

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

Summary Minutes – February 24, 2021

**DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX**

Committee members & staff	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair	X		
Robert Adler	X		
Rod N. Andreason	X		
Paul Barron	X		
Judge James T. Blanch	X		
Lauren DiFrancesco	X		
Judge Kent Holmberg	X		
James Hunnicutt	X		
Trevor Lee			X
Judge Amber M. Mettler	X		
Brooke McKnight	X		
Ash McMurray			
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	
Nick Stiles	X		
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Nancy Sylvester, Staff	X		
Kim Neville, Recording Secretary	X		

(1) WELCOME AND APPROVAL OF MINUTES

Jonathan Hafen welcomed the Committee and asked for approval of the January minutes as amended with comments from the minutes sub-committee. Rod Andreason moved to adopt the minutes as amended; Jim Hunnicutt seconded. The minutes were approved unanimously.

(2) RULES BACK FROM COMMENT

Nancy Sylvester presented a summary of the comments received on the proposed rules that were sent out for public comment (Rules 43, 5, 76, 6, 7, 37, and 45).

The Committee received public comments in support of the proposed changes to Rule 6, which extends the number of days allowed for a response from 3 to 7, when service is completed by mail. The Committee did receive one comment suggesting that the time frame would be more appropriate extended to 4 or 5 days (instead of 7). The consensus of the Committee, however, is that 7 days is appropriate as the proposed rule applies largely to pro se litigants who frequently report delays in service by mail. E-filers are unlikely to be affected.

The Committee also received comments to proposed Rule 7, with one comment requesting additional guidance as to how parties can address accusers in video proceedings. The consensus of the Committee is that the proposed rule change addressed these issues and struck an appropriate balance by affording certain deference to the trial court to manage its proceedings. Additional minor stylistic changes were provided by the commentator, which were adopted.

With respect to Rule 37, the Committee received one comment stating that the reference to Rule 43(b) was superfluous. Leslie Slaugh and Lauren DiFrancesco both spoke in favor of the original proposed language, as the proposed change allows the court to conduct proceedings by either telephone or videoconference. The proposed language clarifies that the court will utilize appropriate safeguards when remote hearings are conducted. The consensus of the Committee is that it was important to acknowledge the need for safeguards in both Rule 37 and Rule 43.

The same comment also addressed Rule 43, raising critique on several subparts. Specifically, the comment suggested that use of the word “shall” in Rule 43(a) be replaced with “must” with respect to the oath. Ms. Sylvester noted that the term “shall” is used in the correlating statute. Accordingly, the Committee prefers to track the language used by the Legislature. The comment also expressed concerns about use of the term “practical” as being confusing. The Committee changed the term to “feasible” in order to better clarify this term. The comment also suggested breaking out the good cause and safeguard concepts into multiple sections; however, the Committee favors the succinct wording. The comment also indicated a preference for use of a plural form, along with minor criticisms as to the use of certain adjectives. The Committee considered each suggestion identified by the comments and deleted one superfluous “necessary.”

The consensus of the Committee is that the remaining terms are appropriate in light of prior discussions regarding the terms. The comment also raised a number of issues with respect to subsection (b). The Committee elected to replace the phrase “and other things,” with “electronic materials” for clarity. The Committee also adopted several of the comment’s proposed stylistic suggestions with regard to subsection (c).

The Committee received a set of comments from another member of the bar with regard to Rules 5 and 6. The comment suggested that proposed Rule 5 address what should happen when an email is returned, and advise litigants of the need to regularly check spam filters. Mr. Slauch noted that the court expects all e-filers to maintain a working email address with the courts and to assume responsibility for ensuring their technology is reliable. Ms. Sylvester also noted that Rule 76 addresses contact information changes. Judge Holmberg recommended that the Committee adopt wording similar to that used in Maine’s Rule of Civil Procedure 5(b)(2), which states in part:

If Electronic Service to the last known electronic mail address is returned as undeliverable, or the sender otherwise learns that it was not successfully delivered, service must then be made by regular mail. Service shall be complete upon the attempted Electronic Service for purposes of the sender meeting any time period.

This provision was included under sub-section (b) in a modified form. Per Ms. Vogel’s suggestion, the phrase “or the sender otherwise learns that it was not successfully delivered” was deleted and “if the person to be served has provided a mailing address” was added. These changes are for the benefit of pro se litigants, who frequently report that they have not been served.

The same comment also advocated for a shorter period of time for mailing days. The consensus of the Committee is that seven days is appropriate for the reasons previously stated.

The Committee received comments from two other members of the bar with respect to Rule 43, both of whom expressed concern about the use of remote testimony. These comments expressed concern that the court or counsel would not be able to reliably assess credibility through remote hearing. The Committee noted that a remote hearing is not required, but left to the judgement of the trial judge.

Copies of the revised rule changes, which incorporate the public comments that were received and considered, are attached as **Exhibit A**.

(3) PANDEMIC AMENDMENTS

Susan Vogel presented the proposed amendments to Rule 12 with respect to landlord-tenant claims. Under the current statute, a tenant has three days to respond to an eviction proceeding, while the landlord has 21 days to respond to a counterclaim. The proposed change would provide for equal response time, by requiring a three-day response to any counterclaim. This would also

allow the occupancy hearing to proceed within ten days as required by statute. Ms. Vogel noted that many pro se litigants and tenants express frustration with the process and what they perceive to be an inherent unfairness in the process. Ms. Vogel also reminded the Committee that 94% of the defendants in landlord-tenant cases are unrepresented; while only 8% of plaintiffs are unrepresented. The proposed language has been vetted with Utah Legal Services, which supports the change.

The proposed change would add the following phrase to Rule 12(a): “However, the plaintiff in an unlawful detainer action shall serve a reply to a counterclaim within three business days after service of the counterclaim.”

Judge Stone suggested that the language be limited to cases “affecting occupancy.” Judge Scott noted that trial courts have difficulty contacting defendants who have been evicted, which can create administrative problems when cases continue beyond an occupancy hearing. Judge Scott also noted that it is rare for a case to continue after an order of restitution is issued, other than for default proceedings. Judge Scott also suggested that the Committee may benefit from hearing from Judge Parker on the issue, as he currently oversees the landlord-tenant calendar in Third District.

Mr. Hunnicutt also suggested that it would be appropriate to hear from attorneys representing landlords to hear any counter-arguments. Judge Blanch also joined Judge Scott’s suggestion that the Committee reach out to Judge Parker before taking further action. Ms. Sylvester will contact Judge Parker on behalf of the Committee.

(3) FAMILY LAW AMENDMENTS

Jim Hunnicutt presented the proposed family law amendments, starting with Rule 108. The Committee has collected feedback in response to *Day v. Barnes*, 2018 UT App 143. Judge Holmberg surveyed judges in the districts that have domestic commissioners, who have noted a sharp increase in the number of objections. Judge Holmberg also reported that the trial judges indicate widespread support for imposing a standard of review other than de novo. Judge Stone and Judge Holmberg indicated that many trial judges will conduct a hearing when an objection is made, and the manner in which the hearing proceeds (through evidence, proffer, or argument) is often conducted in consultation with the parties or counsel as to how the parties wish to proceed. Ms. Vogel expressed concern on behalf of pro se litigants, who often feel frustrated by the process and value the right to be heard through a full proceeding. Judge Blanch also commented on the standard of review, indicating that in practice, trial judges consider the commissioner’s ruling in evaluating the burden of persuasion, but often consider additional evidence that an objecting party may bring to the court’s attention.

The Committee decided to defer further discussion until the next meeting.

(4) ADJOURNMENT

The meeting adjourned at 6:02 p.m.

Exhibit A

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

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

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

5 (A) a judgment;

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

7 (C) a pleading after the original complaint;

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

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

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

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

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

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

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

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

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

23 **(3) Service in actions begun by seizing property.** If an action is begun by seizing
24 property and no person is or need be named as defendant, any service required

25 before the filing of an answer, claim or appearance must be made upon the person
26 who had custody or possession of the property when it was seized.

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

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

31 (A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the
32 papers being served relate to a matter within the scope of the Notice; or

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

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

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

40 (A) except in the juvenile court, submitting it for electronic filing, or the court
41 submitting it to the electronic filing service provider, if the person being served
42 has an electronic filing account;

43 (B) for a paper not electronically served under paragraph (b)(3)(A), emailing it to
44 ~~(i)~~ the most recent email address provided by the person to the court and other
45 parties under Rule 10(a)(3) or Rule 76, or by other notice, or
46 ~~(ii)~~ to the email address on file with the Utah State Bar. If email service to the
47 email address is returned as undeliverable, service must then be made by regular
48 mail if the person to be served has provided a mailing address. Service is
49 complete upon the attempted email service for purposes of the sender meeting
50 any time period;

51 | (C) if the person's email address has not been provided to the court and other
52 | parties, or if the person required to serve the document does not have the ability
53 | to email, a paper may be served under this rule by:

54 | (i) mailing it to the ~~person's~~ last known mailing address provided by the
55 | person to the court and other parties under Rule 10(a)(3) or Rule 76;

56 | ~~(D)~~(ii) handing it to the person;

57 | ~~(E)~~(iii) leaving it at the person's office with a person in charge or, if no one is
58 | in charge, leaving it in a receptacle intended for receiving deliveries or in a
59 | conspicuous place;

60 | ~~(F)~~(iv) leaving it at the person's dwelling house or usual place of abode with a
61 | person of suitable age and discretion who resides there; or

62 | ~~(G)~~(v) any other method agreed to in writing by the parties.

63 | **(4) When service is effective.** Service by mail or electronic means is complete upon
64 | sending.

65 | **(5) Who serves.** Unless otherwise directed by the court or these rules:

66 | (A) every paper required to be served must be served by the party preparing it;
67 | and

68 | (B) every paper prepared by the court will be served by the court.

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

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

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

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

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

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

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

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

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

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

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

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

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

102

103 **Advisory Committee Notes**

104 *Note adopted 2015*

105 Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the
106 document on lawyers who have an e-filing account. (Lawyers representing parties in
107 the district court are required to have an account and electronically file documents.
108 Code of Judicial Administration Rule 4-503.) The 2015 amendment excepts from this
109 provision documents electronically filed in juvenile court.

110 Although electronic filing in the juvenile court presents to the parties the documents
111 that have been filed, the juvenile court e-filing application (CARE), unlike that in the
112 district court, does not deliver an email alerting the party to that fact. The Board of
113 Juvenile Court Judges and the Advisory Committee on the Rules of Juvenile Procedure
114 believe this difference renders electronic filing alone insufficient notice of a document
115 having been filed. So in the juvenile court, a party electronically filing a document must
116 serve that document by one of the other permitted methods.

117

1 **Rule 6. Time.**

2 **(a) Computing time.** The following rules apply in computing any time period specified
3 in these rules, any local rule or court order, or in any statute that does not specify a
4 method of computing time.

5 (1) When the period is stated in days or a longer unit of time:

6 (A) exclude the day of the event that triggers the period;

7 (B) count every day, including intermediate Saturdays, Sundays, and legal
8 holidays; and

9 (C) include the last day of the period, but if the last day is a Saturday, Sunday, or
10 legal holiday, the period continues to run until the end of the next day that is not
11 a Saturday, Sunday or legal holiday.

12 (2) When the period is stated in hours:

13 (A) begin counting immediately on the occurrence of the event that triggers the
14 period;

15 (B) count every hour, including hours during intermediate Saturdays, Sundays,
16 and legal holidays; and

17 (C) if the period would end on a Saturday, Sunday, or legal holiday, the period
18 continues to run until the same time on the next day that is not a Saturday,
19 Sunday, or legal holiday.

20 (3) Unless the court orders otherwise, if the clerk's office is inaccessible:

21 (A) on the last day for filing under Rule 6(a)(1), then the time for filing is
22 extended to the first accessible day that is not a Saturday, Sunday or legal
23 holiday; or

24 (B) during the last hour for filing under Rule 6(a)(2), then the time for filing is
25 extended to the same time on the first accessible day that is not a Saturday,
26 Sunday, or legal holiday.

27 (4) Unless a different time is set by a statute or court order, filing on the last day
28 means:

29 (A) for electronic filing, before midnight; and

30 (B) for filing by other means, the filing must be made before the clerk's office is
31 scheduled to close.

32 (5) The "next day" is determined by continuing to count forward when the period is
33 measured after an event and backward when measured before an event.

34 (6) "Legal holiday" means the day for observing:

35 (A) New Year's Day;

36 (B) Dr. Martin Luther King, Jr. Day;

37 (C) Washington and Lincoln Day;

38 (D) Memorial Day;

39 (E) Independence Day;

40 (F) Pioneer Day;

41 (G) Labor Day;

42 (H) Columbus Day;

43 (I) Veterans' Day;

44 (J) Thanksgiving Day;

45 (K) Christmas; and

46 (L) any day designated by the Governor or Legislature as a state holiday.

47 **(b) Extending time.**

48 (1) When an act may or must be done within a specified time, the court may, for
49 good cause, extend the time:

50 (A) with or without motion or notice if the court acts, or if a request is made,
51 before the original time or its extension expires; or

52 (B) on motion made after the time has expired if the party failed to act because of
53 excusable neglect.

54 (2) A court must not extend the time to act under Rules 50(b) and (d), 52(b), 59(b), (d)
55 and (e), and 60(c).

56 **(c) Additional time after service by mail.** When a party may or must act within a
57 specified time after service and service is made exclusively by mail
58 under Rule 5(b)(3)(C)(i), 3-7 days are added after the period would otherwise expire
59 under paragraph (a).

60 **(d) Response time for an unrepresented party.** When a party is not represented by an
61 attorney, does not have an electronic filing account, and may or must act within a
62 specified time after the filing of a paper, the period of time within which the party may
63 or must act is counted from the service date and not the filing date of the paper.

64 **(e) Filing or service by inmate.**

65 (1) For purposes of Rule 45(i) and this paragraph (e), an inmate is a person confined
66 to an institution or committed to a place of legal confinement.

67 (2) Papers filed or served by an inmate are timely filed or served if they are
68 deposited in the institution's internal mail system on or before the last day for filing
69 or service. Timely filing or service may be shown by a contemporaneously filed
70 notarized statement or written declaration setting forth the date of deposit and
71 stating that first-class postage has been, or is being, prepaid, or that the inmate has
72 complied with any applicable requirements for legal mail set by the institution.
73 Response time will be calculated from the date the papers are received by the court,
74 or for papers served on parties that do not need to be filed with the court, the
75 postmark date the papers were deposited in U.S. mail.

76 (3) The provisions of paragraph (e)(2) do not apply to service of process, which is
77 governed by Rule 4.

1 **Rule 7. Pleadings allowed; motions, memoranda, hearings, orders.**

2 **(a) Pleadings.** Only these pleadings are allowed:

3 (1) a complaint;

4 (2) an answer to a complaint;

5 (3) an answer to a counterclaim designated as a counterclaim;

6 (4) an answer to a crossclaim;

7 (5) a third-party complaint;

8 (6) an answer to a third-party complaint; and

9 (7) a reply to an answer if ordered by the court.

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

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

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

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

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

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

22 **(c) Name and content of motion.**

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

25 (2) **Caution language.** For all dispositive motions, the motion must include the
26 following caution language at the top right corner of the first page, in bold type:
27 **This motion requires you to respond. Please see the Notice to Responding Party.**

28 (3) **Bilingual notice.** All motions must include or attach the bilingual Notice to
29 Responding Party approved by the Judicial Council.

30 (4) **Failure to include caution language and notice.** Failure to include the caution
31 language in paragraph (c)(2) or the bilingual notice in paragraph (c)(3) may be
32 grounds to continue the hearing on the motion, or may provide the non-moving
33 party with a basis under Rule 60(b) for excusable neglect to set aside the order
34 resulting from the motion. Parties may opt out of receiving the notices set forth in
35 paragraphs (c)(2) and (c)(3) while represented by counsel.

36 (5) **Title of motion.** The moving party must title the motion substantially as:
37 “Motion [short phrase describing the relief requested].”

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

40 (A) a concise statement of the relief requested and the grounds for the relief
41 requested; and

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

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

48 (8) **Length of motion.** If the motion is for relief authorized
49 by Rule [12\(b\)](#) or [12\(c\)](#), Rule [56](#) or Rule [65A](#), the motion may not exceed 25 pages, not
50 counting the attachments, unless a longer motion is permitted by the court. Other

51 motions may not exceed 15 pages, not counting the attachments, unless a longer
52 motion is permitted by the court.

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

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

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

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

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

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

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

73 **(e) Name and content of reply memorandum.**

74 (1) Within 7 days after the memorandum opposing the motion is filed, the moving
75 party may file a reply memorandum, which must be limited to rebuttal of new
76 matters raised in the memorandum opposing the motion. The moving party must

77 title the memorandum substantially as “Reply memorandum supporting motion
78 [short phrase describing the relief requested].” The memorandum must include
79 under appropriate headings and in the following order:

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

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

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

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

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

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

98 **(f) Objection to evidence in the reply memorandum; response.** If the reply
99 memorandum includes an objection to evidence, the nonmoving party may file a
100 response to the objection no later than 7 days after the reply memorandum is filed. If
101 the reply memorandum includes evidence not previously set forth, the nonmoving
102 party may file an objection to the evidence no later than 7 days after the reply
103 memorandum is filed, and the moving party may file a response to the objection no

104 later than 7 days after the objection is filed. The objection or response may not be more
105 than 3 pages.

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

111 (1) the motion;

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

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

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

115 **(h) Hearings.** The court may hold a hearing on any motion. A party may request a
116 hearing in the motion, in a memorandum or in the request to submit for decision. A
117 request for hearing must be separately identified in the caption of the document
118 containing the request. The court must grant a request for a hearing on a motion
119 under Rule 56 or a motion that would dispose of the action or any claim or defense in
120 the action unless the court finds that the motion or opposition to the motion is frivolous
121 or the issue has been authoritatively decided. A motion hearing may be held remotely,
122 consistent with the safeguards in Rule 43(b).

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

131 **(j) Orders.**

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

135 **(2) Preparing and serving a proposed order.** Within 14 days of being directed by the
136 court to prepare a proposed order confirming the court's decision, a party must
137 serve the proposed order on the other parties for review and approval as to form. If
138 the party directed to prepare a proposed order fails to timely serve the order, any
139 other party may prepare a proposed order confirming the court's decision and serve
140 the proposed order on the other parties for review and approval as to form.

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

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

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

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

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

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

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

158 (A) a stipulated motion;

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

160 (C) an ex parte motion;

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

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

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

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

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

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

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

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

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

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

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

- 180 (A) motion to permit an over-length motion or memorandum;
- 181 (B) motion for an extension of time if filed before the expiration of time;
- 182 (C) motion to appear pro hac vice; and
- 183 (D) other similar motions.
- 184 (2) A motion that can be acted on without waiting for a response must:
- 185 (A) be titled as a regular motion;
- 186 (B) include a concise statement of the relief requested and the grounds for the
- 187 relief requested;
- 188 (C) cite the statute or rule authorizing the motion to be acted on without waiting
- 189 for a response; and
- 190 (D) be accompanied by a request to submit for decision and a proposed order.

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

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

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

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

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

212 (1) motion to allow an over-length motion or memorandum;

213 (2) motion to extend the time to perform an act, if the motion is filed before the time
214 to perform the act has expired;

215 (3) motion to continue a hearing;

216 (4) motion to appoint a guardian ad litem;

217 (5) motion to substitute parties;

218 (6) motion to refer the action to or withdraw it from alternative dispute resolution
219 under Rule 4-510.05;

220 (7) motion for a conference under Rule 16; and

221 (8) motion to approve a stipulation of the parties.

222

223 Effective May 1, 2021

1 **Rule 37. Statement of discovery issues; Sanctions; Failure to admit, to attend**
2 **deposition or to preserve evidence.**

3 **(a) Statement of discovery issues.**

4 (1) A party or the person from whom discovery is sought may request that the judge
5 enter an order regarding any discovery issue, including:

6 (A) failure to disclose under Rule [26](#);

7 (B) extraordinary discovery under Rule [26](#);

8 (C) a subpoena under Rule [45](#);

9 (D) protection from discovery; or

10 (E) compelling discovery from a party who fails to make full and complete
11 discovery.

12 **(2) Statement of discovery issues length and content.** The statement of discovery
13 issues must be no more than 4 pages, not including permitted attachments, and
14 must include in the following order:

15 (A) the relief sought and the grounds for the relief sought stated succinctly and
16 with particularity;

17 (B) a certification that the requesting party has in good faith conferred or
18 attempted to confer with the other affected parties in person or by telephone in
19 an effort to resolve the dispute without court action;

20 (C) a statement regarding proportionality under Rule [26\(b\)\(2\)](#); and

21 (D) if the statement requests extraordinary discovery, a statement certifying that
22 the party has reviewed and approved a discovery budget.

23 **(3) Objection length and content.** No more than 7 days after the statement is filed,
24 any other party may file an objection to the statement of discovery issues. The

25 objection must be no more than 4 pages, not including permitted attachments, and
26 must address the issues raised in the statement.

27 **(4) Permitted attachments.** The party filing the statement must attach to the
28 statement only a copy of the disclosure, request for discovery or the response at
29 issue.

30 **(5) Proposed order.** Each party must file a proposed order concurrently with its
31 statement or objection.

32 **(6) Decision.** Upon filing of the objection or expiration of the time to do so, either
33 party may and the party filing the statement must file a Request to Submit for
34 Decision under Rule 7(g). The court will promptly:

35 (A) decide the issues on the pleadings and papers;

36 (B) conduct a hearing, preferably remotely and if remotely, then consistent with
37 the safeguards in Rule 43(b) by telephone conference or other electronic
38 communication; or

39 (C) order additional briefing and establish a briefing schedule.

40 **(7) Orders.** The court may enter orders regarding disclosure or discovery or to
41 protect a party or person from discovery being conducted in bad faith or from
42 annoyance, embarrassment, oppression, or undue burden or expense, or to achieve
43 proportionality under Rule 26(b)(2), including one or more of the following:

44 (A) that the discovery not be had or that additional discovery be had;

45 (B) that the discovery may be had only on specified terms and conditions,
46 including a designation of the time or place;

47 (C) that the discovery may be had only by a method of discovery other than that
48 selected by the party seeking discovery;

49 (D) that certain matters not be inquired into, or that the scope of the discovery be
50 limited to certain matters;

51 (E) that discovery be conducted with no one present except persons designated
52 by the court;

53 (F) that a deposition after being sealed be opened only by order of the court;

54 (G) that a trade secret or other confidential information not be disclosed or be
55 disclosed only in a designated way;

56 (H) that the parties simultaneously deliver specified documents or information
57 enclosed in sealed envelopes to be opened as directed by the court;

58 (I) that a question about a statement or opinion of fact or the application of law to
59 fact not be answered until after designated discovery has been completed or until
60 a pretrial conference or other later time;

61 (J) that the costs, expenses and attorney fees of discovery be allocated among the
62 parties as justice requires; or

63 | (K) that a party pay the reasonable costs, expenses, and attorney fees incurred on
64 account of the statement of discovery issues if the relief requested is granted or
65 denied, or if a party provides discovery or withdraws a discovery request after a
66 statement of discovery issues is filed and if the court finds that the party, witness,
67 or attorney did not act in good faith or asserted a position that was not
68 substantially justified.

69 **(8) Request for sanctions prohibited.** A statement of discovery issues or an
70 objection may include a request for costs, expenses and attorney fees but not a
71 request for sanctions.

72 **(9) Statement of discovery issues does not toll discovery time.** A statement of
73 discovery issues does not suspend or toll the time to complete standard discovery.

74 **(b) Motion for sanctions.** Unless the court finds that the failure was substantially
75 justified, the court, upon motion, may impose appropriate sanctions for the failure to
76 follow its orders, including the following:

- 77 (1) deem the matter or any other designated facts to be established in accordance
78 with the claim or defense of the party obtaining the order;
- 79 (2) prohibit the disobedient party from supporting or opposing designated claims or
80 defenses or from introducing designated matters into evidence;
- 81 (3) stay further proceedings until the order is obeyed;
- 82 (4) dismiss all or part of the action, strike all or part of the pleadings, or render
83 judgment by default on all or part of the action;
- 84 (5) order the party or the attorney to pay the reasonable costs, expenses, and
85 attorney fees, caused by the failure;
- 86 (6) treat the failure to obey an order, other than an order to submit to a physical or
87 mental examination, as contempt of court; and
- 88 (7) instruct the jury regarding an adverse inference.

89 **(c) Motion for costs, expenses and attorney fees on failure to admit.** If a party fails to
90 admit the genuineness of a document or the truth of a matter as requested under
91 Rule [36](#), and if the party requesting the admissions proves the genuineness of the
92 document or the truth of the matter, the party requesting the admissions may file a
93 motion for an order requiring the other party to pay the reasonable costs, expenses and
94 attorney fees incurred in making that proof. The court must enter the order unless it
95 finds that:

- 96 (1) the request was held objectionable pursuant to Rule [36\(a\)](#);
- 97 (2) the admission sought was of no substantial importance;
- 98 (3) there were reasonable grounds to believe that the party failing to admit might
99 prevail on the matter;
- 100 (4) that the request was not proportional under Rule [26\(b\)\(2\)](#); or
- 101 (5) there were other good reasons for the failure to admit.

102 **(d) Motion for sanctions for failure of party to attend deposition.** If a party or an
103 officer, director, or managing agent of a party or a person designated under
104 Rule [30\(b\)\(6\)](#) to testify on behalf of a party fails to appear before the officer taking the
105 deposition after service of the notice, any other party may file a motion for sanctions
106 under paragraph (b). The failure to appear may not be excused on the ground that the
107 discovery sought is objectionable unless the party failing to appear has filed a statement
108 of discovery issues under paragraph (a).

109 **(e) Failure to preserve evidence.** Nothing in this rule limits the inherent power of the
110 court to take any action authorized by paragraph (b) if a party destroys, conceals, alters,
111 tampers with or fails to preserve a document, tangible item, electronic data or other
112 evidence in violation of a duty. Absent exceptional circumstances, a court may not
113 impose sanctions under these rules on a party for failing to provide electronically stored
114 information lost as a result of the routine, good-faith operation of an electronic
115 information system.

116

117 **Advisory Committee Notes**

118 The 2011 amendments to Rule 37 make two principal changes. First, the amended Rule
119 37 consolidates provisions for motions for a protective order (formerly set forth in Rule
120 26(c)) with provisions for motions to compel. ~~By consolidating the standards for these~~
121 ~~two motions in a single rule, the Advisory Committee sought to highlight some of the~~
122 ~~parallels and distinctions between the two types of motions and to present them in a~~
123 ~~single rule.~~

124 Second, the amended Rule 37 incorporates the new Rule 26 standard of
125 "proportionality" as a principal criterion on which motions to compel or for a protective
126 order should be evaluated. ~~As to motions to compel, Rule 37(a)(3) requires that a party~~
127 ~~moving to compel discovery certify to the court "that the discovery being sought is~~
128 ~~proportional under Rule 26(b)(2)." Rule 37(b) makes clear that a lack of proportionality~~

129 ~~may be raised as ground for seeking a protective order, indicating that "the party~~
130 ~~seeking the discovery has the burden of demonstrating that the information being~~
131 ~~sought is proportional."~~

132 ~~Paragraph (h) and its predecessors have long authorized the court to take the drastic~~
133 ~~steps authorized by paragraph (e)(2) for failure to disclose as required by the rules or~~
134 ~~for failure to amend a response to discovery. The federal counterpart to this provision is~~
135 ~~similar. Yet the courts historically have limited those more drastic sanctions to~~
136 ~~circumstances in which a party fails to comply with a court order, persists in dilatory~~
137 ~~conduct, or acts in bad faith.~~

138 ~~The 2011 amendments have brought new attention to paragraph (h). Those~~
139 ~~amendments, which emphasized greater and earlier disclosure, also emphasized the~~
140 ~~enforcement of that requirement by prohibiting the party from using the undisclosed~~
141 ~~information as evidence at a hearing. The committee intends that courts should impose~~
142 ~~sanctions under (e)(2) for failure to disclose in only the most egregious circumstances.~~
143 ~~In most circumstances exclusion of the evidence seems an adequate sanction for failure~~
144 ~~to disclose or failure to amend discovery.~~

145 ~~2015 Amendments.~~

146 Paragraph (a) adopts the expedited procedures for statements of discovery issues
147 formerly found in Rule 4-502 of the Code of Judicial Administration. Statements of
148 discovery issues replace discovery motions, and paragraph (a) governs unless the judge
149 orders otherwise.

150 ~~Former paragraph (a)(2), which directed a motion for a discovery order against a~~
151 ~~nonparty witness to be filed in the judicial district where the subpoena was served or~~
152 ~~deposition was to be taken, has been deleted. A statement of discovery issues related to~~
153 ~~a nonparty must be filed in the court in which the action is pending.~~

154 ~~Former paragraph (h), which prohibited a party from using at a hearing information not~~
155 ~~disclosed as required, was deleted because the effect of non-disclosure is adequately~~

156 | ~~governed by Rule 26(d). See also *The Townhomes At Pointe Meadows Owners*~~
157 | ~~*Association v. Pointe Meadows Townhomes, LLC*, 2014 UT App 52 ¶14. The process for~~
158 | ~~resolving disclosure issues is included in paragraph (a).~~

159

160 | -

161

1 **Rule 43. Evidence.**

2 **(a) Form.** In all trials and evidentiary hearings, the testimony of a witnesses shall ~~must~~
3 be taken in open court, unless otherwise provided by these rules, the Utah Rules of
4 Evidence, or a statute of this state. In civil proceedings, the court may, upon request or
5 on its own order, and ~~For~~ for good cause and with appropriate safeguards, the court may
6 permit remote testimony in open court. Remote testimony will be presented via
7 videoconference if reasonably feasible, or if not, via telephone or assistive device.

8 **(b) Remote testimony safeguards.** No hearing may proceed unless the court ensures
9 that all necessary remote testimony safeguards are provided, by the court or by the
10 parties. An objection to a lack of safeguards is waived unless timely made. Remote
11 testimony safeguards must include:

12 (1) a notice of (i) the date, time, and method of transmission; (ii) instructions for
13 participation, and (iii) contact information for technical assistance;

14 (2) a verbatim record of the testimony;

15 (3) upon request to the court, access to the technology and resources to participate,
16 including an interpreter, telephone, or assistive device;

17 (4) a court-provided or party-provided means for a party and the party's counsel to
18 communicate confidentially;

19 (5) a court-provided or party-provided means for the party and the party's counsel
20 to share documents, photos, and other electronic materials among the remote
21 participants; and

22 (6) any other measures the court deems necessary to maintain the integrity of the
23 proceedings.

24 **(c) Remote hearing oath.** An oath in substantially the following form must be given
25 prior to any remote hearing testimony: "You do solemnly swear (or affirm) that the
26 evidence you shall give in this issue (or matter) pending between _____ and _____ shall be

27 the truth, the whole truth and nothing but the truth, and that you will neither
28 communicate with, nor receive any communications from, another person during your
29 testimony unless authorized by the court, so help you God (or, under the pains and
30 penalties of perjury)."

31 **(b)** Evidence on motions. When a motion is based on facts not in the record, the court
32 may hear the matter on affidavits, declarations, oral testimony, or depositions.

33 **Advisory Committee Note**

34 ~~Federal Rule of Civil Procedure 43 has permitted testimony by contemporaneous~~
35 ~~transmission since 1996. State court judges have been conducting telephone conferences~~
36 ~~for many decades. These range from simple scheduling conferences to resolution of~~
37 ~~discovery disputes to status conferences to pretrial conferences. These conferences tend~~
38 ~~not to involve testimony, although judges sometimes permit testimony by telephone or~~
39 ~~more recently by video conference with the consent of the parties. The 2016~~
40 ~~amendments are part of a coordinated effort by the Supreme Court and the Judicial~~
41 ~~Council to authorize a convenient practice that is more frequently needed in an~~
42 ~~increasingly connected society and to bring a level of quality to that practice suitable for~~
43 ~~a court record. As technology evolves the methods of contemporaneous transmission~~
44 ~~will change.~~

45

46

1 **Rule 45. Subpoena.**

2 **(a) Form; issuance.**

3 (1) Every subpoena shall:

4 (A) issue from the court in which the action is pending;

5 (B) state the title and case number of the action, the name of the court from which
6 it is issued, and the name and address of the party or attorney responsible for
7 issuing the subpoena;

8 (C) command each person to whom it is directed

9 (i) to appear and give testimony at a trial, hearing or deposition, or

10 (ii) to appear and produce for inspection, copying, testing or sampling
11 documents, electronically stored information or tangible things in the
12 possession, custody or control of that person, or

13 (iii) to copy documents or electronically stored information in the possession,
14 custody or control of that person and mail or deliver the copies to the party or
15 attorney responsible for issuing the subpoena before a date certain, or

16 (iv) to appear and to permit inspection of premises;

17 (D) if an appearance is required, ~~specify~~ give notice of the date, time, and place
18 for the appearance and, if remote transmission is requested, instructions for
19 participation and whom to contact if there are technical difficulties; and

20 (E) include a notice to persons served with a subpoena in a form substantially
21 similar to the approved subpoena form. A subpoena may specify the form or
22 forms in which electronically stored information is to be produced.

23 (2) The clerk shall issue a subpoena, signed but otherwise in blank, to a party
24 requesting it, who shall complete it before service. An attorney admitted to practice
25 in Utah may issue and sign a subpoena as an officer of the court.

26 **(b) Service; fees; prior notice.**

27 (1) A subpoena may be served by any person who is at least 18 years of age and not
28 a party to the case. Service of a subpoena upon the person to whom it is directed
29 shall be made as provided in Rule 4(d).

30 (2) If the subpoena commands a person's appearance, the party or attorney
31 responsible for issuing the subpoena shall tender with the subpoena the fees for one
32 day's attendance and the mileage allowed by law. When the subpoena is issued on
33 behalf of the United States, or this state, or any officer or agency of either, fees and
34 mileage need not be tendered.

35 (3) If the subpoena commands a person to copy and mail or deliver documents or
36 electronically stored information, to produce documents, electronically stored
37 information or tangible things for inspection, copying, testing or sampling or to
38 permit inspection of premises, the party or attorney responsible for issuing the
39 subpoena shall serve each party with the subpoena by delivery or other method of
40 actual notice before serving the subpoena.

41 **(c) Appearance; resident; non-resident.**

42 (1) A person who resides in this state may be required to appear:

43 (A) at a trial or hearing in the county in which the case is pending; and

44 (B) at a deposition, or to produce documents, electronically stored information or
45 tangible things, or to permit inspection of premises only in the county in which
46 the person resides, is employed, or transacts business in person, or at such other
47 place as the court may order.

48 (2) A person who does not reside in this state but who is served within this state
49 may be required to appear:

50 (A) at a trial or hearing in the county in which the case is pending; and

51 (B) at a deposition, or to produce documents, electronically stored information or
52 tangible things, or to permit inspection of premises only in the county in which
53 the person is served or at such other place as the court may order.

54 (d) Payment of production or copying costs. The party or attorney responsible for
55 issuing the subpoena shall pay the reasonable cost of producing or copying documents,
56 electronically stored information, or tangible things. Upon the request of any other
57 party and the payment of reasonable costs, the party or attorney responsible for issuing
58 the subpoena shall provide to the requesting party copies of all documents,
59 electronically stored information or tangible things obtained in response to the
60 subpoena or shall make the tangible things available for inspection.

61 **(e) Protection of persons subject to subpoenas; objection.**

62 (1) The party or attorney responsible for issuing a subpoena shall take reasonable
63 steps to avoid imposing an undue burden or expense on the person subject to the
64 subpoena. The court shall enforce this duty and impose upon the party or attorney
65 in breach of this duty an appropriate sanction, which may include, but is not limited
66 to, lost earnings and a reasonable attorney fee.

67 (2) A subpoena to copy and mail or deliver documents or electronically stored
68 information, to produce documents, electronically stored information or tangible
69 things, or to permit inspection of premises shall comply with Rule 34(a) and (b)(1),
70 except that the person subject to the subpoena must be allowed at least 14 days after
71 service to comply.

72 (3) The person subject to the subpoena or a non-party affected by the subpoena may
73 object under Rule 37 if the subpoena:

74 (A) fails to allow reasonable time for compliance;

75 (B) requires a resident of this state to appear at other than a trial or hearing in a
76 county in which the person does not reside, is not employed, or does not transact
77 business in person;

78 (C) requires a non-resident of this state to appear at other than a trial or hearing
79 in a county other than the county in which the person was served;

80 (D) requires the person to disclose privileged or other protected matter and no
81 exception or waiver applies;

82 (E) requires the person to disclose a trade secret or other confidential research,
83 development, or commercial information;

84 (F) subjects the person to an undue burden or cost;

85 (G) requires the person to produce electronically stored information in a form or
86 forms to which the person objects;

87 (H) requires the person to provide electronically stored information from sources
88 that the person identifies as not reasonably accessible because of undue burden
89 or cost; or

90 (I) requires the person to disclose an unretained expert's opinion or information
91 not describing specific events or occurrences in dispute and resulting from the
92 expert's study that was not made at the request of a party.

93 | **(4) Timing and form of objections.**

94 (A) If the person subject to the subpoena or a non-party affected by the subpoena
95 objects, the objection must be made before the date for compliance.

96 (B) The objection shall be stated in a concise, non-conclusory manner.

97 (C) If the objection is that the information commanded by the subpoena is
98 privileged or protected and no exception or waiver applies, or requires the
99 person to disclose a trade secret or other confidential research, development, or
100 commercial information, the objection shall sufficiently describe the nature of the
101 documents, communications, or things not produced to enable the party or
102 attorney responsible for issuing the subpoena to contest the objection.

103 (D) If the objection is that the electronically stored information is from sources
104 that are not reasonably accessible because of undue burden or cost, the person
105 from whom discovery is sought must show that the information sought is not
106 reasonably accessible because of undue burden or cost.

107 (E) The objection shall be served on the party or attorney responsible for issuing
108 the subpoena. The party or attorney responsible for issuing the subpoena shall
109 serve a copy of the objection on the other parties.

110 (5) If objection is made, or if a party requests a protective order, the party or attorney
111 responsible for issuing the subpoena is not entitled to compliance but may request
112 an order to compel compliance under Rule 37(a). The objection or request shall be
113 served on the other parties and on the person subject to the subpoena. An order
114 compelling compliance shall protect the person subject to or affected by the
115 subpoena from significant expense or harm. The court may quash or modify the
116 subpoena. If the party or attorney responsible for issuing the subpoena shows a
117 substantial need for the information that cannot be met without undue hardship, the
118 court may order compliance upon specified conditions.

119 **(f) Duties in responding to subpoena.**

120 (1) A person commanded to copy and mail or deliver documents or electronically
121 stored information or to produce documents, electronically stored information or
122 tangible things shall serve on the party or attorney responsible for issuing the
123 subpoena a declaration under penalty of law stating in substance:

124 (A) that the declarant has knowledge of the facts contained in the declaration;

125 (B) that the documents, electronically stored information or tangible things
126 copied or produced are a full and complete response to the subpoena;

127 (C) that the documents, electronically stored information or tangible things are
128 the originals or that a copy is a true copy of the original; and

129 (D) the reasonable cost of copying or producing the documents, electronically
130 stored information or tangible things.

131 (2) A person commanded to copy and mail or deliver documents or electronically
132 stored information or to produce documents, electronically stored information or
133 tangible things shall copy or produce them as they are kept in the usual course of
134 business or shall organize and label them to correspond with the categories in the
135 subpoena.

136 (3) If a subpoena does not specify the form or forms for producing electronically
137 stored information, a person responding to a subpoena must produce the
138 information in the form or forms in which the person ordinarily maintains it or in a
139 form or forms that are reasonably usable.

140 (4) If the information produced in response to a subpoena is subject to a claim of
141 privilege or of protection as trial-preparation material, the person making the claim
142 may notify any party who received the information of the claim and the basis for it.
143 After being notified, the party must promptly return, sequester, or destroy the
144 specified information and any copies of it and may not use or disclose the
145 information until the claim is resolved. A receiving party may promptly present the
146 information to the court under seal for a determination of the claim. If the receiving
147 party disclosed the information before being notified, it must take reasonable steps
148 to retrieve the information. The person who produced the information must
149 preserve the information until the claim is resolved.

150 (g) **Contempt.** Failure by any person without adequate excuse to obey a subpoena
151 served upon that person is punishable as contempt of court.

152 (h) **Procedure when witness evades service or fails to attend.** If a witness evades
153 service of a subpoena or fails to attend after service of a subpoena, the court may issue a
154 warrant to the sheriff of the county to arrest the witness and bring the witness before
155 the court.

156 (i) **Procedure when witness is an inmate.** If the witness is an inmate as defined in Rule
157 6(e)(1), a party may move for an order to examine the witness in the institution or to
158 produce the witness before the court or officer for the purpose of being orally examined.

159 (j) **Subpoena unnecessary.** A person present in court or before a judicial officer may be
160 required to testify in the same manner as if the person were in attendance upon a
161 subpoena.

162

163 ~~Advisory Committee Notes~~

164 ~~The process to request a protective order is governed by Rule 37(a), Statement of~~
165 ~~discovery issues.~~

166 ~~The form subpoena formerly part of the Appendix of Forms described in Rule 81 has~~
167 ~~been replaced by forms approved by the Board of District Court Judges found on the~~
168 ~~court website at <http://www.utcourts.gov/resources/forms/subpoena/>. The website~~
169 ~~includes information and forms for domestic subpoenas and subpoenas from other~~
170 ~~states. Utah has adopted the Uniform Interstate Depositions and Discovery Act, and the~~
171 ~~act differentiates between the requirements for a subpoena issued by a state that also~~
172 ~~has adopted the uniform act and the requirements for a subpoena issued by a state that~~
173 ~~has not.~~