

Agenda

Advisory Committee on Rules of Civil Procedure

January 22, 2020

4:00 to 6:00 p.m.

Scott M. Matheson Courthouse

450 South State Street

Judicial Council Room

Administrative Office of the Courts, Suite N31

Welcome and approval of minutes.	Tab 1	Jonathan Hafen, Chair
Rule 68 Subcommittee Report.	Handout	Judge Clay Stucki (subcommittee chair), Leslie Slaugh, Rod Andreason, Susan Vogel, Rep. Brady Brammer, Ken Ivory
Rule 64, Writs in general. Board of District Court Judges request.	Tab 2	Judge Barry Lawrence, Judge Andrew Stone
Rules 4, 7, 36: Request from Self-represented Parties Committee (more notice to pro se litigants).	Tab 3	Judge Barry Lawrence, Nathanael Player
Rule 55 and notice re requirement to answer counterclaims.	Tab 4	Jonathan Felt
Rules back from comment: Rule 65C.	Tab 5	Nancy Sylvester
Mistake in citing reference: Rule 5(a)(2)(D).	Tab 6	Nancy Sylvester
Other business.		Jonathan Hafen, Chair

Committee Webpage: <http://www.utcourts.gov/committees/civproc/>

2020 Meeting Schedule:

February 26, 2020

June 24, 2020

March 25, 2020

September 23, 2020

April 22, 2020

October 28, 2020

May 27, 2020

November 18, 2020

Tab 1

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE**

Meeting Minutes – November 20, 2019

Committee members & staff	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair	X		
Rod N. Andreason		X	
Judge James T. Blanch		X	
Lauren DiFrancesco	X		
Judge Kent Holmberg	X		
James Hunnicutt	X		
Larissa Lee		X	
Trevor Lee	X		
Judge Amber M. Mettler	X		
Timothy Pack	X		
Bryan Pattison			X
Michael Petrogeorge		X	
Judge Clay Stucki		X	
Judge Laura Scott	X		
Leslie W. Slauch	X		
Trystan B. Smith	X		
Heather M. Sneddon		X	
Paul Stancil	X		
Judge Andrew H. Stone	X		
Justin T. Toth			X
Susan Vogel	X		
Brooke McKnight		X	
Ash McMurray, Recording Secretary	X		
Nancy Sylvester, Staff			X
Katie Gregory, Staff	X		

(1) WELCOME AND APPROVAL OF MINUTES

Jonathan Hafen welcomed the committee and asked for approval of the minutes as amended. The minutes were approved unanimously.

(2) FORMATION OF TECHNOLOGY SUBCOMMITTEE

Trevor Lee introduced the topic of forming a standing technology subcommittee. The committee discussed the subcommittee's potential goals and composition, noting that additional members or support staff may be needed in the future as IT or clerical resources. Judge Kent Holmberg moved to form the technology subcommittee as a standing committee with Trevor Lee as chair and Judge Andrew Stone, Susan Vogel, and Paul Stancil as members. Judge Amber Mettler seconded the motion. The motion passed unanimously.

(3) RULE 26.4 DISCUSSION

The committee discussed whether additional language regarding auxiliary aids and services is necessary or whether it is sufficiently covered by Rule 10(f). Judge Stone moved to add the following proposed language to the end of paragraph (c)(2)(A): "The court may for good cause waive the requirement of a writing and document the objection in the court record." Judge Stone further moved to delete in its entirety the proposed paragraph (c)(2)(C), which read:

An objection made using auxiliary aids and services the person's preferred means of communication under paragraph (c)(2)(A) must also set forth the grounds for the objection and any supporting authority to the extent possible. The court will provide notice of the objection to the parties named in the petition and any interested persons, as that term is defined in Utah Code § 75-1-201.

James Hunnicutt seconded the motion. The motion passed unanimously. Jonathan Hafen and Nancy Sylvester will seek guidance from the Supreme Court and discuss whether the rule may move forward without an additional comment period.

Rule 26.4. Provisions governing disclosure and discovery in contested proceedings under Title 75 of the Utah Code.

- (a) **Scope.** This rule applies to all contested actions arising under Title 75 of the Utah Code.
- (b) **Definition.** A probate dispute is a contested action arising under Title 75 of the Utah Code.
- (c) **Designation of parties, objections, initial disclosures, and discovery.**

(c)(1) **Designation of Parties.** For purposes of Rule 26, the plaintiff in probate proceedings is presumed to be the petitioner in the matter, and the defendant is presumed to be any party ~~filing who has made~~ an objection. Once a probate dispute arises, and based on the facts and circumstances of the case, the court may designate an interested person as plaintiff, defendant, or non-party for purposes of discovery. Only an interested person who has appeared on the record will be treated as a party for purposes of discovery.

(c)(2) **Objection to the petition.**

(c)(2)(A) Any oral objection ~~must be made at a scheduled hearing on the petition and must then be put into writing and filed with the court~~ within 7 days, unless the written objection has been previously filed with the court. ~~The court may for good cause in a guardianship or conservatorship case accept an objection made using the person's preferred means of communication and document the objection in the court record.~~ The court may for good cause waive the requirement of a writing and document the objection in the court record.

(c)(2)(B) A written objection must set forth the grounds for the objection and any supporting authority, must be filed with the court, and must be mailed to the parties named in the petition and any "interested persons," as that term is defined ~~provided in Utah Code § 75-1-201(24)~~, unless the written objection has been previously filed with the court.

(c)(2)(C) If the petitioner and objecting party agree to an extension of time to file the written objection, notice of the agreed upon date must be filed with the court.

(c)(2)(D) The court may modify the timing for making an objection in accordance with Rule 6(b).

~~(c)(2)(D)~~ In the event no written objection is timely filed, the court will act on the original petition upon the petitioner's filing of a request to submit pursuant to Rule 7 ~~of the Utah Rules of Civil Procedure~~.

(c)(3) **Initial disclosures in guardianship and conservatorship matters.**

(c)(3)(A) In addition to the disclosures required by Rule 26(a), and unless included in the petition, the following documents must be served by the party in possession or control of the documents within 14 days after a written objection has been filed:

(c)(3)(A)(i) any document purporting to nominate a guardian or conservator, including a will, trust, power of attorney, or advance healthcare directive, copies of which must be served upon all interested persons; and

(c)(3)(A)(ii) a list of less restrictive alternatives to guardianship or conservatorship that the petitioner has explored and ways in which a guardianship or conservatorship of the respondent may be limited.

This paragraph supersedes Rule 26(a)(2).

(c)(3)(B) The initial disclosure documents must be served on the parties named in the probate petition and the objection and anyone who has requested notice under Title 75 of the Utah Code:

(c)(3)(C) If there is a dispute regarding the validity of an original document, the proponent of the original document must make it available for inspection by ~~any other the contesting~~ party within 14 days of the date of referral to mediation unless the parties agree to a different date.

(c)(3)(D) The court may for good cause modify the content and timing of the disclosures required in this rule or in Rule 26(a) in accordance with Rule 6(b). ~~for any reason justifying departure from these rules.~~

(c)(4) Initial disclosures in all other probate matters.

(c)(4)(A) In addition to the disclosures required by Rule 26(a), and unless included in the petition, the following documents must be served by the party in possession or control of the documents within 14 days after a written objection has been filed: any other document purporting to nominate a personal representative or trustee after death, including wills, trusts, and any amendments to those documents, copies of which must be served upon all interested persons. This paragraph supersedes Rule 26(a)(2).

(c)(4)(B) The initial disclosure documents must be served on the parties named in the probate petition and the objection and anyone who has requested notice under Title 75 of the Utah Code.

(c)(4)(C) If there is a dispute regarding the validity of an original document, the proponent of the original document must make it available for inspection by the contesting party within 14 days of the date of referral to mediation unless the parties agree to a different date.

(c)(4)(D) The court may for good cause modify the content and timing of the disclosures required in this rule or in Rule 26(a) in accordance with Rule 6(b). ~~for any reason justifying departure from these rules.~~

(c)(5) **Discovery once a probate dispute arises.** Except as provided in this rule or as otherwise ordered by the court, once a probate dispute arises, discovery will proceed pursuant to the Rules of Civil Procedure, including the other provisions of Rule 26.

~~(d) **Pretrial disclosures under Rule 26(a)(5), objections.** The term “trial” in Rule 26(a)(5)(B) also refers to evidentiary hearings for purposes of this rule. No later than 14 days prior to an evidentiary hearing or trial, the parties must serve the disclosures required by Rule 26(a)(5)(A).~~

(4) RULE 7A AND RULE 7B DISCUSSION

The committee discussed the final drafts for the new proposed Rules 7A and 7B, and unanimously approved three amendments. First, the committee approved the deletion of an extra “(d)” on line 25 of Rule 7A. Second, the committee approved the deletion of hyphens in the word

“ex-parte” on line 3 of both Rules 7A and 7B. Third, the committee approved the addition of the phrase “and has not withdrawn” to line 32 of both Rules 7A and 7B, which currently read “For purposes of this rule, a party is represented by counsel, within the last 120 days, counsel for that party has served or filed any documents in the case.” The three changes will be sent to the Supreme Court for consideration with the Committee’s recommendation that the rules be sent out for comment because the original Rule 7 has been split into two rules.

1 **Rule 7A. Motion to enforce order and for sanctions.**

2 **(a) Motion.** To enforce a court order or to obtain a sanctions order for violation of an order, a party
3 must file an ex-parte motion to enforce order and for sanctions (if requested), pursuant to this rule
4 and [Rule 7](#). The motion must be filed in the same case in which that order was entered. The timeframes
5 set forth in this rule, rather than those set forth in [Rule 7](#), govern motions to enforce orders and for
6 sanctions.

7 **(b) Affidavit.** The motion must state the title and date of entry of the order that the moving party
8 seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting
9 affidavit that is based on personal knowledge and shows that the affiant is competent to testify on the
10 matters set forth. The verified motion or affidavit must set forth facts that would be admissible in evidence
11 and that would support a finding that the party has violated the order.

12 **(c) Proposed order.** The motion must be accompanied by a request to submit for decision and a
13 proposed order to attend hearing, which must:

14 (c)(1) state the title and date of entry of the order that the motion seeks to enforce;

15 (c)(2) state the relief sought in the motion;

16 (c)(3) state whether the motion is requesting that the other party be held in contempt and, if so,
17 state that the penalties for contempt may include, but are not limited to, a fine of up to \$1000 and
18 confinement in jail for up to 30 days;

19 (c)(4) order the other party to appear personally or through counsel at a specific place (the court’s
20 address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving
21 party has violated the order; and

22 (c)(5) state that no written response to the motion is required but is permitted if filed within 14
23 days of service of the order, unless the court sets a different time, and that any written response must
24 follow the requirements of [Rule 7](#).

25 ~~(d)~~

26 **(d) Service of the order.** If the court issues an order to attend a hearing, the moving party must have
27 the order, motion, and all supporting affidavits served on the nonmoving party at least 28 days before the
28 hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by
29 counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made
30 on the nonmoving party's counsel of record in a manner provided in [Rule 5](#). For purposes of this rule, a
31 party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any
32 documents in the case and has not withdrawn. The court may shorten the 28 day period if:

33 (d)(1) the motion requests an earlier date; and

34 (d)(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable
35 injury, loss, or damage will result to the moving party if the hearing is not held sooner.

36 **(e) Opposition.** A written opposition is not required, but if filed, must be filed within 14 days of service
37 of the order, unless the court sets a different time, and must follow the requirements of Rule 7.

38 **(f) Reply.** If the nonmoving party files a written opposition, the moving party may file a reply within 7
39 days of the filing of the opposition to the motion, unless the court sets a different time. Any reply must
40 follow the requirements of [Rule 7](#).

41 **(g) Hearing.** At the hearing the court may receive evidence, hear argument, and rule upon the
42 motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all
43 claims made in the motion. At the court's discretion, the court may convene a telephone conference
44 before the hearing to preliminarily address any issues related to the motion, including whether the court
45 would like to order a briefing schedule other than as set forth in this rule.

46 **(h) Limitations.** This rule does not apply to an order that is issued by the court on its own initiative.
47 This rule does not apply in criminal cases or motions filed under [Rule 37](#). Nothing in this rule is intended
48 to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess
49 whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket, or
50 to limit the authority of the court to hold a party in contempt for failure to appear pursuant to a court order.

51 **(i) Orders to show cause.** The process set forth in this rule replaces and supersedes the prior order
52 to show cause procedure. An order to attend hearing serves as an order to show cause as that term is
53 used in Utah law.

1 **Rule 7B. Motion to enforce order and for sanctions in domestic law matters.**

2 **(a) Motion.** To enforce a court order or to obtain a sanctions order for violation of an order, a party
3 must file an ex_parte motion to enforce order and for sanctions (if requested), pursuant to this rule
4 and [Rule 7](#). The motion must be filed in the same case in which that order was entered. The timeframes
5 set forth in this rule, rather than those set forth in [Rule 7](#), govern motions to enforce orders and for
6 sanctions. If the motion is to be heard by a commissioner, the motion must also follow the procedures
7 of [Rule 101](#). For purpose of this rule, an order includes a decree.

8 **(b) Affidavit.** The motion must state the title and date of entry of the order that the moving party
9 seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting
10 affidavit that is based on personal knowledge and shows that the affiant is competent to testify on the
11 matters set forth. The verified motion or affidavit must set forth facts that would be admissible in evidence
12 and that would support a finding that the party has violated the order.

13 **(c) Proposed order.** The motion must be accompanied by a request to submit for decision and a
14 proposed order to attend hearing, which must:

15 (c)(1) state the title and date of entry of the order that the motion seeks to enforce;

16 (c)(2) state the relief sought in the motion;

17 (c)(3) state whether the motion is requesting that the other party be held in contempt and, if so,
18 state that the penalties for contempt may include, but are not limited to, a fine of up to \$1000 and
19 confinement in jail for up to 30 days;

20 (c)(4) order the other party to appear personally or through counsel at a specific place (the court's
21 address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving
22 party has violated the order; and

23 (c)(5) state that no written response to the motion is required, but is permitted if filed at least 14
24 days before the hearing, unless the court sets a different time, and that any written response must
25 follow the requirements of [Rule 7](#), and [Rule 101](#) if the hearing will be before a commissioner.

26 **(d) Service of the order.** If the court issues an order to attend a hearing, the moving party must
27 have the order, motion, and all supporting affidavits served on the nonmoving party at least 28 days
28 before the hearing. Service must be in a manner provided in [Rule 4](#) if the nonmoving party is not
29 represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service
30 must be made on the nonmoving party's counsel of record in a manner provided in [Rule 5](#). For purposes
31 of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served
32 or filed any documents in the case and has not withdrawn. The court may shorten the 28 day period if:

33 (d)(1) the motion requests an earlier date; and
34 (d)(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable
35 injury, loss, or damage will result to the moving party if the hearing is not held sooner.

36 **(e) Opposition.** A written opposition is not required, but if filed, must be filed at least 14 days before
37 the hearing, unless the court sets a different time, and must follow the requirements of Rule 7, and Rule
38 101 if the hearing will be before a commissioner.

39 **(f) Reply.** If the nonmoving party files a written opposition, the moving party may file a reply at least 7
40 days before the hearing, unless the court sets a different time. Any reply must follow the requirements of
41 Rule 7, and Rule 101 if the hearing will be before a commissioner.

42 **(g) Hearing.** At the hearing the court may receive evidence, hear argument, and rule upon the
43 motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all
44 claims made in the motion. At the court's discretion, the court may convene a telephone conference
45 before the hearing to preliminarily address any issues related to the motion, including whether the court
46 would like to order a briefing schedule other than as set forth in this rule.

47 **(h) Counter Motions.** A responding party may request affirmative relief only by filing a counter
48 motion, to be heard at the same hearing. A counter motion need not be limited to the subject matter of the
49 original motion. All of the provisions of this rule apply to counter motions except that a counter motion
50 must be filed and served with the opposition. Any opposition to the counter motion must be filed and
51 served no later than the reply to the motion. Any reply to the opposition to the counter motion must be
52 filed and served at least 3 business days before the hearing in a manner that will cause the reply to be
53 actually received by the party responding to the counter motion (i.e. hand-delivery, fax or other electronic
54 delivery as allowed by rule or agreed by the parties). The party who filed the counter motion bears the
55 burden of proof on all claims made in the counter motion. A separate proposed order is required only for
56 counter motions to enforce a court order or to obtain a sanctions order for violation of an order, in which
57 case the proposed order for the counter motion must:

58 (h)(1) state the title and date of entry of the order that the counter motion seeks to enforce;

59 (h)(2) state the relief sought in the counter motion;

60 (h)(3) state whether the counter motion is requesting that the other party be held in contempt and,
61 if so, state that the penalties for contempt may include, but are not limited to, a fine of up to \$1000
62 and confinement in jail for up to 30 days;

63 (h)(4) order the other party to appear personally or through counsel at the scheduled hearing to
64 explain whether that party has violated the order; and

65 (h)(5) state that no written response to the countermotion is required, but that a written response
66 is permitted if filed at least 7 days before the hearing, unless the court sets a different time, and that
67 any written response must follow the requirements of [Rule 7](#), and [Rule 101](#) if the hearing will be
68 before a commissioner.

69 **(i) Limitations.** This rule does not apply to an order that is issued by the court on its own initiative.
70 This rule applies only to domestic relations actions, including divorce; temporary separation; separate
71 maintenance; parentage; custody; child support; adoptions; cohabitant abuse protective orders; child
72 protective orders; civil stalking injunctions; grandparent visitation; and modification actions. Nothing in this
73 rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings
74 to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's
75 docket, or to limit the authority of the court to hold a party in contempt for failure to appear pursuant to a
76 court order.

77 **(j) Orders to show cause.** The process set forth in this rule replaces and supersedes the prior order
78 to show cause procedure. An order to attend hearing serves as an order to show cause as that term is
79 used in Utah law.

(5) ADVISORY COMMITTEE NOTES REVIEW

(a) *Group C – Review of Advisory Committee Note to Rule 26.*

Tim Pack introduced proposed edits to the Advisory Committee Note to Rule 26. During discussion, the committee proposed additional revisions to the note as follows:

- Sixth paragraph: The committee recommended that the phrase “enforce them” be deleted and replaced with the phrase “exclude the evidence.” The proposed amended paragraph would read as follows:

The penalty for failing to make timely disclosures is that the evidence may not be used in the party's case-in-chief. To make the disclosure requirement meaningful, and to discourage sandbagging, parties must know that if they fail to disclose important information that is helpful to their case, they will not be able to use that information at trial. The courts will be expected to ~~enforce them~~ exclude the evidence unless

the failure is harmless or the party shows good cause for the failure.

- Seventh paragraph: The committee recommended that the word “present” be deleted and replaced with the word “disclose.” The proposed amended paragraph would read as follows:

~~The 2011 amendments also change the time for making these required disclosures. Because the plaintiff controls when it brings the action, plaintiffs must make their disclosures within 14 days after service of the first answer. A defendant is required to make its disclosures within 28 days after the plaintiff’s first disclosure or after that defendant’s appearance, whichever is later. The purpose of early disclosure is to have all parties present disclose the evidence they expect to use to prove their claims or defenses, thereby giving the opposing party the ability to better evaluate the case and determine what additional discovery is necessary and proportional.~~

- Eighth paragraph: The committee recommended that the stricken portion of the eighth paragraph be retained so that it reads as follows:

The time periods for making Rule 26(a)(1) disclosures, and the presumptive deadlines for completing fact discovery, are keyed to the filing of an answer. If a defendant files a motion to dismiss or other Rule 12(b) motion in lieu of an answer, these time periods normally would not begin to run until that motion is resolved.

The committee further recommended that the entire eighth paragraph be discussed with the Utah Supreme Court as an example of a provision that may be better inserted into the rule itself rather than in an advisory note.

Overall the committee recommended taking the note to Rule 26 back to the Supreme Court for further guidance.

(b) *Group D – Review of Advisory Committee Notes to Rules 41, 42, 43, 45, 47, 50, and 52.*

The committee discussed Advisory Committee Notes in Group D. After the discussion concluded, Jim Hunnicutt moved to delete the Advisory Committee Notes in their entirety to all rules in Group D, including notes to Rules 41, 42, 43, 45, 47, 50, and 52. Judge Scott seconded the motion. The motion passed unanimously.

(c) *Group C – Review of Advisory Committee Notes to Rules 26.1, 26.2, 27, 32, 34, 35, and 37.*

The committee returned to discuss additional Advisory Committee Notes in Group C. Throughout the discussion, the following recommendations were made:

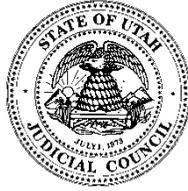
- **Rule 26.1:** The committee recommended deleting the note to Rule 26.1.
- **Rule 26.2:** The committee recommended deleting the entire note with the exception of the final sentence, which reads as follows: “This includes wrongful death action, in which case the disclosure will usually be of the decedent’s records rather than of the plaintiff’s, and emotional distress accompanied by physical injury or physical sickness.” The committee also recommended that the retained language be further discussed as another example of a note that may be better placed into the rule itself because of its substantive nature.
- **Rules 27 and 32:** The committee recommended deleting the notes to Rules 27 and 32 because they are outdated.
- **Rule 34:** The committee recommended retaining the note to Rule 34 because it is current.
- **Rule 35:** The committee recommended deleting the note to Rule 35.
- **Rule 37:** The committee recommended deleting the note to Rule 37 except for those portions that were not stricken in the copy attached to the November 20 meeting packet.

Judge Mettler moved to send the Advisory Committee Notes on Rules 26.1, 26.2, 27, 32, 34, 35, and 37 to the Supreme Court for further discussion. Paul Stancil seconded the motion. The motion passed unanimously

(6) ADJOURNMENT

The remaining items were deferred until the next meeting. The meeting adjourned at 5:53 p.m. The next meeting will be held January 22, 2020.

Tab 2

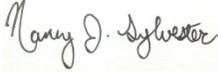


Administrative Office of the Courts

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

MEMORANDUM

Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

To: Civil Rules Committee
From: Nancy Sylvester 
Date: January 17, 2020
Re: Rule 64. Writs in general.

The following rule proposal comes from the Board of District Court Judges. The proposal is a response to concerns raised about the enforcement mechanisms being used to recover money owed.

**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 64. Writs in general.**

2 **(a) Definitions.** As used in Rules 64, 64A, 64B, 64C, 64D, 64E, 69A, 69B and 69C:

3 (a)(1) "Claim" means a claim, counterclaim, cross claim, third party claim or any other claim.

4 (a)(2) "Defendant" means the party against whom a claim is filed or against whom judgment has
5 been entered.

6 (a)(3) "Deliver" means actual delivery or to make the property available for pick up and give to the
7 person entitled to delivery written notice of availability.

8 (a)(4) "Disposable earnings" means that part of earnings for a pay period remaining after the
9 deduction of all amounts required by law to be withheld.

10 (a)(5) "Earnings" means compensation, however denominated, paid or payable to an individual
11 for personal services, including periodic payments pursuant to a pension or retirement program.
12 Earnings accrue on the last day of the period in which they were earned.

13 (a)(6) "Notice of exemptions" means a form that advises the defendant or a third person that
14 certain property is or may be exempt from seizure under state or federal law. The notice shall list
15 examples of exempt property and indicate that other exemptions may be available. The notice shall
16 instruct the defendant of the deadline for filing a reply and request for hearing.

17 (a)(7) "Officer" means any person designated by the court to whom the writ is issued, including a
18 sheriff, constable, deputy thereof or any person appointed by the officer to hold the property.

19 (a)(8) "Plaintiff" means the party filing a claim or in whose favor judgment has been entered.

20 (a)(9) "Property" means the defendant's property of any type not exempt from seizure. Property
21 includes but is not limited to real and personal property, tangible and intangible property, the right to
22 property whether due or to become due, and an obligation of a third person to perform for the
23 defendant.

24 (a)(10) "Serve" with respect to parties means any method of service authorized by Rule 5 and
25 with respect to non-parties means any manner of service authorized by Rule 4.

26 **(b) Security.**

27 **(b)(1) Amount.** When security is required of a party, the party shall provide security in the sum
28 and form the court deems adequate. For security by the plaintiff the amount should be sufficient to
29 reimburse other parties for damages, costs and attorney fees incurred as a result of a writ wrongfully
30 obtained. For security by the defendant, the amount should be equivalent to the amount of the claim
31 or judgment or the value of the defendant's interest in the property. In fixing the amount, the court
32 may consider any relevant factor. The court may relieve a party from the necessity of providing
33 security if it appears that none of the parties will incur damages, costs or attorney fees as a result of a
34 writ wrongfully obtained or if there exists some other substantial reason for dispensing with security.
35 The amount of security does not establish or limit the amount of damages, costs or attorney fees
36 recoverable if the writ is wrongfully obtained.

37 **(b)(2) Jurisdiction over surety.** A surety submits to the jurisdiction of the court and irrevocably
38 appoints the clerk of the court as agent upon whom papers affecting the surety's liability may be
39 served. The surety shall file with the clerk of the court the address to which the clerk may mail papers.
40 The surety's liability may be enforced on motion without the necessity of an independent action. If the
41 opposing party recovers judgment or if the writ is wrongfully obtained, the surety will pay the
42 judgment, damages, costs and attorney fees not to exceed the sum specified in the contract. The
43 surety is responsible for return of property ordered returned.

44 **(b)(3) Objection.** The court may issue additional writs upon the original security subject to the
45 objection of the opposing party. The opposing party may object to the sufficiency of the security or the

46 sufficiency of the sureties within five days after service of the writ. The burden to show the sufficiency
47 of the security and the sufficiency of the sureties is on the proponent of the security.

48 **(b)(4) Security of governmental entity.** No security is required of the United States, the State of
49 Utah, or an officer, agency, or subdivision of either, nor when prohibited by law.

50 **(c) Procedures in aid of writs.**

51 **(c)(1) Referee.** The court may appoint a referee to monitor hearings under this subsection.

52 **(c)(2) Hearing; witnesses; discovery.** The court may conduct hearings as necessary to identify
53 property and to apply the property toward the satisfaction of the judgment or order. Witnesses may be
54 subpoenaed to appear, testify and produce records. The court may permit discovery.

55 **(c)(3) Restraint.** The court may forbid any person from transferring, disposing or interfering with
56 the property.

57 **(c)(4) Enforcement.** A failure to appear or cooperate in proceedings under this subsection may
58 only be enforced by proceeding by motion under [Rule 7(q)] [new Rule 7A], and may not be heard by
59 a referee. All sanctions and remedies for contempt may be considered on such a motion, and a
60 bench warrant may issue for failure to appear at such motion, if warranted.

61 **(d) Issuance of writ; service**

62 **(d)(1) Clerk to issue writs.** The clerk of the court shall issue writs. A court in which a transcript or
63 abstract of a judgment or order has been filed has the same authority to issue a writ as the court that
64 entered the judgment or order. If the writ directs the seizure of real property, the clerk of the court
65 shall issue the writ to the sheriff of the county in which the real property is located. If the writ directs
66 the seizure of personal property, the clerk of the court may issue the writ to an officer of any county.

67 **(d)(2) Content.** The writ may direct the officer to seize the property, to keep the property safe, to
68 deliver the property to the plaintiff, to sell the property, or to take other specified actions. If the writ is
69 to enforce a judgment or order for the payment of money, the writ shall specify the amount ordered to
70 be paid and the amount due.

71 (d)(2)(A) If the writ is issued ex parte before judgment, the clerk shall attach to the writ
72 plaintiff's affidavit, detailed description of the property, notice of hearing, order authorizing the
73 writ, notice of exemptions and reply form.

74 (d)(2)(B) If the writ is issued before judgment but after a hearing, the clerk shall attach to the
75 writ plaintiff's affidavit and detailed description of the property.

76 (d)(2)(C) If the writ is issued after judgment, the clerk shall attach to the writ plaintiff's
77 application, detailed description of the property, the judgment, notice of exemptions and reply
78 form.

79 **(d)(3) Service.**

80 **(d)(3)(A) Upon whom; effective date.** The officer shall serve the writ and accompanying
81 papers on the defendant, and, as applicable, the garnishee and any person named by the plaintiff
82 as claiming an interest in the property. The officer may simultaneously serve notice of the date,
83 time and place of sale. A writ is effective upon service.

84 **(d)(3)(B) Limits on writs of garnishment.**

85 (d)(3)(B)(i) A writ of garnishment served while a previous writ of garnishment is in effect is
86 effective upon expiration of the previous writ; otherwise, a writ of garnishment is effective
87 upon service.

88 (d)(3)(B)(ii) Only one writ of garnishment of earnings may be in effect at one time. One
89 additional writ of garnishment of earnings for a subsequent pay period may be served on the
90 garnishee while an earlier writ of continuing garnishment is in effect.

91 **(d)(3)(C) Return; inventory.** Within 14 days after service, the officer shall return the writ to
92 the court with proof of service. If property has been seized, the officer shall include an inventory
93 of the property and whether the property is held by the officer or the officer's designee. If a person
94 refuses to give the officer an affidavit describing the property, the officer shall indicate the fact of
95 refusal on the return, and the court may require that person to pay the costs of any proceeding
96 taken for the purpose of obtaining such information.

97 **(d)(3)(D) Service of writ by publication.** The court may order service of a writ by publication
98 upon a person entitled to notice in circumstances in which service by publication of a summons
99 and complaint would be appropriate under Rule 4.

100 (d)(3)(D)(i) If service of a writ is by publication, substantially the following shall be
101 published under the caption of the case:

102 To _____, [Defendant/Garnishee/Claimant]:

103 A writ of _____ has been issued in the above-captioned case commanding the
104 officer of _____ County as follows:

105 [Quoting body of writ]

106 Your rights may be adversely affected by these proceedings. Property in which you have
107 an interest may be seized to pay a judgment or order. You have the right to claim property
108 exempt from seizure under statutes of the United States or this state, including Utah
109 Code, [Title 78B, Chapter 5, Part 5](#).

110 (d)(3)(D)(ii) The notice shall be published in a newspaper of general circulation in each
111 county in which the property is located at least 14 days prior to the due date for the reply or at
112 least 14 days prior to the date of any sale, or as the court orders. The date of publication is
113 the date of service.

114 **(e) Claim to property by third person.**

115 **(e)(1) Claimant's rights.** Any person claiming an interest in the property has the same rights and
116 obligations as the defendant with respect to the writ and with respect to providing and objecting to
117 security. Any claimant named by the plaintiff and served with the writ and accompanying papers shall
118 exercise those rights and obligations within the same time allowed the defendant. Any claimant not
119 named by the plaintiff and not served with the writ and accompanying papers may exercise those
120 rights and obligations at any time before the property is sold or delivered to the plaintiff.

121 **(e)(2) Join claimant as defendant.** The court may order any named claimant joined as a
122 defendant in interpleader. The plaintiff shall serve the order on the claimant. The claimant is
123 thereafter a defendant to the action and shall answer within 14 days, setting forth any claim or
124 defense. The court may enter judgment for or against the claimant to the limit of the claimant's
125 interest in the property.

126 **(e)(3) Plaintiff's security.** If the plaintiff requests that an officer seize or sell property claimed by
127 a person other than the defendant, the officer may request that the court require the plaintiff to file
128 security.

129 **(f) Discharge of writ; release of property.**

130 (f)(1) By defendant. At any time before notice of sale of the property or before the property is
131 delivered to the plaintiff, the defendant may file security and a motion to discharge the writ. The
132 plaintiff may object to the sufficiency of the security or the sufficiency of the sureties within 7 days
133 after service of the motion. At any time before notice of sale of the property or before the property is
134 delivered to the plaintiff, the defendant may file a motion to discharge the writ on the ground that the
135 writ was wrongfully obtained. The court shall give the plaintiff reasonable opportunity to correct a
136 defect. The defendant shall serve the order to discharge the writ upon the officer, plaintiff, garnishee
137 and any third person claiming an interest in the property.

138 **(f)(2) By plaintiff.** The plaintiff may discharge the writ by filing a release and serving it upon the
139 officer, defendant, garnishee and any third person claiming an interest in the property.

140 **(f)(3) Disposition of property.** If the writ is discharged, the court shall order any remaining
141 property and proceeds of sales delivered to the defendant.

142 **(f)(4) Copy filed with county recorder.** If an order discharges a writ upon property seized by
143 filing with the county recorder, the officer or a party shall file a certified copy of the order with the
144 county recorder.

145 **(f)(5) Service on officer; disposition of property.** If the order discharging the writ is served on
146 the officer:

147 (f)(5)(A) before the writ is served, the officer shall return the writ to the court;

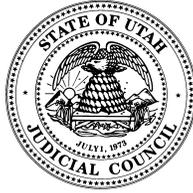
148 (f)(5)(B) while the property is in the officer's custody, the officer shall return the property to the
149 defendant; or

150 (f)(5)(C) after the property is sold, the officer shall deliver any remaining proceeds of the sale
151 to the defendant.

152

153

Tab 3



Administrative Office of the Courts

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

January 16, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

MEMORANDUM

TO: Supreme Court Advisory Committee on the Rules of Civil Procedure

FROM: Judge Barry Lawrence

RE: Proposed rule changes

I write this as the immediate past chair of the Committee on Resources for Self-Represented Parties. This Committee is charged with studying the needs of self-represented parties and proposing policy recommendations concerning those needs. During my tenure as the chair of the Committee, we identified a variety of concerns with the current civil practice that negatively impact a self-represented party's ability to effectively protect their legal rights; we have also discussed some possible solutions, including those discussed below.

The one area about which the Committee feels strongly, concerns the (lack of) notice to self-represented parties when presented with motions and other documents requiring a response. Keep in mind that if the case has progressed this far, the self-represented party would have already filed an Answer (or other initial pleading), thus indicating an intent to engage in the litigation process to defend (or prosecute) the claim. Current practice and current rules do not require a notification to the party that a response to a motion is required; rather, the party is required to implicitly understand that the Rules of Procedure (which they likely don't even know about) require a response. This is problematic for self-represented parties, particularly where the effect of not responding can cause a party to lose their case. Accordingly, we seek some modest changes to a few of the civil rules that will provide better notice to self-represented parties, and thus enhance access to justice for those parties.

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

Accordingly, we request the following rules changes to help make the courts, and the litigation process, more accessible to self-represented parties:

1. URCP 4 be amended to make the form summonses approved by the Judicial Council *mandatory* court forms;¹
2. URCP 7 be amended to make the form notice accompanying motions (which includes a warning on the first page of motions) approved by the Judicial Council a *mandatory* court form;²
3. URCP 36 be amended to require more prominent and plain language warnings on requests for admission.³

Rule 4: The first proposal is intended to make a best practice (adopted by the forms committee) mandatory and to potentially reduce default rates (for defendants interested in defending their claim.) When a defendant receives service of process they are often unaware of how to respond to the lawsuit. The form summons approved by the Judicial Council, enhances notice to a defendant in the following respects:

- It is written in plain language;
- It highlights, in bold type, the deadline to respond to the summons;
- It provides clear guidance on how to respond to the complaint and summons with online resources; this web resource in turn includes a form answer and information on how to file the answer;
- It directs defendants to resources to find legal help;
- It is written in both English and Spanish and has guidance on where to find a Chinese and Vietnamese version of the summons.

We believe this enhanced Summons is important because it allows parties, interested in responding to claims against them, to be able to properly and effectively respond and protect their legal rights. In fact, the Form Committee agreed, and incorporated these changes into the civil rules forms. That being the case, and for the same reasons these changes have been incorporated into approved forms, we believe it logically follows that these same enhancements should be *mandatory for all filings*.

¹ The summonses are attached: attachment A-1 is the 3 day summons for eviction, attachment A-2 is the 10 day summons (currently approved by the Forms Committee and pending Council approval), attachment A-3 is the 21 day summons, and attachment A-4 is the 30 day summons.

² The proposed motion is attached as B-2; aside from the new warning language on the top, the form has been approved by the Council.

³ Sample cover pages for requests for admission are also attached: attachment C-1 is defendant's request and C-2 is plaintiff's request.

Rule 7: Rule 7 governs motions. Although the Rules sets forth the process for responding to motions, the Motion itself contains no information about how to respond, or even that a response is required; let alone the grave consequences of not responding.

Our committee is especially concerned about motions filed in debt collections cases. It is important to remember that if a motion has been filed, a defendant (likely self-represented) has already filed an answer, expressing a denial of the claims asserted against them, and an interest in responding to the claims and avoiding a default. Yet, under current practice, if that party is presented with a dispositive motion, they have absolutely no guidance that they even need to respond, how to respond, or the consequences of not responding. We do not believe that a layperson would understand a need to respond, and believe that the notion that a self-represented party is assumed to know the rules of procedure is folly and unfair to self-represented litigants. Frankly, this is an old and outdated practice that is archaic and needs to be re-examined; until then these requested changes are the least we can do to protect the rights of self-represented parties.

Thus, we strongly believe that motions should contain warning language, such as **“This is important. You must respond to this document within 14 days of when it was served on you. If you do not, you could lose your case.”** By including a clear warning on the motion, the answering party is alerted to the need to respond if they are serious about litigating their case. Providing this additional, conspicuous notice will, hopefully, prevent an unsuspecting party with a legitimate defense to a claim from losing their right to assert that defense based on a technicality.

Warning language such as this will also help judges address an ambiguity in the proceeding. Again, assuming this is a debt collection case, the defendant has denied the claims against them by filing an Answer; yet later, fails to respond to a dispositive motion. Under the current rules, it is unclear to the Court whether the defendant has abandoned their position and essentially consents to judgment, or intends to defend the claim, but is unaware of his/her responsibilities regarding the motion. Given that ambiguity, and in order to protect the defendant’s rights, Judges may place the matter on the calendar for a hearing, resulting in additional legal fees that could have been avoided with a more clear and unambiguous procedure. Under these new rules, if a party fails to respond to a motion, with a clear notice and warning having been given, the Court would more likely assume the defendant received the motion and made a conscious decision not to respond. In that event, the requested relief could be awarded and a hearing (and the costs associated with such a hearing) would be avoided.

Rule 36: For all of the same reasons set forth above, we believe similar language should be included in Rule 36, governing Requests for Admissions. Requests for Admissions (RFA), unlike other discovery mechanisms, are self-activating; if a party

fails to respond within 28 days, the matter is deemed “admitted” and conclusively established.” URCP, Rule 36(c). Thus, the consequences of not responding to RFA’s are just as serious as not responding to a motion. Thus, here too, the notice and warning language is necessary.

For all of these reasons, we request the following changes be made to the Rules. Attached to this Memo are exemplar documents incorporating these changes. Again, the added language in each of these Rules incorporate recent changes made to the Court’s forms. It follows that if these concerns are important enough to incorporate them into Court approved forms, they should likewise be required under the Rules of Procedure to apply across the board to all cases.

Text of recommended rule changes

Rule 4

Rule 4 (c) shall be amended as follows:

OLD:

(c) Contents of summons.

(c)(1) The summons must:

(c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(c)(1)(B) be directed to the defendant;

(c)(1)(C) state the name, address and telephone number of the plaintiff’s attorney, if any, and otherwise the plaintiff’s address and telephone number;

(c)(1)(D) state the time within which the defendant is required to answer the complaint in writing;

(c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default will be entered against the defendant; and

(c)(1)(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons must also:

(c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(c)(3) If service is by publication, the summons must also briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

PROPOSAL:

(c) Contents of summons.

(c)(1) The summons must: be in a format substantially similar to one of the form summonses approved by the Judicial Council, posted on the utcourts.gov website. The summons must correspond to the appropriate applicable summons: the 3-day summons for eviction, the 10-day summons, the 21 day summons and the 30 day summons and must:

(c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;

(c)(1)(B) be directed to the defendant;

(c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number;

(c)(1)(D) state the time within which the defendant is required to answer the complaint in writing;

(c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default will be entered against the defendant; and

(c)(1)(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service.

(c)(2) If the action is commenced under Rule 3(a)(2), the summons must also:

(c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(c)(3) If service is by publication, the summons must also briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

Rule 7

Rule 7(c)(1) shall be amended as follows:

OLD:

(c) Name and content of motion

(c)(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers. The moving party must title the motion substantially as: "Motion [short phrase describing the relief requested]." The motion must include the supporting memorandum. The motion must include under appropriate headings and in the following order:

PROPOSAL:

(c) Name and content of motion

(c)(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers. Motions must include a substantially similar bilingual notice as in the form motion approved by the Judicial Council, posted on the utcourts.gov website.

(c)(2)(i) For all dispositive motions governed by Rule 12 or Rule 56 filed by a plaintiff, the motion must include the following language on the first page of the document, to the right of the movant's name, in bold type:

This is important. You must respond to this document within 14 days of when it was served on you. If you do not, you could lose your case.

(c)(2)(ii) For all dispositive motions governed by Rule 12 or Rule 56 filed by a defendant, the motion must include the following language on the first page of the document, to the right of the movant's name, in bold type:

This is important. You must respond to this document within 14 days of when it was served on you. If you do not, you could lose your case.

(c)(3)The moving party must title the motion substantially as: "Motion [short phrase describing the relief requested]." The motion must include the supporting memorandum. The motion must include under appropriate headings and in the following order:

Rule 36:

Rule 36(a) shall be amended as follows:

OLD:

(a) Request for admission. A party may serve upon any other party a written request to admit the truth of any discoverable matter set forth in the request, including the genuineness of any document. The matter must relate to statements or opinions of fact or of the application of law to fact. Each matter shall be separately stated and numbered. A copy of the document shall be served with the request unless it has already been furnished or made available for inspection and copying. The request shall notify the responding party that the matters will be deemed admitted unless the party responds within 28 days after service of the request.

PROPOSAL:

(a) Request for admission. A party may serve upon any other party a written request to admit the truth of any discoverable matter set forth in the request, including the genuineness of any document. The matter must relate to statements or opinions of fact or of the application of law to fact. Each matter shall be separately stated and numbered. A copy of the document shall be served with the request unless it has already been furnished or made available for inspection and copying. The request shall notify the responding party that the matters will be deemed admitted unless the party responds within 28 days after service of the request.

(a)(1) For all requests for admissions filed by a plaintiff, the document must include the following language on the first page of the document, to the right of the requesting party's name, in all bold type:

This is important. You must respond to these requests within 28 days. If you do not, you could lose your case.

(A)(2) For all requests for admissions filed by a **defendant**, the document must include the following language on the first page of the document, to the right of the requesting party's name, in bold type:

This is important. You must respond to these requests within 28 days. If you do not, your case could be dismissed.

1 **Rule 4. Process.**

2 **(a) Signing of summons.** The summons must be signed and issued by the plaintiff or the plaintiff's
3 attorney. Separate summonses may be signed and issued.

4 **(b) Time of service.** Unless the summons and complaint are accepted, a copy of the summons and
5 complaint in an action commenced under Rule 3(a)(1) must be served no later than 120 days after the
6 complaint is filed, unless the court orders a different period under Rule 6. If the summons and complaint
7 are not timely served, the action against the unserved defendant may be dismissed without prejudice on
8 motion of any party or on the court's own initiative.

9 **(c) Contents of summons.**

10 (c)(1) The summons must be in a form that is substantially similar to the applicable form
11 summons approved by the Utah Judicial Council. The summons must also:

12 (c)(1)(A) contain the name and address of the court, the names of the parties to the action,
13 and the county in which it is brought;

14 (c)(1)(B) be directed to the defendant;

15 (c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and
16 otherwise the plaintiff's address and telephone number;

17 (c)(1)(D) state the time within which the defendant is required to answer the complaint in
18 writing;

19 (c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default
20 will be entered against the defendant; and

21 (c)(1)(F) state either that the complaint is on file with the court or that the complaint will be
22 filed with the court within 10 days after service.

23 (c)(2) If the action is commenced under Rule 3(a)(2), the summons must also:

24 (c)(2)(A) state that the defendant need not answer if the complaint is not filed within 10 days
25 after service; and

26 (c)(2)(B) state the telephone number of the clerk of the court where the defendant may call at
27 least 14 days after service to determine if the complaint has been filed.

28 (c)(3) If service is by publication, the summons must also briefly state the subject matter and the
29 sum of money or other relief demanded, and that the complaint is on file with the court.

30 **(d) Methods of service.** The summons and complaint may be served in any state or judicial district
31 of the United States. Unless service is accepted, service of the summons and complaint must be by one
32 of the following methods:

33 **(d)(1) Personal service.** The summons and complaint may be served by any person 18 years of
34 age or older at the time of service and not a party to the action or a party's attorney. If the person to
35 be served refuses to accept a copy of the summons and complaint, service is sufficient if the person
36 serving them states the name of the process and offers to deliver them. Personal service must be
37 made as follows:

38 (d)(1)(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or

39 (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by

40 leaving them at the individual's dwelling house or usual place of abode with a person of suitable
41 age and discretion who resides there, or by delivering them to an agent authorized by
42 appointment or by law to receive process;

43 (d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and
44 complaint to the minor and also to the minor's father, mother, or guardian or, if none can be found
45 within the state, then to any person having the care and control of the minor, or with whom the
46 minor resides, or by whom the minor is employed;

47 (d)(1)(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or
48 incapable of conducting the individual's own affairs, by delivering a copy of the summons and
49 complaint to the individual and to the guardian or conservator of the individual if one has been
50 appointed; the individual's legal representative if one has been appointed, and, in the absence of
51 a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or
52 control of the individual;

53 (d)(1)(D) Upon an individual incarcerated or committed at a facility operated by the state or
54 any of its political subdivisions, by delivering a copy of the summons and complaint to the person
55 who has the care, custody, or control of the individual, or to that person's designee or to the
56 guardian or conservator of the individual if one has been appointed. The person to whom the
57 summons and complaint are delivered must promptly deliver them to the individual;

58 (d)(1)(E) Upon a corporation not otherwise provided for in this rule, a limited liability company,
59 a partnership, or an unincorporated association subject to suit under a common name, by
60 delivering a copy of the summons and complaint to an officer, a managing or general agent, or
61 other agent authorized by appointment or law to receive process and by also mailing a copy of
62 the summons and complaint to the defendant, if the agent is one authorized by statute to receive
63 process and the statute so requires. If no officer or agent can be found within the state, and the
64 defendant has, or advertises or holds itself out as having, a place of business within the state or
65 elsewhere, or does business within this state or elsewhere, then upon the person in charge of the
66 place of business;

67 (d)(1)(F) Upon an incorporated city or town, by delivering a copy of the summons and
68 complaint as required by statute, or in the absence of a controlling statute, to the recorder;

69 (d)(1)(G) Upon a county, by delivering a copy of the summons and complaint as required by
70 statute, or in the absence of a controlling statute, to the county clerk;

71 (d)(1)(H) Upon a school district or board of education, by delivering a copy of the summons
72 and complaint as required by statute, or in the absence of a controlling statute, to the
73 superintendent or administrator of the board;

74 (d)(1)(I) Upon an irrigation or drainage district, by delivering a copy of the summons and
75 complaint as required by statute, or in the absence of a controlling statute, to the president or
76 secretary of its board;

77 (d)(1)(J) Upon the state of Utah or its department or agency by delivering a copy of the
78 summons and complaint to the attorney general and any other person or agency required by
79 statute to be served; and

80 (d)(1)(K) Upon a public board, commission or body by delivering a copy of the summons and
81 complaint as required by statute, or in the absence of a controlling statute, to any member of its
82 governing board, or to its executive employee or secretary.

83 **(d)(2) Service by mail or commercial courier service.**

84 (d)(2)(A) The summons and complaint may be served upon an individual other than one
85 covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial courier service in any state or
86 judicial district of the United States provided the defendant signs a document indicating receipt.

87 (d)(2)(B) The summons and complaint may be served upon an entity covered by paragraphs
88 (d)(1)(E) through (d)(1)(I) by mail or commercial courier service in any state or judicial district of
89 the United States provided defendant's agent authorized by appointment or by law to receive
90 service of process signs a document indicating receipt.

91 (d)(2)(C) Service by mail or commercial courier service shall be complete on the date the
92 receipt is signed as provided by this rule.

93 **(d)(3) Acceptance of service.**

94 **(d)(3)(A) Duty to avoid expenses.** All parties have a duty to avoid unnecessary expenses of
95 serving the summons and complaint.

96 **(d)(3)(B) Acceptance of service by party.** Unless the person to be served is a
97 minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind,
98 or incapable of conducting the individual's own affairs, a party may accept service of a summons
99 and complaint by signing a document that acknowledges receipt of the summons and complaint.

100 **(d)(3)(B)(i) Content of proof of electronic acceptance.** If acceptance is obtained
101 electronically, the proof of acceptance must demonstrate on its face that the electronic signature
102 is attributable to the party accepting service and was voluntarily executed by the party. The proof
103 of acceptance must demonstrate that the party received readable copies of the summons and
104 complaint prior to signing the acceptance of service.

105 **(d)(3)(B)(ii) Duty to avoid deception.** A request to accept service must not be
106 deceptive, including stating or implying that the request to accept service originates with a public
107 servant, peace officer, court, or official government agency. A violation of this paragraph may
108 nullify the acceptance of service and could subject the person to criminal penalties under
109 applicable Utah law.

110 **(d)(3)(C) Acceptance of service by attorney for party.** An attorney may accept service of a
111 summons and complaint on behalf of the attorney's client by signing a document that acknowledges
112 receipt of the summons and complaint.

113 **(d)(3)(D) Effect of acceptance, proof of acceptance.** A person who accepts service of the
114 summons and complaint retains all defenses and objections, except for adequacy of service. Service

115 is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes
116 proof of service under Rule 4(e).

117 **(d)(4) Service in a foreign country.** Service in a foreign country must be made as follows:

118 (d)(4)(A) by any internationally agreed means reasonably calculated to give notice, such as
119 those means authorized by the Hague Convention on the Service Abroad of Judicial and
120 Extrajudicial Documents;

121 (d)(4)(B) if there is no internationally agreed means of service or the applicable international
122 agreement allows other means of service, provided that service is reasonably calculated to give
123 notice:

124 (d)(4)(B)(i) in the manner prescribed by the law of the foreign country for service in that
125 country in an action in any of its courts of general jurisdiction;

126 (d)(4)(B)(ii) as directed by the foreign authority in response to a letter of request issued
127 by the court; or

128 (d)(4)(B)(iii) unless prohibited by the law of the foreign country, by delivering a copy of the
129 summons and complaint to the individual personally or by any form of mail requiring a signed
130 receipt, addressed and dispatched by the clerk of the court to the party to be served; or

131 (d)(4)(C) by other means not prohibited by international agreement as may be directed by the
132 court.

133 **(d)(5) Other service.**

134 (d)(5)(A) If the identity or whereabouts of the person to be served are unknown and cannot
135 be ascertained through reasonable diligence, if service upon all of the individual parties is
136 impracticable under the circumstances, or if there is good cause to believe that the person to be
137 served is avoiding service, the party seeking service may file a motion to allow service by some
138 other means. An affidavit or declaration supporting the motion must set forth the efforts made to
139 identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of
140 the individual parties.

141 (d)(5)(B) If the motion is granted, the court will order service of the complaint and summons
142 by means reasonably calculated, under all the circumstances, to apprise the named parties of the
143 action. The court's order must specify the content of the process to be served and the event upon
144 which service is complete. Unless service is by publication, a copy of the court's order must be
145 served with the process specified by the court.

146 (d)(5)(C) If the summons is required to be published, the court, upon the request of the party
147 applying for service by other means, must designate a newspaper of general circulation in the
148 county in which publication is required.

149 **(e) Proof of service.**

150 (e)(1) The person effecting service must file proof of service stating the date, place, and manner of
151 service, including a copy of the summons. If service is made by a person other than by an attorney,
152 sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the

153 proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a,
154 Uniform Unsworn Declarations Act.

155 (e)(2) Proof of service in a foreign country must be made as prescribed in these rules for service
156 within this state, or by the law of the foreign country, or by order of the court.

157 (e)(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a
158 receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the
159 court.

160 (e)(4) Failure to file proof of service does not affect the validity of the service. The court may allow
161 proof of service to be amended.

162 **Advisory Committee Notes**

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Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.**(a) Pleadings.** Only these pleadings are allowed:

- (a)(1) a complaint;
- (a)(2) an answer to a complaint;
- (a)(3) an answer to a counterclaim designated as a counterclaim;
- (a)(4) an answer to a crossclaim;
- (a)(5) a third-party complaint;
- (a)(6) an answer to a third-party complaint; and
- (a)(7) a reply to an answer if ordered by the court.

(b) Motions. A request for an order must be made by motion. The motion must be in writing unless made during a hearing or trial, must state the relief requested, and must state the grounds for the relief requested. Except for the following, a motion must be made in accordance with this rule.

(b)(1) A motion, other than a motion described in paragraphs (b)(2), (b)(3) or (b)(4), made in proceedings before a court commissioner must follow Rule [101](#).

(b)(2) A request under [Rule 26](#) for extraordinary discovery must follow Rule [37\(a\)](#).

(b)(3) A request under Rule [37](#) for a protective order or for an order compelling disclosure or discovery—but not a motion for sanctions—must follow Rule [37\(a\)](#).

(b)(4) A request under Rule [45](#) to quash a subpoena must follow Rule [37\(a\)](#).

(b)(5) A motion for summary judgment must follow the procedures of this rule as supplemented by the requirements of Rule [56](#).

(c) Name and content of motion.

(c)(1) The rules governing captions and other matters of form in pleadings apply to motions and other papers.

(c)(2) **Caution language.** For all dispositive motions governed by Rule 12 or Rule 56, the motion must include the following language on the first page of the document, to the right of the movant's name, in bold type:

This is important. You must respond to this document within 14 days of when it was served on you. If you do not, you could lose your case.

(c)(3) **Bilingual notice.** Motions must include a bilingual notice that is substantially similar to the one contained in the form motion approved by the Judicial Council.

(c)(4) **Title of motion.** The moving party must title the motion substantially as: "Motion [short phrase describing the relief requested]."

(c)(5) **Contents of motion.** The motion must include the supporting memorandum. The motion must include under appropriate headings and in the following order:

(c)(45)(A) a concise statement of the relief requested and the grounds for the relief requested; and

(c)(45)(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party and argument citing authority for the relief requested.

(c)(25) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the motion.

(c)(36) **Length of motion.** If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the motion may not exceed 25 pages, not counting the attachments, unless a longer motion is permitted by the court. Other motions may not exceed 15 pages, not counting the attachments, unless a longer motion is permitted by the court.

(d) Name and content of memorandum opposing the motion.

(d)(1) A nonmoving party may file a memorandum opposing the motion within 14 days after the motion is filed. The nonmoving party must title the memorandum substantially as: "Memorandum opposing motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(d)(1)(A) a concise statement of the party's preferred disposition of the motion and the grounds supporting that disposition;

(d)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the nonmoving party and argument citing authority for that disposition; and

(d)(1)(C) objections to evidence in the motion, citing authority for the objection.

(d)(2) If the non-moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(d)(3) If the motion is for relief authorized by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the memorandum opposing the motion may not exceed 25 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other opposing memoranda may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

(e) Name and content of reply memorandum.

(e)(1) Within 7 days after the memorandum opposing the motion is filed, the moving party may file a reply memorandum, which must be limited to rebuttal of new matters raised in the memorandum opposing the motion. The moving party must title the memorandum substantially as "Reply memorandum supporting motion [short phrase describing the relief requested]." The memorandum must include under appropriate headings and in the following order:

(e)(1)(A) a concise statement of the new matter raised in the memorandum opposing the motion;

(e)(1)(B) one or more sections that include a concise statement of the relevant facts claimed by the moving party not previously set forth that respond to the opposing party's statement of facts and argument citing authority rebutting the new matter;

(e)(1)(C) objections to evidence in the memorandum opposing the motion, citing authority for the objection; and

(e)(1)(D) response to objections made in the memorandum opposing the motion, citing authority for the response.

(e)(2) If the moving party cites documents, interrogatory answers, deposition testimony, or other discovery materials, relevant portions of those materials must be attached to or submitted with the memorandum.

(e)(3) If the motion is for relief authorized by Rule [12\(b\)](#) or [12\(c\)](#), Rule [56](#) or Rule [65A](#), the reply memorandum may not exceed 15 pages, not counting the attachments, unless a longer memorandum is permitted by the court. Other reply memoranda may not exceed 10 pages, not counting the attachments, unless a longer memorandum is permitted by the court.

(f) Objection to evidence in the reply memorandum; response. If the reply memorandum includes an objection to evidence, the nonmoving party may file a response to the objection no later than 7 days after the reply memorandum is filed. If the reply memorandum includes evidence not previously set forth, the nonmoving party may file an objection to the evidence no later than 7 days after the reply memorandum is filed, and the moving party may file a response to the objection no later than 7 days after the objection is filed. The objection or response may not be more than 3 pages.

(g) Request to submit for decision. When briefing is complete or the time for briefing has expired, either party may file a "Request to Submit for Decision," but, if no party files a request, the motion will not be submitted for decision. The request to submit for decision must state whether a hearing has been requested and the dates on which the following documents were filed:

(g)(1) the motion;

(g)(2) the memorandum opposing the motion, if any;

(g)(3) the reply memorandum, if any; and

(g)(4) the response to objections in the reply memorandum, if any.

(h) Hearings. The court may hold a hearing on any motion. A party may request a hearing in the motion, in a memorandum or in the request to submit for decision. A request for hearing must be separately identified in the caption of the document containing the request. The court must grant a request for a hearing on a motion under Rule [56](#) or a motion that would dispose of the action or any claim or defense in the action unless the court finds that the motion or opposition to the motion is frivolous or the issue has been authoritatively decided.

(i) Notice of supplemental authority. A party may file notice of citation to significant authority that comes to the party's attention after the party's motion or memorandum has been filed or after oral argument but before decision. The notice may not exceed 2 pages. The notice must state the citation to the authority, the page of the motion or memorandum or the point orally argued to which the authority applies, and the reason the authority is relevant. Any other party may promptly file a response, but the court may act on the motion without waiting for a response. The response may not exceed 2 pages.

(j) Orders.

(j)(1) Decision complete when signed; entered when recorded. However designated, the court's decision on a motion is complete when signed by the judge. The decision is entered when recorded in the docket.

(j)(2) Preparing and serving a proposed order. Within 14 days of being directed by the court to prepare a proposed order confirming the court's decision, a party must serve the proposed order on

the other parties for review and approval as to form. If the party directed to prepare a proposed order fails to timely serve the order, any other party may prepare a proposed order confirming the court's decision and serve the proposed order on the other parties for review and approval as to form.

(j)(3) Effect of approval as to form. A party's approval as to form of a proposed order certifies that the proposed order accurately reflects the court's decision. Approval as to form does not waive objections to the substance of the order.

(j)(4) Objecting to a proposed order. A party may object to the form of the proposed order by filing an objection within 7 days after the order is served.

(j)(5) Filing proposed order. The party preparing a proposed order must file it:

(j)(5)(A) after all other parties have approved the form of the order (The party preparing the proposed order must indicate the means by which approval was received: in person; by telephone; by signature; by email; etc.);

(j)(5)(B) after the time to object to the form of the order has expired (The party preparing the proposed order must also file a certificate of service of the proposed order.); or

(j)(5)(C) within 7 days after a party has objected to the form of the order (The party preparing the proposed order may also file a response to the objection.).

(j)(6) Proposed order before decision prohibited; exceptions. A party may not file a proposed order concurrently with a motion or a memorandum or a request to submit for decision, but a proposed order must be filed with:

(j)(6)(A) a stipulated motion;

(j)(6)(B) a motion that can be acted on without waiting for a response;

(j)(6)(C) an ex parte motion;

(j)(6)(D) a statement of discovery issues under Rule [37\(a\)](#); and

(j)(6)(E) the request to submit for decision a motion in which a memorandum opposing the motion has not been filed.

(j)(7) Orders entered without a response; ex parte orders. An order entered on a motion under paragraph (l) or (m) can be vacated or modified by the judge who made it with or without notice.

(j)(8) Order to pay money. An order to pay money can be enforced in the same manner as if it were a judgment.

(k) Stipulated motions. A party seeking relief that has been agreed to by the other parties may file a stipulated motion which must:

(k)(1) be titled substantially as: "Stipulated motion [short phrase describing the relief requested]";

(k)(2) include a concise statement of the relief requested and the grounds for the relief requested;

(k)(3) include a signed stipulation in or attached to the motion and;

(k)(4) be accompanied by a request to submit for decision and a proposed order that has been approved by the other parties.

(l) Motions that may be acted on without waiting for a response.

(l)(1) The court may act on the following motions without waiting for a response:

- (l)(1)(A) motion to permit an over-length motion or memorandum;
- (l)(1)(B) motion for an extension of time if filed before the expiration of time;
- (l)(1)(C) motion to appear pro hac vice; and
- (l)(1)(D) other similar motions.

(l)(2) A motion that can be acted on without waiting for a response must:

- (l)(2)(A) be titled as a regular motion;
- (l)(2)(B) include a concise statement of the relief requested and the grounds for the relief requested;
- (l)(2)(C) cite the statute or rule authorizing the motion to be acted on without waiting for a response; and
- (l)(2)(D) be accompanied by a request to submit for decision and a proposed order.

(m) Ex parte motions. If a statute or rule permits a motion to be filed without serving the motion on the other parties, the party seeking relief may file an ex parte motion which must:

- (m)(1) be titled substantially as: “Ex parte motion [short phrase describing the relief requested]”;
- (m)(2) include a concise statement of the relief requested and the grounds for the relief requested;
- (m)(3) cite the statute or rule authorizing the ex parte motion;
- (m)(4) be accompanied by a request to submit for decision and a proposed order.

(n) Motion in opposing memorandum or reply memorandum prohibited. A party may not make a motion in a memorandum opposing a motion or in a reply memorandum. A party who objects to evidence in another party’s motion or memorandum may not move to strike that evidence. Instead, the party must include in the subsequent memorandum an objection to the evidence.

(o) Overlength motion or memorandum. The court may permit a party to file an overlength motion or memorandum upon a showing of good cause. An overlength motion or memorandum must include a table of contents and a table of authorities with page references.

(p) Limited statement of facts and authority. No statement of facts and legal authorities beyond the concise statement of the relief requested and the grounds for the relief requested required in paragraph (c) is required for the following motions:

- (p)(1) motion to allow an over-length motion or memorandum;
- (p)(2) motion to extend the time to perform an act, if the motion is filed before the time to perform the act has expired;
- (p)(3) motion to continue a hearing;
- (p)(4) motion to appoint a guardian ad litem;
- (p)(5) motion to substitute parties;
- (p)(6) motion to refer the action to or withdraw it from alternative dispute resolution under Rule 4-510.05;
- (p)(7) motion for a conference under Rule [16](#); and
- (p)(8) motion to approve a stipulation of the parties.

~~**(q) Limit on order to show cause.** An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show cause to believe a party has violated a court order. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket.~~

Advisory Committee Notes

1 **Rule 36. Request for admission.**

2 **(a) Request for admission.** A party may serve upon any other party a written request to admit the
3 truth of any discoverable matter set forth in the request, including the genuineness of any document. The
4 matter must relate to statements or opinions of fact or of the application of law to fact. Each matter shall
5 be separately stated and numbered. A copy of the document shall be served with the request unless it
6 has already been furnished or made available for inspection and copying. The request shall notify the
7 responding party that the matters will be deemed admitted unless the party responds within 28 days after
8 service of the request.

9 **(a)(1) Plaintiff request for admissions.** For all requests for admissions filed by a plaintiff, the
10 document must include the following language on the first page of the document, to the right of the
11 requesting party's name, in all bold type:

12 **This is important. You must respond to these requests within 28 days. If you do not, you could**
13 **lose your case.**

14 **(A)(2) Defendant request for admissions.** For all requests for admissions filed by a defendant,
15 the document must include the following language on the first page of the document, to the right of
16 the requesting party's name, in bold type:

17 **This is important. You must respond to these requests within 28 days. If you do not, your case**
18 **could be dismissed.**

19 **(b) Answer or objection.**

20 (b)(1) The matter is admitted unless, within 28 days after service of the request, the responding
21 party serves upon the requesting party a written response.

22 (b)(2) The answering party shall restate each request before responding to it. Unless the
23 answering party objects to a matter, the party must admit or deny the matter or state in detail the
24 reasons why the party cannot truthfully admit or deny. A party may identify the part of a matter which
25 is true and deny the rest. A denial shall fairly meet the substance of the request. Lack of information
26 is not a reason for failure to admit or deny unless, after reasonable inquiry, the information known or
27 reasonably available is insufficient to enable an admission or denial. A party who considers the
28 subject of a request for admission to be a genuine issue for trial may not object on that ground alone
29 but may, subject to Rule 37(c), deny the matter or state the reasons for the failure to admit or deny.

30 (b)(3) If the party objects to a matter, the party shall state the reasons for the objection. Any
31 reason not stated is waived unless excused by the court for good cause. The party shall admit or
32 deny any part of a matter that is not objectionable. It is not grounds for objection that the truth of a
33 matter is a genuine issue for trial.

34 **(c) Effect of admission.** Any matter admitted under this rule is conclusively established unless the
35 court on motion permits withdrawal or amendment of the admission. The court may permit withdrawal or
36 amendment if the presentation of the merits of the action will be promoted and withdrawal or amendment

37 will not prejudice the requesting party. Any admission under this rule is for the purpose of the pending
38 action only. It is not an admission for any other purpose, nor may it be used in any other action.
39
40

Name

Address

City, State, Zip

Phone

Email

I am Plaintiff/Petitioner Defendant/Respondent
 Plaintiff/Petitioner's Attorney Defendant/Respondent's Attorney (Utah Bar #: _____)
 Plaintiff/Petitioner's Licensed Paralegal Practitioner
 Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #: _____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>V.</p> <p>_____ Defendant/Respondent</p>	<p>Ten Day Summons (Utah Rule of Civil Procedure 3 and 4)</p> <p>_____ Case Number</p> <p>_____ Judge</p> <p>_____ Commissioner (domestic cases)</p>
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The State of Utah to

_____ (party's name):

A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.

Se ha presentado una demanda en su contra. Si desea que el juez considere su lado, deberá presentar una respuesta por escrito dentro del periodo de tiempo establecido. La respuesta por escrito es conocida como la Respuesta.

Call the court to see if a Complaint or Petition has been filed

The plaintiff must file the Complaint with the court within 10 days after service of this Summons on you.

If the complaint is not filed within that time, the case is considered to be dismissed and you do not need to file an answer.

Call the court at _____ (phone number) at least 14 days after service of this Summons to ask if the Complaint has been filed. This is an action to:

_____ (describe nature of action).

Deadline!

Your Answer must be filed with the court and served on the other party **within 21 days** of the date you were served with this Summons.

If you do not file and serve your Answer by the deadline, the other party can ask the court for a default judgment. A default judgment means the other party can get what they asked for, and you do not get the chance to tell your side of the story.

Read the complaint/petition

The Complaint or Petition has been filed with the court and explains what the other party is asking for in their lawsuit. Read it carefully.

Si a la persona
[translate into Spanish]

Si a la persona se le hace la entrega formal fuera de Utah, tendrá 30 días para responder. En la mayor parte de las demandas civiles, la persona tiene 21 días para responder a la demanda o petición. Si a la persona se le hace la entrega formal fuera de Utah, tendrá 30 días para responder. En la mayor parte de las demandas civiles, la persona tiene 21 días para responder a la demanda o petición.

Call the court at _____ (phone number) at least 14 days after service of this Summons to ask if the Complaint has been filed. This is an action to:

_____ (describe nature of action).

¡Fecha límite para contestar!

Su Respuesta debe ser presentada en el tribunal y también con la debida entrega formal a la otra parte **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio.

Si usted no presenta una respuesta ni hace la entrega formal dentro del plazo establecido, la otra parte podrá pedirle al juez que asiente un fallo por incumplimiento. Un fallo por incumplimiento significa que la otra parte recibe lo que pidió, y usted no tendrá la oportunidad de decir su versión de los hechos.

Lea la demanda o petición

La demanda o petición fue presentada en el tribunal y ésta explica lo que la otra parte pide. Léala cuidadosamente.

Answer the complaint/petition

You must file your Answer in writing with the court **within 21 days** of the date you were served with this Summons. You can find an Answer form on the court's website:

www.utcourts.gov/howto/answer/.

Serve the Answer on the other party

You must mail or hand deliver a copy of your Answer to the other party (or their attorney or licensed paralegal practitioner, if they have one) at the address shown at the top left corner of the first page of this Summons.

Finding help

The court's Finding Legal Help web page (www.utcourts.gov/howto/legalassist/) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.

Cómo responder a la demanda o petición

Usted debe presentar su Respuesta por escrito en el tribunal **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio. En la página del tribunal www.utcourts.gov/howto/answer/ puede encontrar el formulario para la presentación de la Respuesta.

Entrega formal de la respuesta a la otra parte

Usted deberá enviar por correo o entregar personalmente una copia de su Respuesta a la otra parte (o a su abogado o asistente legal, si tiene) a la dirección localizada en la esquina izquierda superior de la primera hoja del citatorio.

Cómo encontrar ayuda legal

Para información sobre maneras de obtener ayuda legal, vea nuestra página de Internet [Cómo encontrar ayuda legal](#). Algunas maneras de hablar con un abogado son por medio de una visita a un taller jurídico gratuito, o mediante el Centro de Ayuda. Estos talleres proveen información legal general y dan consejo legal breve. También hay ayuda legal a precios de descuento.

A Simplified Chinese version of this document is available on the court's website.

本文件的简体中文版可在法院网站上找到：

www.utcourts.gov/howto/filing/summons/docs/document_name_Chinese.pdf

A Vietnamese version of this document is available on the court's website:

Một bản tiếng Việt của tài liệu này có sẵn trên trang web của tòa:

www.utcourts.gov/howto/filing/summons/docs/document_name_Vietnamese.pdf

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date

Signature ► _____

Printed Name _____

Name

Address

City, State, Zip

Phone

Email

I am Plaintiff/Petitioner Defendant/Respondent
 Plaintiff/Petitioner's Attorney Defendant/Respondent's Attorney (Utah Bar #: _____)
 Plaintiff/Petitioner's Licensed Paralegal Practitioner
 Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #: _____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>v.</p> <p>_____ Defendant/Respondent</p>	<p>Summons (To be served in Utah)</p> <p>_____ Case Number</p> <p>_____ Judge</p> <p>_____ Commissioner (domestic cases)</p>
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The State of Utah to

_____ (party's name):

A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.

Se ha presentado una demanda en su contra. Si desea que el juez considere su lado, deberá presentar una respuesta por escrito dentro del periodo de tiempo establecido. La respuesta por escrito es conocida como la Respuesta.

Deadline!

Your Answer must be filed with the court and served on the other party **within 21 days** of the date you were served with this Summons.

If you do not file and serve your Answer by the deadline, the other party can ask the court for a default judgment. A default judgment means the other party can get what they asked for, and you do not get the chance to tell your side of the story.

Read the complaint/petition

The Complaint or Petition has been filed with the court and explains what the other party is asking for in their lawsuit. Read it carefully.

Answer the complaint/petition

You must file your Answer in writing with the court **within 21 days** of the date you were served with this Summons. You can find an Answer form on the court's website (www.utcourts.gov/howto/answer/).

Serve the Answer on the other party

You must email, mail or hand deliver a copy of your Answer to the other party (or their attorney or licensed paralegal practitioner, if they have one) at the address shown at the top left corner of the first page of this Summons.

¡Fecha límite para contestar!

Su Respuesta debe ser presentada en el tribunal y también con la debida entrega formal a la otra parte **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio.

Si usted no presenta una respuesta ni hace la entrega formal dentro del plazo establecido, la otra parte podrá pedirle al juez que asiente un fallo por incumplimiento. Un fallo por incumplimiento significa que la otra parte recibe lo que pidió, y usted no tendrá la oportunidad de decir su versión de los hechos.

Lea la demanda o petición

La demanda o petición fue presentada en el tribunal y ésta explica lo que la otra parte pide. Léala cuidadosamente.

Cómo responder a la demanda o petición

Usted debe presentar su Respuesta por escrito en el tribunal **dentro de 21 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio. En la página del tribunal (www.utcourts.gov/howto/answer/) puede encontrar el formulario para la presentación de la Respuesta.

Entrega formal de la respuesta a la otra parte

Usted deberá enviar por correo electrónico, correo o entregar personalmente una copia de su Respuesta a la otra parte (o a su abogado o asistente legal, si tiene) a la dirección localizada en la esquina izquierda superior de la primera hoja del citatorio.

Finding help

The court's Finding Legal Help web page (www.utcourts.gov/howto/legalassist/) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.

Cómo encontrar ayuda legal

Para información sobre maneras de obtener ayuda legal, vea nuestra página de Internet Cómo encontrar ayuda legal. Algunas maneras de hablar con un abogado son por medio de una visita a un taller jurídico gratuito, o mediante el Centro de Ayuda. Estos talleres proveen información legal general y dan consejo legal breve. También hay ayuda legal a precios de descuento.

A Simplified Chinese version of this document is available on the court's website.

本文件的简体中文版可在法院网站上找到：

www.utcourts.gov/howto/filing/summons/docs/1015GE_Summons_In_State_Chinese.pdf

A Vietnamese version of this document is available on the court's website:

Một bản tiếng Việt của tài liệu này có sẵn trên trang web của tòa:

www.utcourts.gov/howto/filing/summons/docs/1015GE_Summons_In_State_Vietnamese.pdf

Plaintiff/Petitioner or Defendant/Respondent

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date

Signature ► _____
Printed Name _____

Attorney or Licensed Paralegal Practitioner of record (if applicable)

Date

Signature ► _____
Printed Name _____

Name

Address

City, State, Zip

Phone

Email

I am Plaintiff/Petitioner Defendant/Respondent
 Plaintiff/Petitioner's Attorney Defendant/Respondent's Attorney (Utah Bar #: _____)
 Plaintiff/Petitioner's Licensed Paralegal Practitioner
 Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #: _____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>v.</p> <p>_____ Defendant/Respondent</p>	<p>Summons (To be served outside Utah)</p> <p>_____ Case Number</p> <p>_____ Judge</p> <p>_____ Commissioner (domestic cases)</p>
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The State of Utah to

_____ (party's name):

A lawsuit has been filed against you. You must respond in writing by the deadline for the court to consider your side. The written response is called an Answer.

Se ha presentado una demanda en su contra. Si desea que el juez considere su lado, deberá presentar una respuesta por escrito dentro del periodo de tiempo establecido. La respuesta por escrito es conocida como la Respuesta.

Deadline!

Your Answer must be filed with the court and served on the other party **within 30 days** of the date you were served with this Summons.

If you do not file and serve your Answer by the deadline, the other party can ask the court for a default judgment. A default judgment means the other party can get what they asked for, and you do not get the chance to tell your side of the story.

Read the complaint/petition

The Complaint or Petition has been filed with the court and explains what the other party is asking for in their lawsuit. Read it carefully.

Answer the complaint/petition

You must file your Answer in writing with the court **within 30 days** of the date you were served with this Summons. You can find an Answer form on the court's website: www.utcourts.gov/howto/answer/.

Serve the Answer on the other party

You must email, mail or hand deliver a copy of your Answer to the other party (or their attorney or licensed paralegal practitioner, if they have one) at the address shown at the top left corner of the first page of this Summons.

¡Fecha límite para contestar!

Su Respuesta debe ser presentada en el tribunal y también con la debida entrega formal a la otra parte **dentro de 30 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio.

Si usted no presenta una respuesta ni hace la entrega formal dentro del plazo establecido, la otra parte podrá pedirle al juez que asiente un fallo por incumplimiento. Un fallo por incumplimiento significa que la otra parte recibe lo que pidió, y usted no tendrá la oportunidad de decir su versión de los hechos.

Lea la demanda o petición

La demanda o petición fue presentada en el tribunal y ésta explica lo que la otra parte pide. Léala cuidadosamente.

Cómo responder a la demanda o petición

Usted debe presentar su Respuesta por escrito en el tribunal **dentro de 30 días** a partir de la fecha en que usted recibió la entrega formal del Citatorio. En la página del tribunal www.utcourts.gov/howto/answer/ puede encontrar el formulario para la presentación de la Respuesta.

Entrega formal de la respuesta a la otra parte

Usted deberá enviar por correo electrónico, correo o entregar personalmente una copia de su Respuesta a la otra parte (o a su abogado o asistente legal, si tiene) a la dirección localizada en la esquina izquierda superior de la primera hoja del citatorio.

Finding help

The court's Finding Legal Help web page (www.utcourts.gov/howto/legalassist/) provides information about the ways you can get legal help, including the Self-Help Center, reduced-fee attorneys, limited legal help and free legal clinics.

Cómo encontrar ayuda legal

Para información sobre maneras de obtener ayuda legal, vea nuestra página de Internet Cómo encontrar ayuda legal. Algunas maneras de hablar con un abogado son por medio de una visita a un taller jurídico gratuito, o mediante el Centro de Ayuda. Estos talleres proveen información legal general y dan consejo legal breve. También hay ayuda legal a precios de descuento.

A Simplified Chinese version of this document is available on the court's website
本文件的简体中文版可在法院网站上找到：

www.utcourts.gov/howto/filing/summons/docs/1016GE_Summons_Out_State_Chinese.pdf

A Vietnamese version of this document is available on the court's website:

Một bản tiếng Việt của tài liệu này có sẵn trên trang web của tòa:

www.utcourts.gov/howto/filing/summons/docs/1016GE_Summons_Out_State_Vietnamese.pdf

Plaintiff/Petitioner or Defendant/Respondent

I declare under criminal penalty under the law of Utah that everything stated in this document is true.

Signed at _____ (city, and state or country).

Date

Signature ► _____
Printed Name _____

Attorney or Licensed Paralegal Practitioner of record (if applicable)

Date

Signature ► _____
Printed Name _____

Name

This is important. You must respond to these requests within 28 days. If you do not, you could lose your case.

Address

City, State, Zip

Phone

Check your email. You will receive information and documents at this email address.

Email

I am Plaintiff/Petitioner Defendant/Respondent
 Plaintiff/Petitioner's Attorney Defendant/Respondent's Attorney (Utah Bar #: _____)
 Plaintiff/Petitioner's Licensed Paralegal Practitioner
 Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #: _____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>V.</p> <p>_____ Defendant/Respondent</p>	<p>Plaintiff's First Set of Requests for Admissions</p> <p>_____ Case Number</p> <p>_____ Judge</p> <p>_____ Commissioner (domestic cases)</p>
---	---

Name

Address

City, State, Zip

Phone

Email

This is important. You must respond to these requests within 28 days. If you do not, your case could be dismissed

Check your email. You will receive information and documents at this email address.

I am Plaintiff/Petitioner Defendant/Respondent
 Plaintiff/Petitioner's Attorney Defendant/Respondent's Attorney (Utah Bar #: _____)
 Plaintiff/Petitioner's Licensed Paralegal Practitioner
 Defendant/Respondent's Licensed Paralegal Practitioner (Utah Bar #: _____)

In the District Court of Utah

_____ Judicial District _____ County

Court Address _____

<p>_____ Plaintiff/Petitioner</p> <p>V.</p> <p>_____ Defendant/Respondent</p>	<p>Defendant's First Set of Requests for Admissions</p> <p>_____ Case Number</p> <p>_____ Judge</p> <p>_____ Commissioner (domestic cases)</p>
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Tab 4



KAUFMAN NICHOLS & KAUFMAN

205 26th Street Suite 34 – Ogden, UT 84401
(801) 394-6062 – felt@knoklaw.com

Jonathan L. Felt
Attorney & Mediator

December 13, 2019

UTAH BAR RULES COMMITTEE

c/o Jonathan Hafen
Parr Brown
101 South 200 East, Suite 700
Salt Lake City, UT 84111

Re: Request to Amend Rule 55 – Notice prior to Default of Counter-/Cross Claims

Dear Rules Committee,

I would like to propose a rule change to URCP 55 to require notice of potential default prior to obtaining default on a counterclaim or cross claim.

I am a family law attorney, and I often volunteer for *pro se* domestic hearings. I have represented a number of clients who start their cases *pro se* and find out later they are over their head or have made significant mistakes in their case which require a lot of work to fix.

I am concerned by the number of cases I have seen involving requests for default on domestic counterclaims. Under the current rule and current practices, a party who files a counterclaim can get a default on counterclaim simply because the Petitioner or Plaintiff does not know they are required to answer the counterclaim. I have need to help *pro se* parties and previously *pro se* parties walk back a default judgment, which causes extra unnecessary work for the party, for the court, and often for already-strained *pro bono* and *low bono* services.

I believe the current practice causes significant unnecessary legal work for parties and for the court. I believe much of the unnecessary, often unwarranted nuisance caused can be addressed by amending URCP 55 to include a notice provision prior to defaulting counter- and cross claims.

I therefore propose an amendment to Rule 55 of the Utah Rules of Civil Procedure to include a notice provision prior to defaults on counterclaims and crossclaims. I recommend either of the following or any similar amendment:

- Add a new subpart (f): **Notice requirement.** Prior seeking default, a party must provide no less than 14 days' notice to the other party, whether in the summons or a stand-alone notice, that failure to answer the claim, counterclaim, or cross claim may result in default.

or

- Amend subpart (d): **Plaintiffs, counterclaimants, cross-claimants.** The provisions of this rule apply to whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has plead a cross-claim or counterclaim. In such cases, the party seeking default must provide no less than 14 days' notice to the other party that

failure to answer the claim upon which default is sought may result in default. In all cases a judgment by default is subject to the limitations of Rule 54(c).

Such an amendment is warranted to put *pro se* parties (and young, new attorneys) on notice that they are required to Answer counterclaims and cross claims. A *pro se* Respondent or Defendant receives notice in the Summons that they are required to Answer or a default may be entered; but a *pro se* Petitioner receives no notice at all indicating they should respond to the Answer and Counterclaim. Most Petitioners I speak with in such circumstances are bewildered how a default can be entered against them when they were the party who filed the case in the first place.

I strongly believe that such an amendment would protect the growing number of *pro se* parties in domestic cases and would create only a minimal burden to the party seeking default. It would significantly reduce the number of cases where a party seeks or gets default on a counterclaim, only to be later re-opened by Petitioners because the Petitioner did not receive notice of the potential default. I believe it will ultimately reduce unnecessary work in the Courts.

Please consider the proposed amendment. I am happy to provide any additional information or background that might help in the consideration.

Sincerest Regards,



JONATHAN L. FELT

Family Law Attorney, Mediator & GAL

Rule 55. Default.

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear the clerk shall enter the default of that party.

(b) Judgment. Judgment by default may be entered as follows:

(b)(1) By the clerk. When the plaintiff's claim against a defendant is for a sum certain, upon request of the plaintiff the clerk shall enter judgment for the amount claimed and costs against the defendant if:

(b)(1)(A) the default of the defendant is for failure to appear;

(b)(1)(B) the defendant is not an infant or incompetent person;

(b)(1)(C) the defendant has been personally served pursuant to Rule 4(d)(1); and

(b)(1)(D) the plaintiff, through a verified complaint, an affidavit, or an unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, submitted in support of the default judgment, sets forth facts necessary to establish the amount of the claim, after deducting all credits to which the defendant is entitled, and verifies the amount is warranted by information in the plaintiff's possession.

(b)(2) By the court. In all other cases the party entitled to a judgment by default shall apply to the court therefor. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper.

(c) Setting aside default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

(d) Plaintiffs, counterclaimants, cross-claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(e) Judgment against the state or officer or agency thereof. No judgment by default shall be entered against the state of Utah or against an officer or agency thereof unless the claimant establishes his claim or right to relief by evidence satisfactory to the court.

(f) Notice requirement. Prior to seeking default, a party must provide no fewer than 14 days notice to the other party, whether in a summons or standalone notice, that failure to answer the claim, cross-claim, or counter-claim may result in [default] [judgment being entered against that party].

Alternative:

(f) Caution language. A party seeking default must provide 14-days notice and include the following language on the first page of the document, to the right of the movant's name, in bold type:

This is important. You must respond to the [claim/cross-claim/counterclaim] within 14 days of receiving this notice. If you do not, you could lose your case.

Tab 5

URCP Rule 65C

URCP065C. Post-conviction relief. AMEND. Addresses service of post-conviction petitions and the underlying court record.

<https://www.utcourts.gov/utc/rules-comment/2019/10/22/rules-of-civil-procedure-comment-period-closes-december-6-2019/>

Comments

Doug Thompson

I think serving the respondent with a copy of the record in (i) makes sense, though it seems that if the respondent gets a copy, a copy should also be sent to the petitioner for use in any reply or amended petition. The petitioner has filed a petition and survived summary disposition likely without unfettered access to the record, Isn't it fair that if the government gets to respond using the record, the petitioner (who most times is a pro se inmate in a correctional facility) should be able to see what the government is referring to?

I'd suggest adding the following language:

(i) Service of petitions. If, on review of the petition, the court concludes that all or part of the petition should not be summarily dismissed, the court shall designate the portions of the petition that are not dismissed and direct the clerk to serve a copy of the petition, attachments, and memorandum, and the court record of the underlying criminal case being challenged, including all non-public documents, by mail upon the petitioner and respondent. In lieu of mailing paper copies, the clerk may mail to the respondent a storage medium containing electronic copies of the records enumerated above. The petitioner may request that the record be provided in paper form.

Nancy's comment:

Doug's suggestion to add the petitioner likely makes sense but the last sentence is probably not a good idea. The clerks of court are trying to get away from mailing out paper copies now that almost all records are electronic. Paper copies create an unnecessary amount of work for court staff.

Earl Tanner

I agree with Doug Thompson but have a comment on his proposed amendment. If the default rule is sending paper to both petitioner and respondent, shouldn't the last sentence authorize a request by the petitioner for the records in electronic form?

Nancy's comment:

The default is now electronic form under the new language, so this suggestion does not need to be adopted.

1 **Rule 65C. Post-conviction relief.**

2 **(a) Scope.** This rule governs proceedings in all petitions for post-conviction relief filed under the Post-
3 Conviction Remedies Act, Utah Code [Title 78B, Chapter 9](#). The Act sets forth the manner and extent to
4 which a person may challenge the legality of a criminal conviction and sentence after the conviction and
5 sentence have been affirmed in a direct appeal under [Article I, Section 12](#) of the Utah Constitution, or the
6 time to file such an appeal has expired.

7 **(b) Procedural defenses and merits review.** Except as provided in paragraph (h), if the court
8 comments on the merits of a post-conviction claim, it shall first clearly and expressly determine whether
9 that claim is independently precluded under Section [78B-9-106](#).

10 **(c) Commencement and venue.** The proceeding shall be commenced by filing a petition with the
11 clerk of the district court in the county in which the judgment of conviction was entered. The petition
12 should be filed on forms provided by the court. The court may order a change of venue on its own motion
13 if the petition is filed in the wrong county. The court may order a change of venue on motion of a party for
14 the convenience of the parties or witnesses.

15 **(d) Contents of the petition.** The petition shall set forth all claims that the petitioner has in relation to
16 the legality of the conviction or sentence. The petition shall state:

17 (d)(1) whether the petitioner is incarcerated and, if so, the place of incarceration;

18 (d)(2) the name of the court in which the petitioner was convicted and sentenced and the dates of
19 proceedings in which the conviction was entered, together with the court's case number for those
20 proceedings, if known by the petitioner;

21 (d)(3) in plain and concise terms, all of the facts that form the basis of the petitioner's claim to
22 relief;

23 (d)(4) whether the judgment of conviction, the sentence, or the commitment for violation of
24 probation has been reviewed on appeal, and, if so, the number and title of the appellate proceeding,
25 the issues raised on appeal, and the results of the appeal;

26 (d)(5) whether the legality of the conviction or sentence has been adjudicated in any prior post-
27 conviction or other civil proceeding, and, if so, the case number and title of those proceedings, the
28 issues raised in the petition, and the results of the prior proceeding; and

29 (d)(6) if the petitioner claims entitlement to relief due to newly discovered evidence, the reasons
30 why the evidence could not have been discovered in time for the claim to be addressed in the trial,
31 the appeal, or any previous post-conviction petition.

32 **(e) Attachments to the petition.** If available to the petitioner, the petitioner shall attach to the
33 petition:

34 (e)(1) affidavits, copies of records and other evidence in support of the allegations;

35 (e)(2) a copy of or a citation to any opinion issued by an appellate court regarding the direct
36 appeal of the petitioner's case;

37 (e)(3) a copy of the pleadings filed by the petitioner in any prior post-conviction or other civil
38 proceeding that adjudicated the legality of the conviction or sentence; and

39 (e)(4) a copy of all relevant orders and memoranda of the court.

40 **(f) Memorandum of authorities.** The petitioner shall not set forth argument or citations or discuss
41 authorities in the petition, but these may be set out in a separate memorandum, two copies of which shall
42 be filed with the petition.

43 **(g) Assignment.** On the filing of the petition, the clerk shall promptly assign and deliver it to the judge
44 who sentenced the petitioner. If the judge who sentenced the petitioner is not available, the clerk shall
45 assign the case in the normal course.

46 **(h)(1) Summary dismissal of claims.** The assigned judge shall review the petition, and, if it is
47 apparent to the court that any claim has been adjudicated in a prior proceeding, or if any claim in the
48 petition appears frivolous on its face, the court shall forthwith issue an order dismissing the claim, stating
49 either that the claim has been adjudicated or that the claim is frivolous on its face. The order shall be sent
50 by mail to the petitioner. Proceedings on the claim shall terminate with the entry of the order of dismissal.
51 The order of dismissal need not recite findings of fact or conclusions of law.

52 (h)(2) A claim is frivolous on its face when, based solely on the allegations contained in the
53 pleadings and attachments, it appears that:

54 (h)(2)(A) the facts alleged do not support a claim for relief as a matter of law;

55 (h)(2)(B) the claim has no arguable basis in fact; or

56 (h)(2)(C) the claim challenges the sentence only and the sentence has expired prior to the
57 filing of the petition.

58 (h)(3) If a claim is not frivolous on its face but is deficient due to a pleading error or failure to
59 comply with the requirements of this rule, the court shall return a copy of the petition with leave to
60 amend within 21 days. The court may grant one additional 21-day period to amend for good cause
61 shown.

62 (h)(4) The court shall not review for summary dismissal the initial post-conviction petition in a
63 case where the petitioner is sentenced to death.

64 **(i) Service of petitions.** If, on review of the petition, the court concludes that all or part of the petition
65 should not be summarily dismissed, the court shall designate the portions of the petition that are not
66 dismissed and direct the clerk to serve a copy of the petition, attachments, ~~and memorandum,~~ and the
67 court record of the underlying criminal case being challenged, including all non-public documents, by mail
68 upon the petitioner and respondent. In lieu of mailing paper copies, the clerk may mail to the respondent
69 a storage medium containing electronic copies of the records enumerated above.

70 (i)(1) If the petition is a challenge to a felony conviction or sentence, the respondent is the state of
71 Utah represented by the Attorney General. Service on the Attorney General shall be by mail at the
72 following address:

73 Utah Attorney General's Office

74 Criminal Appeals

75 Post-Conviction Section

76 160 East 300 South, 6th Floor

77 P.O. Box 140854

78 Salt Lake City, UT 84114-0854

79 (i)(2) In all other cases, the respondent is the governmental entity that prosecuted the petitioner.

80 **(j) Appointment of pro bono counsel.** If any portion of the petition is not summarily dismissed, the
81 court may, upon the request of an indigent petitioner, appoint counsel on a pro bono basis to represent
82 the petitioner in the post-conviction court or on post-conviction appeal. In determining whether to appoint
83 counsel the court shall consider whether the petition or the appeal contains factual allegations that will
84 require an evidentiary hearing and whether the petition involves complicated issues of law or fact that
85 require the assistance of counsel for proper adjudication.

86 **(k) Answer or other response.** Within 30 days after service of a copy of the petition upon the
87 respondent, or within such other period of time as the court may allow, the respondent shall answer or
88 otherwise respond to the portions of the petition that have not been dismissed and shall serve the answer or
89 other response upon the petitioner in accordance with Rule [5\(b\)](#). Within 30 days (plus time allowed for
90 service by mail) after service of any motion to dismiss or for summary judgment, the petitioner may
91 respond by memorandum to the motion. No further pleadings or amendments will be permitted unless
92 ordered by the court.

93 **(l) Hearings.** After pleadings are closed, the court shall promptly set the proceeding for a hearing or
94 otherwise dispose of the case. The court may also order a prehearing conference, but the conference
95 shall not be set so as to delay unreasonably the hearing on the merits of the petition. At the prehearing
96 conference, the court may:

97 (l)(1) consider the formation and simplification of issues;

98 (l)(2) require the parties to identify witnesses and documents; and

99 (l)(3) require the parties to establish the admissibility of evidence expected to be presented at the
100 evidentiary hearing.

101 **(m) Presence of the petitioner at hearings.** The petitioner shall be present at the prehearing
102 conference if the petitioner is not represented by counsel. The prehearing conference may be conducted
103 by means of telephone or video conferencing. The petitioner shall be present before the court at hearings
104 on dispositive issues but need not otherwise be present in court during the proceeding. The court may
105 conduct any hearing at the correctional facility where the petitioner is confined.

106 **(n) Discovery; records.**

107 (n)(1) Discovery under Rules [26](#) through [37](#) shall be allowed by the court upon motion of a party
108 and a determination that there is good cause to believe that discovery is necessary to provide a party
109 with evidence that is likely to be admissible at an evidentiary hearing.

110 (n)(2) The court may order either the petitioner or the respondent to obtain any relevant transcript
111 or court records.

112 (n)(3) All records in the criminal case under review, including the records in an appeal of that
113 conviction, are deemed part of the trial court record in the petition for post-conviction relief. A record
114 from the criminal case retains the security classification that it had in the criminal case.

115 **(o) Orders; stay.**

116 (o)(1) If the court vacates the original conviction or sentence, it shall enter findings of fact and
117 conclusions of law and an appropriate order. If the petitioner is serving a sentence for a felony
118 conviction, the order shall be stayed for 7 days. Within the stay period, the respondent shall give
119 written notice to the court and the petitioner that the respondent will pursue a new trial, pursue a new
120 sentence, appeal the order, or take no action. Thereafter the stay of the order is governed by these
121 rules and by the [Rules of Appellate Procedure](#).

122 (o)(2) If the respondent fails to provide notice or gives notice that no action will be taken, the stay
123 shall expire and the court shall deliver forthwith to the custodian of the petitioner the order to release
124 the petitioner.

125 (o)(3) If the respondent gives notice that the petitioner will be retried or resentenced, the trial
126 court may enter any supplementary orders as to arraignment, trial, sentencing, custody, bail,
127 discharge, or other matters that may be necessary and proper.

128 **(p) Costs.** The court may assign the costs of the proceeding, as allowed under Rule [54\(d\)](#), to any
129 party as it deems appropriate. If the petitioner is indigent, the court may direct the costs to be paid by the
130 governmental entity that prosecuted the petitioner. If the petitioner is in the custody of the Department of
131 Corrections, Utah Code [Title 78A, Chapter 2, Part 3](#) governs the manner and procedure by which the trial
132 court shall determine the amount, if any, to charge for fees and costs.

133 **(q) Appeal.** Any final judgment or order entered upon the petition may be appealed to and reviewed
134 by the Court of Appeals or the Supreme Court of Utah in accord with the statutes governing appeals to
135 those courts.

136 [Advisory Committee Notes](#)

137

Tab 6



Nancy Sylvester <nancyjs@utcourts.gov>

Mistake in citing reference in URCP 5(a)(2)(D)?

Jessica Van Buren <jessicavb@utcourts.gov>
To: Nancy Sylvester <nancyjs@utcourts.gov>

Mon, Nov 25, 2019 at 3:20 PM

Nancy,

I think there may be a mistake in the citing reference in URCP 5(a)(2)(D).

It cites to URCP 58A(d), (Judge's signature), but I think it's supposed to cite to URCP 58A(g), (Notice of judgment).

-jvb

[Jessica Van Buren, State Law Librarian](#)

Utah State Law Library

450 S. State Street / PO Box 140220

Salt Lake City, UT 84114-0220

801-238-7991 / jessicavb@utcourts.gov

www.utcourts.gov/lawlibrary

1 **Rule 5. Service and filing of pleadings and other papers.**

2 **(a) When service is required.**

3 **(a)(1) Papers that must be served.** Except as otherwise provided in these rules or as otherwise
4 directed by the court, the following papers must be served on every party:

5 (a)(1)(A) a judgment;

6 (a)(1)(B) an order that states it must be served;

7 (a)(1)(C) a pleading after the original complaint;

8 (a)(1)(D) a paper relating to disclosure or discovery;

9 (a)(1)(E) a paper filed with the court other than a motion that may be heard ex parte; and

10 (a)(1)(F) a written notice, appearance, demand, offer of judgment, or similar paper.

11 **(a)(2) Serving parties in default.** No service is required on a party who is in default except that:

12 (a)(2)(A) a party in default must be served as ordered by the court;

13 (a)(2)(B) a party in default for any reason other than for failure to appear must be served as
14 provided in paragraph (a)(1);

15 (a)(2)(C) a party in default for any reason must be served with notice of any hearing to
16 determine the amount of damages to be entered against the defaulting party;

17 (a)(2)(D) a party in default for any reason must be served with notice of entry of judgment
18 under Rule [58A\(dg\)](#); and

19 (a)(2)(E) a party in default for any reason must be served under Rule [4](#) with pleadings
20 asserting new or additional claims for relief against the party.

21 **(a)(3) Service in actions begun by seizing property.** If an action is begun by seizing property
22 and no person is or need be named as defendant, any service required before the filing of an answer,
23 claim or appearance must be made upon the person who had custody or possession of the property
24 when it was seized.

25 **(b) How service is made.**

26 **(b)(1) Whom to serve.** If a party is represented by an attorney, a paper served under this rule
27 must be served upon the attorney unless the court orders service upon the party. Service must be
28 made upon the attorney and the party if:

29 (b)(1)(A) an attorney has filed a Notice of Limited Appearance under Rule [75](#) and the papers
30 being served relate to a matter within the scope of the Notice; or

31 (b)(1)(B) a final judgment has been entered in the action and more than 90 days has elapsed
32 from the date a paper was last served on the attorney.

33 **(b)(2) When to serve.** If a hearing is scheduled 7 days or less from the date of service, a party
34 must serve a paper related to the hearing by the method most likely to be promptly received.
35 Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

36 **(b)(3) Methods of service.** A paper is served under this rule by:

37 (b)(3)(A) except in the juvenile court, submitting it for electronic filing, or the court submitting it
38 to the electronic filing service provider, if the person being served has an electronic filing account;

39 (b)(3)(B) emailing it to

40 (b)(3)(B)(i) the most recent email address provided by the person to the court under [Rule](#)
41 [10\(a\)\(3\)](#) or [Rule 76](#), or

42 (b)(3)(B)(ii) to the email address on file with the Utah State Bar;

43 (b)(3)(C) mailing it to the person's last known address;

44 (b)(3)(D) handing it to the person;

45 (b)(3)(E) leaving it at the person's office with a person in charge or, if no one is in charge,
46 leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

47 (b)(3)(F) leaving it at the person's dwelling house or usual place of abode with a person of
48 suitable age and discretion who resides there; or

49 (b)(3)(G) any other method agreed to in writing by the parties.

50 **(b)(4) When service is effective.** Service by mail or electronic means is complete upon sending.

51 **(b)(5) Who serves.** Unless otherwise directed by the court:

52 (b)(5)(A) every paper required to be served must be served by the party preparing it; and

53 (b)(5)(B) every paper prepared by the court will be served by the court.

54 **(c) Serving numerous defendants.** If an action involves an unusually large number of defendants,
55 the court, upon motion or its own initiative, may order that:

56 (c)(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

57 (c)(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and
58 replies to them are deemed denied or avoided by all other parties;

59 (c)(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all
60 other parties; and

61 (c)(4) a copy of the order must be served upon the parties.

62 **(d) Certificate of service.** A paper required by this rule to be served, including electronically filed
63 papers, must include a signed certificate of service showing the name of the document served, the date
64 and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not
65 apply to papers required to be served under paragraph (b)(5)(B) when service to all parties is made under
66 paragraph (b)(3)(A).

67 **(e) Filing.** Except as provided in Rule [7\(j\)](#) and Rule [26\(f\)](#), all papers after the complaint that are
68 required to be served must be filed with the court. Parties with an electronic filing account must file a
69 paper electronically. A party without an electronic filing account may file a paper by delivering it to the
70 clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the
71 electronic filing system, the clerk of court or the judge.

72 **(f) Filing an affidavit or declaration.** If a person files an affidavit or declaration, the filer may:

73 (f)(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah
74 Code Section [46-1-16\(7\)](#);

75 (f)(2) electronically file a scanned image of the affidavit or declaration;

76 (f)(3) electronically file the affidavit or declaration with a conformed signature; or

77 (f)(4) if the filer does not have an electronic filing account, present the original affidavit or
78 declaration to the clerk of the court, and the clerk will electronically file a scanned image and return
79 the original to the filer.

80 The filer must keep an original affidavit or declaration of anyone other than the filer safe and available
81 for inspection upon request until the action is concluded, including any appeal or until the time in which to
82 appeal has expired.

83 **[Advisory Committee Notes](#)**