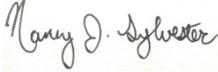


Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Civil Rules Committee
From: Nancy Sylvester 
Date: March 28, 2018
Re: Rules 101 and 105 and SB 25

[Senate Bill 25](#) takes effect on May 8, 2018. The new law changes the waiting period for a divorce from 90 to 30 days, which affects Rules 101 and 105. Attached are the rules with conforming amendments. The Standing Committee on Children and Family Law has asked that we fast track these amendments given the effective date of the bill.

**The mission of the Utah judiciary is to provide the people an open, fair,
efficient, and independent system for the advancement of justice under the law.**

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

2 **(a) Written motion required.** An application to a court commissioner for an order must be by motion
3 which, unless made during a hearing, must be made in accordance with this rule. A motion must be in
4 writing and state succinctly and with particularity the relief sought and the grounds for the relief
5 sought. Any evidence necessary to support the moving party's position must be presented by way of one
6 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 must file the motion and any supporting papers with the
9 clerk of the court and obtain a hearing date and time. The moving party must serve the responding party
10 with the motion and supporting papers, together with notice of the hearing at least 28 days before the
11 hearing. If service is more than 90 days after the date of entry of the most recent appealable order,
12 service may not be made through counsel.

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

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

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

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

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

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

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

47 (h)(2) If papers or exhibits referred to in a motion or necessary to support the
48 moving party's position are not served with the motion, the responding party may file and serve an
49 objection to the defect with the response. If papers or exhibits referred to in the response
50 or necessary to support the responding party's position are not served with the response, the moving
51 party may file and serve an objection to the defect with the reply. The defect must be cured within 2
52 business days after notice of the defect or at least 3 business days before the hearing, whichever is
53 earlier.

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

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

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

75 **(k) Limit on order to show cause.** An application to the court for an order to show cause may be
76 made only for enforcement of an existing order or for sanctions for violating an existing order. An
77 application for an order to show cause must be supported by affidavit or other evidence sufficient to show
78 cause to believe a party has violated a court order.

79 **(l) Hearings.**

80 (l)(1) The court commissioner may not hold a hearing on a motion for temporary orders before the
81 deadline for an appearance by the respondent under Rule [12](#).

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

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

88 | motion for alternative service; motion to waive ~~90~~30-day waiting period; motion to waive divorce
89 education class; motion for leave to withdraw after a case has been certified as ready for trial; and
90 motions in limine. A court may provide that other motions be considered by the judge.

91 **(n) Objection to court commissioner's recommendation.** A recommendation of a court
92 commissioner is the order of the court until modified by the court. A party may object to the
93 recommendation by filing an objection under Rule [108](#).

1 **Rule 105. Shortening ~~90~~30 day waiting period in domestic matters.**

2 A motion for a hearing less than ~~90~~30 days from the date the petition was filed shall be accompanied
3 by an affidavit setting forth the date on which the petition for divorce was filed and the facts constituting
4 extraordinary circumstances.