, photographs, e-mails, text messages, calendars, and journal entries
103 that collectively exceed ten pages in length must be presented in summary form.
104 ~~Individual documents with specific legal significance, such as tax returns,~~
105 ~~appraisals, financial statements and reports prepared by an accountant, wills, trust~~
106 ~~documents, contracts, or settlement agreements must be submitted in their entirety.~~

107 ~~(A) Unless they have been previously supplied through discovery or otherwise~~
108 ~~and are readily identifiable,~~Copies of any such ~~voluminous~~ documents beyond

109 the page limits must be supplied to the other parties at the time of the filing of
110 the summary, chart, or calculation.

111 (B) The originals or duplicates of the documents must be available at the hearing
112 for examination by the parties and the commissioner.

113 (ki) Length. ~~Initial and responding memoranda may not exceed 10 pages of argument~~
114 ~~without leave of the court. Reply memoranda may not exceed 5 pages of argument~~
115 ~~without leave of the court.~~ Except as provided below, The total number of pages
116 ~~submitted to the court by~~ each party may submit no more than ~~not exceed~~ 25 total
117 pages per hearing regardless of the number of motions to be heard. This page limit
118 applies to the total of all motions, responses, counter-motions, replies, memoranda,
119 ~~including~~ affidavits, declarations, exhibits, attachments, and summaries submitted by
120 each party for a hearing, ~~but excluding financial declarations and income verification.~~
121 ~~The court commissioner may permit the party to file an over-length memorandum~~
122 ~~upon ex parte application and showing of good cause.~~

123 (1) The following documents are excluded from the page limit and must be
124 submitted in their entirety:

125 (A) financial declarations and their required attachments;

126 (B) income verification;

127 (C) tax returns;

128 (D) appraisals;

129 (E) financial statements and reports prepared by an accountant;

130 (F) wills;

131 (G) trust documents;

132 (H) contracts;

133 (I) settlement agreements;

134 (J) reports from the Division of Child and Family Services or equivalent
135 agencies;

136 (K) relevant court orders from other cases or jurisdictions; and

137 (L) other documents at the commissioner's discretion.

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

139 (A) caption;

140 (B) table of contents;

141 (C) table of authorities;

142 (D) signature block;

143 (E) certificate of service;

144 (F) verification;

145 (G) bilingual notice; and

146 (H) other notice required by these rules.

147 (3) A party may file a motion under Rule 7(I), asking the court commissioner for
148 permission to exceed the 25-page limit ~~based on a~~ and on a showing of good
149 cause.

150 **(lj) Late filings; sanctions.** If a party files or serves papers beyond the ~~time required~~
151 deadlines stated in this rule, the court commissioner may hold or continue the hearing,
152 reject the papers, impose costs and attorney fees caused by the failure ~~and by the~~ or
153 continuance, and impose other sanctions as appropriate.

154 **(mk) Limit on motion to enforce order and for sanctions ~~order to show cause~~.** ~~An~~
155 ~~application to the court for~~ A motion to enforce order and for sanctions ~~an order to~~
156 ~~show cause~~ may be made only for enforcement of ~~an existing order~~ or ~~for sanctions for~~
157 violating an existing order. ~~An application for~~ A motion to enforce order and for

158 ~~sanctions an order to show cause must be supported by affidavit or other evidence~~
159 ~~sufficient to show cause to believe a party has violated a court order.~~

160 **(n1) Hearings.**

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

164 (2) Unless the court commissioner specifically requires otherwise, when the
165 statement of a person is set forth in an affidavit, declaration, or other document
166 accepted by the commissioner, that person need not be present at the hearing. The
167 statements of any person not set forth in an affidavit, declaration, or other acceptable
168 document may not be presented ~~by proffer~~ unless the person is present at the
169 hearing and the commissioner finds that fairness requires its admission.

170 **(om) Motions to judge.** The following motions must be submitted to the judge to whom
171 the case is assigned:

172 (1) motion for alternative service;

173 (2) motion to waive 30-day waiting period for divorces;

174 (3) motion to waive a divorce parenting education class courses;

175 (4) motion for leave to withdraw after a case has been certified as ready for trial;

176 ~~and~~

177 (5) motions in limine; and

178 (6) post-trial motion under Rules 58A, 58B, 58C or 59 for those trials held before
179 the judge.

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

181 **(pn) ~~Objection to court commissioner's recommendation~~Orders.** Rule 7(j) applies to
182 preparing a proposed order after a hearing before a court commissioner unless the
183 commissioner directs otherwise. A recommendation of a court commissioner is the

184 order of the court ~~until~~unless modified by the court. A party may object to the
185 recommendation by filing an objection under Rule 108.

186