

Agenda

Advisory Committee on Rules of Civil Procedure

October 27, 2021

4:00 to 6:00 p.m.

[Via Webex](#)

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Introduction of new staff attorney (<i>Stacy Haacke</i>)		Keisa Williams
Supreme Court Conf. Update: <ul style="list-style-type: none">• Rules 24 and 62 (<i>approved as final</i>)• Rules 5 and 65 (<i>published for comment</i>)		Lauren DiFrancesco
Preferred terminology	Tab 2	Susan Vogel
Remote hearing notices	Tab 3	Susan Vogel
Legal community requests <ul style="list-style-type: none">• Rule 7(j)(6)• Rule 37	Tab 4	Lauren DiFrancesco
Federal Rule 41 issue	Tab 5	Judge Linda Jones Judge Amber Mettler
<i>Consent agenda</i> --		
Verify Pipeline items: <ul style="list-style-type: none">• Rule 45 and objections (Jen Tomchak)• Trial date setting (family law-Judge Holmberg, Jim Hunnicutt)		Lauren DiFrancesco, Chair

2021 Meeting Schedule: 4th Wednesday at 4pm unless otherwise scheduled

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

Tab 1

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

Summary Minutes – September 22, 2021

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

Committee members, staff, and guests	Present	Excused	Guests/Staff Present
Robert Adler	X		Keisa Williams, Staff
Rod N. Andreason	X		Crystal Powell, Recording Secretary
Judge James T. Blanch	X		Paul Barron, Guest
Lauren DiFrancesco, Chair	X		Judge Brendan McCullagh, Guest
Judge Kent Holmberg	X		Keri Sargent, Guest
James Hunnicutt	X		Christopher Williams, Guest
Trevor Lee	X		Nick Stiles, Guest
Ash McMurray		X	Nathanael Player, Guest
Judge Amber M. Mettler	X		Jim Peters, Guest
Kim Neville	X		
Timothy Pack	X		
Loni Page	X		
Bryan Pattison		X	
James Peterson	X		
Michael Petrogeorge	X		
Judge Laura Scott		X	
Leslie W. Slauch	X		
Paul Stancil		X	
Judge Clay Stucki	X		
Judge Andrew H. Stone		X	
Justin T. Toth	X		
Susan Vogel	X		

(1) INTRODUCTION OF NEW COMMITTEE MEMBERS

New and continuing members as well as committee staff and guests introduced themselves.

(2) APPROVAL OF MINUTES

Lauren Di Francesco asked for approval of the minutes subject to minor amendments noted by the minutes subcommittee. Jim Hunnicutt moved to adopt the minutes as amended; Susan Vogel seconded. The minutes were approved unanimously.

(3) DISCUSSION OF RULE 5

Ms. Keisa Williams opened the discussion on Rule 5, summarizing public comments and questions raised by Justice Lee, as noted in the rule draft included in the materials. Following discussion, the Committee made the following amendments in response to Justice Lee's questions:

- *(line 46)* **What does “or by other notice” mean?**
 - “or by other notice” was meant to address all of the ways in which a pro se litigant might provide an email address to the court or to other parties.
 - To clarify and accomplish that purpose, the committee struck “or by other notice,” removed the reference to Rules 10 and 76, and added “and other parties.”
- *(lines 49-50)* **What if the person hasn't provided a mailing address? Couldn't service be made by other methods listed in (C)?**
 - Yes. The committee added a reference to the methods in (b)(3)(C).
- *lines 50-51:* **Does this mean there is an unlimited amount of time to serve someone by mail following an undeliverable notice?**
 - The committee added a time limit: “provided service by another method is made within 3 days following receipt of an undeliverable email notice, excluding Saturday, Sunday, or legal holidays.
- *lines 58-59:* **Doesn't this essentially allow parties to “opt-out” of email service by simply not providing an email address? Does that defeat the purpose?**
 - This is really a policy decision for the Court. An exception is necessary to account for those who cannot communicate by email, but most pro se litigants prefer email and provide it freely. The committee does not believe the “opt-out” provision would be abused.

Other amendments included eliminating the use of gendered pronouns (*lines 56 and 58*) and eliminating the requirement that parties “certify” their inability to serve and receive documents by

email (*line 55*). The amendment would allow litigants to simply “notify” the court and other parties of their inability to use email. The committee felt certification was unnecessary and confusing for pro se litigants.

Ms. Vogel noted that more a focused discussion of persons with disabilities or lack of access to technology is necessary to ensure those individuals are able to easily “opt-out” or certify that they are unable to serve or be served by email. Ms. Vogel noted the difficulty that self-represented parties and those who lack access to technology already have in receiving notices from the court. Ms. Vogel explored whether this should be done by adding a ‘check box’ on the form and should be referred to the forms committee.

After a full discussion, Mr. Hunnicutt moved to adopt the revisions and Ms. Vogel seconded. The motion passed unanimously.

(4) Rule 100A

Judge Holmberg summarized the concerns raised by court staff on Rule 100A pertaining to the additional workload that will be created for court staff. He noted that the November 1st effective date posed an unfeasible burden on court staff and would have a detrimental affect given the lack of human and financial resources. Based on extensive feedback, he recommended that that the effective date be suspended. Ms. Keri Sargant also recommended a delay in implementation of the rule to allow court staff and administration to prepare. Mr. Hunnicutt noted that while delay in the short term is required, the rule has been in the pipeline for over four years and expressed concern that postponing implementation may lead to other legislative actions. Judge Amber Mettler recommended that that the issue be addressed with the legislative council to push for increased resources so that the rule may be implemented properly.

Mr. Robert Alder questioned whether it makes sense to remove case management conferences from track one cases. Mr. Hunnicutt noted that the proposal for a case management conference does expedite the divorce process by identifying what track a case falls in; thereby estimating how long a case will take and how many resources will be needed.

Ms. Vogel noted that the case management conference can be highly effective for pro se litigants who do not understand the system. Litigants receive a quick education of the process and learn what will be required of them.

Mr. Nick Stiles suggested that the committee’s decision be placed on the Supreme Court’s conference agenda in October. Judge Holmberg and Ms. DiFrancesco volunteered to attend the conference to lead the discussion.

Judge Holmberg moved to delay the effective date until May 1, 2022. Judge Stucki seconded. The motion passed unanimously.

(5) Rule 108

Judge Holmberg and Mr. Hunnicutt updated the committee on the status of Rule 108. Judge Holmberg stated that all of the discussion and feedback he received, as well as recent case law on the authority of judges and commissioners, leads to the conclusion that the proposed changes are unconstitutional. Judge Holmberg recommended that the committee retire the issue. The committee expressed thanks for the work that had been done.

(6) RULES OF SMALL CLAIMS PROCEDURE: ODR (ONLINE DISPUTE RESOLUTION)

Judge McCullagh opened the discussion concerning ODR and the Small Claims Procedure Rules by giving a summary of the history of ODR from its pilot program to its current operation under a standing order of the Supreme Court. They are now working on a permanent set of rules to govern the roll out of the program. Judge McCullagh noted that it is expedient to standardize the rules and make them more understandable.

Judge McCullagh asked for a focus on substantive changes in order to present the concept of the proposals to the Court for feedback.

Judge Stucki expressed that the language in Rule 9(c) could be unclear as “immediately” needs to be defined. The rule was revised to provide that the party granted default judgment must serve the judgment within 7 days. Judge McCullagh noted that service of judgements will most likely be by traditional mail as the second party would have defaulted by their absence and most likely have not provided an email address.

Judge Stucki noted that Rule 3(d) only provides one method of dismissing the case and questioned whether to provide courts with the ability to dismiss the case after 14 days of failure to file the proof of service. Judge McCullagh clarified that the failure to serve the proof of service triggers the ability of the defendant to exercise the right to move for dismissal and the court must be notified of that by the defendant.

The committee discussed changing the language in 2(d) to read, “the court will notify the plaintiff at the email address provided.”

Judge Stucki asked for clarification of whether Rule 2(b) mandates that small claims litigants must have emails and suggested including a statement about requesting an exemption pursuant to Rule 5.

With regard to Rule 13, Judge Mettler suggested including that the party may also be represented by a paralegal within the authorized scope of practice and licensure and noted as an aside that a representative from the paralegal sector should be invited to sit on the committee.

Other changes to the rules were suggested in: (1) Rule 7 to allow for permissive subpoena rather than mandatory; (2) the numbering error in Rule 6B.

Judge Stucki motioned for adoption of the rules as amended. Mr. Hunnicutt seconded. The changes were adopted unanimously. Judge McCullagh expressed his excitement about the positive impact the new rules may have on access to justice.

(7) ADJOURNMENT

The chair thanked everyone for their time and efforts and requested that any new items be emailed to her or Ms. Keisa Williams. The meeting adjourned at 6:00 p.m.

Tab 2

CURRENT TERMINOLOGY	WHEN USED	POSSIBLE NEW TERMINOLOGY
NAMES TO START A CASE		
Acceptance of Service		Acceptance of Documents
Complaint		Request? Application?
Petition		Request? Application?
Service of Process		Service of Court Documents
NAMES OF COURT DECISIONS THAT MUST BE FOLLOWED		
Confession of Judgment	Debt	Agreement for Judgment
Letters	Probate only	Order
Stay of Execution	Collection	Stop or Pause
Writ of Attachment	Collections	Order to Assist in ...
Writ of Execution	Collections	Order to Take Property
Writ of Garnishment	Collections	Order to Take Money
Writ of Replevin		Order to Return Property
NAMES OF PROCESSES DURING CASE		
Application		
Discovery		Formal Request for Information
Motion		Request
Motion for Satisfaction of Judgment		Request to Show Judgment Paid
Motion to Change Venue		Request to Change Court Location
Motion to Continue		Request to Reschedule
Motion to Expunge	Criminal	Motion to Seal Criminal Case
Motion to Recuse		Request to Change Judge
Motion to Set Aside		Request to Undo
Motion to Stay		Request to Stop (or Pause?)
Motion to Waive	filing fee, mediation, classes	Motion to excuse (someone's requirement, like court fees) or agreement to give up (their rights, like in adoption)
Request for Admission		
Waive notice	Probate	Glve up my right to have papers sent to me
NAMES RELATING TO PROCESS - LIKE SERVICE or FILING		
Deliliver to the court		File with the court
Deliver to the other parties		Serve to the other parties under Rule 5
Deliver to the prosecutor		
Docket with the court		File with the court
Interpose with the court	Rule 12	File with the court
Lodge with the court		File with the court
Present to the court	Rule 11	File with the court
Register with the court		File with the court
Remand		Send back

Supplemental order	Collection	Order to attend hearing about property
DISPOSITIONS		
Dismissed - re closing case		Closed
Dismissed as in petition to modify		
Dissolved	Injunction, marriage	End
Expire	PO/Judgment/stay/lien will expire	End
Remove	Remove case	Move, transfer
Revoked	Power of atty, provisions of will	Cancel
Vacated	Vacate dismissal, stay, PO, conviction	Cancel
OTHER		
Assign	Right to collect debt	Transfer
Common Law Marriage		Marriage Without Certificate?
Conservatorship		Order to Manage Finances/Assets of Another Person
Estate (for probate)		Assets/Debts of Deceased
Extinguished	Right to foreclose	Ended
Fixed	Rule 12, diff time is fixed by order	Ordered
Foreign Judgment		Order from Another State Court in U.S.
Forfeit	Rights to adoptee, bail, gun, lease	Lose rights to
Garnishee		Person/Co. who has debtor's property
Impecuniosity	Right to counsel, fee waiver	Inability to pay
Judgment by Confession		Agreement to Enter Judgment
Laches	Right to collect	Creditor seeking debtor's property
	Right to fee waiver, counsel	Waited too long
Minute Entry		Court Order
More definite statement	Rule 12	clearer, more detailed?
Power of attorney		Permission to act on my behalf
Prescribe	Rule 11, the court may prescribe	Order
Probate		
Quiet title		Establish who owns property
Sanction		Punishment
Statute of limitations		Deadline for filing case
Stipulation		Agreement
Third party practice		
Toll		Pause or stop
Tort		Wrongful Act

Whom

Who

Tab 3

Wish list for **notices of remote hearings** suggested by the Utah State Courts' Self-Help Center attorneys based on court patrons' reports of difficulties in connecting and having to file motions to set aside default/judgment or address warrants that result.

1. A notice of an online, telephonic or other remote hearing must include:
 - a. Clear information that the hearing *will be remote and whether there is an option to attend in person*. It must provide information on how the person can connect remotely to the hearing through technology at the courthouse.
 - b. Information on how to connect to the hearing such as the Webex link or the phone number to call to connect. If this information is not available when the notice is sent out, and will be provided to later, the notice must state from what email or phone number the information will be provided [so it does not go to spam, etc.] and whom to contact and how [their phone number, email or a link] if the information is not received prior to the hearing. If the notice states the party should contact the court for information, it must provide the phone number and the name of the department to call. If the person is provided the court website address to get the link, the link must be to the page on which the link is posted, likely <https://www.utcourts.gov/cal/>
 - b. A phone number for technical support if the person is having trouble connecting or is unable to connect to attend due to technology issues. An email or phone number to call to let the judge or commissioner know that they are trying to connect and having problems [hopefully that can be noted in the minutes].
 - c. A certificate of service stating when and how the notice was provided to the parties (including the email address/text/phone/street address to which it was sent, unless protected).
 - d. If the parties are to present evidence remotely, the notice must explain how the party can do this or provide a link where they can find the information.
2. If a party notifies the court, pursuant to 1 (b) above, that they are trying to connect, and unable to due to technology issues, such information will be provided to the judge as soon as received and noted in the record of the hearing [hopefully this will avoid a default or warrant]. In order to issue a default judgment, or issue a warrant, based on failure to appear at a virtual hearing, the court must first find that the party's failure to appear was not due to technological barriers in connecting to the virtual hearing. If a court cannot make the finding, the court must reset the hearing one time before issuing a default judgment or warrant.
3. A party/person is unable to connect due to technology issues, the court shall reschedule the hearing.
4. The court shall provide the parties/witnesses the notices above at least __ prior to the hearing via the email they have provided the court for this purpose or their last-provided email (or is no email is provided, their last provided contact information) and shall post the link to all public hearings on the court calendar webpage at least __ days prior to the hearing date. [<https://www.utcourts.gov/cal/>]

4TH DISTRICT COURT - PROVO
UTAH COUNTY, STATE OF UTAH

ENRIQUE A AQUINO : NOTICE OF
Petitioner, : CASE MANAGEMENT CONFERENCE
:
VS. : Case No: 204402840 DA
NANCY CECILIA CARRANZA : Commissioner: MARIAN ITO
Respondent. : Date: December 22, 2020

CASE MANAGEMENT CONFERENCE is scheduled.

Date: 03/04/2021

Time: 02:00 p.m.

Before Commissioner: MARIAN ITO

Your case has been selected to participate in a 4th District Court pilot program and is set for a Case Management Conference with the Commissioner.

At this conference, you will be given the opportunity to present your request as to how this matter should move forward toward completion.

The court anticipates you will have completed your Rule 26.1 disclosures prior to this hearing.

WHAT TO BRING: ___ List of issues in order of priority ___ If desired, you may use the Status Conference Worksheet available online to outline and prioritize issues. It can be found at utcourts.gov/courts/dist/dist/sites/4th

___ If applicable, proof of completion of the Divorce Orientation and Divorce Education courses.

If a party FAILS TO APPEAR, that party's pleadings may be stricken and default could be entered.

This hearing will not take place at the courthouse. It will be conducted remotely.

Contact the court to provide your current email address.

If you do not have access to a phone or other electronic device to appear remotely, notify the court.

For up-to-date information on court operations during the COVID-19 pandemic, please visit:

<https://www.utcourts.gov/alerts/>

* The court will provide an interpreter upon request. If you need an interpreter, please notify the court at (801)429-1000 five days before the hearing.

* El tribunal proveerá un intérprete si lo solicita. Si usted necesita un intérprete, por favor notifique al tribunal llamando al número (801)429-1000 cinco días antes de la audiencia.

Individuals needing special accommodations (including auxiliary communicative aids and services) should call the court at (801)429-1037 three days prior to the hearing. For TTY service, call Utah Relay at 800-346-4128.

Case No: 204402840 Date: December 22, 2020

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 204402840 by the method and on the date specified.

MAIL: ENRIQUE A AQUINO 8187 BROKEN SPOKE LN EAGLE MOUNTAIN, UT 84005

MAIL: NANCY CECILIA CARRANZA 3379 E PEREGRINE RD EAGLE MOUNTAIN, UT 84005

Date: 12/22/2020

/s/ CANDICE MEAD
Signature

SALT LAKE CITY JUSTICE COURT
SALT LAKE COUNTY, STATE OF UTAH

SALT LAKE CITY CORPORATION : NOTICE OF
Plaintiff, : SMALL CLAIMS TRIAL
: :
VS. : Case No: 217400281 SG
NATHAN LONG : Judge: JUDGE PROTEM (SLC RM5)
Defendant. : Date: July 13, 2021

SMALL CLAIMS TRIAL is scheduled.

Date: 10/07/2021

Time: 05:30 p.m.

Before Judge: JUDGE PROTEM (SLC RM5)

Date: 07/13/2021

Signature

This hearing will not take place at the courthouse. It will be conducted remotely.

Contact the court to provide your current email address.

If you do not have access to a phone or other electronic device to appear remotely, notify the court.

For up-to-date information on court operations during the COVID-19 pandemic, please visit:

<https://www.utcourts.gov/alerts/>

* The court will provide an interpreter upon request. If you need an interpreter, please notify the court at (801) 535-6300 five days before the hearing.

* El tribunal proveerá un intérprete si lo solicita. Si usted necesita un intérprete, por favor notifique al tribunal llamando al número (801) 535-6300 cinco días antes de la audiencia.

Individuals needing special accommodations (including auxiliary communicative aids and services) should call the court at (801)535-6300 three days prior to the hearing. For TTY service, call Utah Relay at 800-346-4128.

Case No: 217400281 Date: July 13, 2021

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 217400281 by the method and on the date specified.

MAIL: NATHAN LONG 945 E 500 S BOUNTIFUL, UT 84010

EMAIL: SALT LAKE CITY CORPORATION sc.collections@slcgov.com

Date: 07/13/2021

/s/ MARIA SKAGGS

Signature

3RD DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH

ANDREA MORENO : NOTICE OF
Petitioner, : WEBEX ANNULMENT HEARING
 :
VS. : Case No: 204907216 DA
DAVID REUBEN MORENO : Judge: SU CHON
Respondent. : Date: March 2, 2021

WEBEX ANNULMENT HEARING is scheduled.

Date: 03/23/2021

Time: 01:30 p.m.

Before Judge: SU CHON

The Court is conducting hearings via Webex, a video conferencing platform, while courtroom access is restricted. You must provide us with an email for your invitation to the hearing.

All parties will need adequate internet access, a computer/tablet or other device, a web camera and microphone. A cell phone is also suitable, but you may end up holding it the whole time.

Please contact the court staff at the email listed below to set up a test run. Helpful tips for using webex will be included in the invitation email. The webex invitation may be in a spam folder, please check there for it.

If you do not have a computer and adequate internet access, there may be computer kiosks for Webex access available at the Matheson Courthouse. The kiosks are available on a first come, first serve basis.

Please notify the court staff at 3rdchonteam@utcourts.gov or 801-238-7099 if you need to use a computer kiosk. so they can provide you with additional instructions.

Access to the Courthouse is limited so please do not bring people who are not participating in the hearing or trial to the courthouse.

This is an evidentiary hearing. You will be expected to comply with the Utah Rules of Evidence, Utah Rules of Civil Procedure, and Utah law. The Court may only accept admissible evidence, and the Court cannot tell you what that means in a legal context.

You must bring your witnesses and evidence to the hearing. Witnesses are required to be present because the other side has the right to confront the witnesses. The Court will not accept affidavits. Exchange exhibits in advance of the hearing.

Case No: 204907216 Date: March 02, 2021

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 204907216 by the method and on the date specified.

MAIL: DAVID REUBEN MORENO 2035 E ATKIN AVE SALT LAKE CITY, UT
84109

EMAIL: ANDREA MORENO andrea.moreno2010@gmail.com

EMAIL: ANDREA MORENO abroadbent1@hotmail.com

Date: 03/02/2021

/s/ REFUGIO RANGEL

Signature

Tab 4

Legal Community Rule Amendment Requests Rules of Civil Procedure

Spencer W. Young (Strong & Hanni)

Rule 7(j)(6): “As you may know, the Utah Judicial Council’s Code of Judicial Administration, specifically Rules [4-202.02](#), [\[4-202.03\]](#), and] [4-202.04](#), set forth the classification schema for court records. That includes documents that are “private,” “protected,” and “sealed,” which tend to mirror the access control provisions of typical protective orders I’ve seen. So, when parties are filing a document that’s been designated under a protective order, they’ll typically file a “Motion to Classify” those records accordingly.

GreenFiling provides instructions for this process, and invites the parties to file a proposed order with the motion to classify. However, as you likely know, URCP 7(j)(6) precludes the filing of a proposed order concurrently with a motion, with a few discrete exceptions. None of those circumstances, however, mention motions to classify, creating a small ambiguity between the instruction practitioners are receiving from GreenFiling and the rules that govern civil practice.

I would respectfully urge the committee to consider proposing an amendment to URCP 7(j)(6) that simply adds “a motion to classify a record in accord with Utah Judicial Council Code of Judicial Administration Rules 4-202.02 through -202.04,” as one of those exceptions, to resolve this ambiguity and create consistency between what GreenFiling is instructing and what the rules permit.

If the committee is concerned that this may open the door too broadly, it could add “if the motion is made pursuant to a protective order the court previously entered” as a condition to the exception, since most protective orders provide a means by which a party may challenge the designation of documents, separately from an opposition to the motion to classify.”

Rule 37: “...amendment to URCP 37 to specify that if an SODI is brought for one party’s failure to pay the costs of an expert’s deposition under URCP 26, the Court “shall” order payment of attorney fees and costs incurred to bring the SODI. The reason is I’ve recently experienced a situation where opposing counsel elected a deposition, was sent the invoices from the expert, but never paid, even after repeat reminders. The hourly rate for the expert was \$300 an hour, and the depo was three hours, so I believe the calculus from opposing counsel may have been that our client would just pay the expert’s invoice because it’ll cost our client just as much in attorney fees to raise the issue with the Court and fight about it.

In any event, it’s another circumstance I’ve seen come up that the rules (particularly the unique facets of our 2011 amendments) don’t really anticipate/address.”

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

11 **(b) Motions.** A request for an order must be made by motion. The motion must be in writing

12 unless made during a hearing or trial, must state the relief requested, and must state the

13 grounds for the relief requested. Except for the following, a motion must be made in accordance

14 with this rule.

- 15 (1) A motion, other than a motion described in paragraphs (b)(2), (b)(3) or (b)(4), made in
- 16 proceedings before a court commissioner must follow Rule [101](#).
- 17
- 18 (2) A request under [Rule 26](#) for extraordinary discovery must follow Rule [37\(a\)](#).
- 19
- 20 (3) A request under Rule [37](#) for a protective order or for an order compelling disclosure or
- 21 discovery—but not a motion for sanctions—must follow Rule [37\(a\)](#).
- 22
- 23 (4) A request under Rule [45](#) to quash a subpoena must follow Rule [37\(a\)](#).
- 24
- 25 (5) A motion for summary judgment must follow the procedures of this rule as supplemented
- 26 by the requirements of Rule [56](#).
- 27

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

- 29 (1) The rules governing captions and other matters of form in pleadings apply to motions
- 30 and other papers.
- 31
- 32 (2) **Caution language.** For all dispositive motions, the motion must include the following
- 33 caution language at the top right corner of the first page, in bold type: **This motion requires**
- 34 **you to respond. Please see the Notice to Responding Party.**
- 35
- 36 (3) **Bilingual notice.** All motions must include or attach the bilingual Notice to Responding
- 37 Party approved by the Judicial Council.
- 38
- 39 (4) **Failure to include caution language and notice.** Failure to include the caution
- 40 language in paragraph (c)(2) or the bilingual notice in paragraph (c)(3) may be grounds to

41 continue the hearing on the motion, or may provide the non-moving party with a basis under
42 Rule 60(b) for excusable neglect to set aside the order resulting from the motion. Parties
43 may opt out of receiving the notices set forth in paragraphs (c)(2) and (c)(3) while
44 represented by counsel.

45
46 (5) **Title of motion.** The moving party must title the motion substantially as: "Motion [short
47 phrase describing the relief requested]."

48
49 (6) **Contents of motion.** The motion must include the supporting memorandum. The motion
50 must include under appropriate headings and in the following order:

51 (A) a concise statement of the relief requested and the grounds for the relief requested;
52 and
53

54 (B) one or more sections that include a concise statement of the relevant facts claimed
55 by the moving party and argument citing authority for the relief requested.
56

57
58 (7) If the moving party cites documents, interrogatory answers, deposition testimony, or
59 other discovery materials, relevant portions of those materials must be attached to or
60 submitted with the motion.

61
62 (8) **Length of motion.** If the motion is for relief authorized
63 by Rule 12(b) or 12(c), Rule 56 or Rule 65A, the motion may not exceed 25 pages, not
64 counting the attachments, unless a longer motion is permitted by the court. Other motions
65 may not exceed 15 pages, not counting the attachments, unless a longer motion is
66 permitted by the court.

67
68 (d) **Name and content of memorandum opposing the motion.**

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

73 (A) a concise statement of the party's preferred disposition of the motion and the
74 grounds supporting that disposition;
75

76 (B) one or more sections that include a concise statement of the relevant facts claimed
77 by the nonmoving party and argument citing authority for that disposition; and
78

79 (C) objections to evidence in the motion, citing authority for the objection.
80

81
82 (2) If the non-moving party cites documents, interrogatory answers, deposition testimony, or
83 other discovery materials, relevant portions of those materials must be attached to or
84 submitted with the memorandum.

85
86 (3) If the motion is for relief authorized by Rule [12\(b\)](#) or [12\(c\)](#), Rule [56](#) or Rule [65A](#), the
87 memorandum opposing the motion may not exceed 25 pages, not counting the attachments,
88 unless a longer memorandum is permitted by the court. Other opposing memoranda may
89 not exceed 15 pages, not counting the attachments, unless a longer memorandum is
90 permitted by the court.

91
92 **(e) Name and content of reply memorandum.**

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

99
100 (A) a concise statement of the new matter raised in the memorandum opposing the
101 motion;

102
103 (B) one or more sections that include a concise statement of the relevant facts claimed
104 by the moving party not previously set forth that respond to the opposing party's
105 statement of facts and argument citing authority rebutting the new matter;

106
107 (C) objections to evidence in the memorandum opposing the motion, citing authority for
108 the objection; and

109
110 (D) response to objections made in the memorandum opposing the motion, citing
111 authority for the response.

112
113 (2) If the moving party cites documents, interrogatory answers, deposition testimony, or
114 other discovery materials, relevant portions of those materials must be attached to or
115 submitted with the memorandum.

116
117 (3) If the motion is for relief authorized by Rule [12\(b\)](#) or [12\(c\)](#), Rule [56](#) or Rule [65A](#), the reply
118 memorandum may not exceed 15 pages, not counting the attachments, unless a longer
119 memorandum is permitted by the court. Other reply memoranda may not exceed 10 pages,
120 not counting the attachments, unless a longer memorandum is permitted by the court.

121
122 **(f) Objection to evidence in the reply memorandum; response.** If the reply memorandum
123 includes an objection to evidence, the nonmoving party may file a response to the objection no
124 later than 7 days after the reply memorandum is filed. If the reply memorandum includes
125 evidence not previously set forth, the nonmoving party may file an objection to the evidence no
126 later than 7 days after the reply memorandum is filed, and the moving party may file a response
127 to the objection no later than 7 days after the objection is filed. The objection or response may
128 not be more than 3 pages.

129

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

135 (1) the motion;

136

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

138

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

140

141 ~~(4)~~(4) the response to objections in the reply memorandum, if any.

142

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

150

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

158

159 **(j) Orders.**

160 **(1) Decision complete when signed; entered when recorded.** However designated, the
161 court’s decision on a motion is complete when signed by the judge. The decision is entered
162 when recorded in the docket.

163

164 **(2) Preparing and serving a proposed order.** Within 14 days of being directed by the court
165 to prepare a proposed order confirming the court’s decision, a party must serve the
166 proposed order on the other parties for review and approval as to form. If the party directed
167 to prepare a proposed order fails to timely serve the order, any other party may prepare a
168 proposed order confirming the court’s decision and serve the proposed order on the other
169 parties for review and approval as to form.

170

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

174
175 **(4) Objecting to a proposed order.** A party may object to the form of the proposed order by
176 filing an objection within 7 days after the order is served.

177
178 **(5) Filing proposed order.** The party preparing a proposed order must file it:

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

182
183 (B) after the time to object to the form of the order has expired (The party preparing the
184 proposed order must also file a certificate of service of the proposed order.); or

185
186 (C) within 7 days after a party has objected to the form of the order (The party preparing
187 the proposed order may also file a response to the objection.).

188
189 **(6) Proposed order before decision prohibited; exceptions.** A party may not file a
190 proposed order concurrently with a motion or a memorandum or a request to submit for
191 decision, but a proposed order must be filed with:

192 (A) a stipulated motion;

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

194 (C) an ex parte motion;

195
196 (D) a statement of discovery issues under Rule 37(a); ~~and~~

197
198 (E) the request to submit for decision a motion in which a memorandum opposing the
199 motion has not been filed; and

200
201
202
203 (F) a motion to classify a record in accordance with Utah Code of Judicial Administration
204 Rules 4-202.02, 4-202.03, and 4-202.04.

Commented [KW1]: Proposed Option #1

205
206 (F) a motion to classify a record in accordance with Utah Code of Judicial Administration
207 Rules 4-202.02, 4-202.03, and 4-202.04, if the motion is made pursuant to a protective
208 order the court previously entered.

Commented [KW2]: Proposed Option #2

209
210 **(7) Orders entered without a response; ex parte orders.** An order entered on a motion
211 under paragraph (l) or (m) can be vacated or modified by the judge who made it with or
212 without notice.
213

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

216
217 **(k) Stipulated motions.** A party seeking relief that has been agreed to by the other parties may
218 file a stipulated motion which must:

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

221
222 (2) include a concise statement of the relief requested and the grounds for the relief
223 requested;

224
225 (3) include a signed stipulation in or attached to the motion and;

226
227 (4) be accompanied by a request to submit for decision and a proposed order that has been
228 approved by the other parties.

229
230 **(l) Motions that may be acted on without waiting for a response.**

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

232
233 (A) motion to permit an over-length motion or memorandum;

234
235 (B) motion for an extension of time if filed before the expiration of time;

236
237 (C) motion to appear pro hac vice; and

238
239 (D) other similar motions.

240
241 (2) A motion that can be acted on without waiting for a response must:

242 (A) be titled as a regular motion;

243
244 (B) include a concise statement of the relief requested and the grounds for the relief
245 requested;

246
247 (C) cite the statute or rule authorizing the motion to be acted on without waiting for a
248 response; and

249
250 (D) be accompanied by a request to submit for decision and a proposed order.

251
252 **(m) Ex parte motions.** If a statute or rule permits a motion to be filed without serving the motion
253 on the other parties, the party seeking relief may file an ex parte motion which must:

254 (1) be titled substantially as: "Ex parte motion [short phrase describing the relief requested]";

255

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

258
259 (3) cite the statute or rule authorizing the ex parte motion;

260
261 (4) be accompanied by a request to submit for decision and a proposed order.
262

263 **(n) Motion in opposing memorandum or reply memorandum prohibited.** A party may not
264 make a motion in a memorandum opposing a motion or in a reply memorandum. A party who
265 objects to evidence in another party's motion or memorandum may not move to strike that
266 evidence. Instead, the party must include in the subsequent memorandum an objection to the
267 evidence.
268

269 **(o) Overlength motion or memorandum.** The court may permit a party to file
270 an overlength motion or memorandum upon a showing of good cause. An overlength motion or
271 memorandum must include a table of contents and a table of authorities with page references.
272

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

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

277
278 (2) motion to extend the time to perform an act, if the motion is filed before the time to
279 perform the act has expired;

280
281 (3) motion to continue a hearing;

282
283 (4) motion to appoint a guardian ad litem;

284
285 (5) motion to substitute parties;

286
287 (6) motion to refer the action to or withdraw it from alternative dispute resolution under Rule
288 4-510.05;

289
290 (7) motion for a conference under Rule 16; and

291
292 (8) motion to approve a stipulation of the parties.
293

294 *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
the safeguards in Rule [43\(b\)](#); or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

114

115 **Advisory Committee Notes**

116 The 2011 amendments to Rule 37 make two principal changes. First, the amended Rule
117 37 consolidates provisions for motions for a protective order (formerly set forth in Rule
118 26(c)) with provisions for motions to compel. Second, the amended Rule 37 incorporates
the new Rule 26 standard of "proportionality" as a principal criterion on which motions
to compel or for a protective order should be evaluated.

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

Tab 5

Federal Rule 41 Issue Summary

Judge Linda Jones / Judge Amber Mettler:

An issue was brought to my attention in a case where 4 out of 5 defendants settled and all parties stipulated to a dismissal as to the 4 settling defendants. The parties then turned to the rules. Rule 54(b) did not seem appropriate, and rule 41 was a possibility. The problem, however, is that rule 41 allows the plaintiff to dismiss an "action" by stip or otherwise, and an action is a term of art per rule 2.

Apparently, Utah federal judges have interpreted the federal rule on this point. Specifically, there is disagreement as to whether a Rule 41 dismissal can be used to dismiss parties in a multi-defendant case or whether it can be utilized only to dismiss an entire action.

In the case before me, the parties briefed it this way. I hope this helps.

Here are the excerpts in briefing:

In *Van Leeuwen v. Bank of America, N.A.*, 304 F.R.D. 691, 693, 695-697 (D. Utah 2015), Judge Waddoups analyzed the existence of “a circuit split ... on the question of whether a plaintiff must dismiss the entire action under Rule 41(a)(1)(A) or whether it can more surgically dismiss all claims against one of multiple defendants.” Id. Judge Waddoups observed that “[t]he First, Third, Fifth, Eighth, and Ninth Circuits form the majority in holding that ‘Rule 41(a)(1) allows a plaintiff to dismiss without a court order any defendant who has yet to serve an answer or a motion for summary judgment.’ (quoting *Pedrina v. Chun*, 987 F.2d 608, 609 & n.1 (9th Cir. 1993)). Id. But, “[t]he Second and Sixth Circuits have historically taken the opposite approach based on a literal reading of the Rule.” Id.

Further, Judge Waddoups noted that the Tenth Circuit has not precisely considered whether Rule 41 permits dismissal of all claims against one defendant in a multi-defendant lawsuit. Id. at 695-696. Judge Waddoups considered *Gobbo Farms & Orchards v. Poole Chemical Co., Inc.*, 81 F.3d 122, 123 (10th Cir.1996), the case that came the closest to answering the question, and concluded that the *Gobbo Farms*’ holding “seem[ed] to follow the minority approach of the Second and Sixth Circuits.” Id.

Nevertheless, Judge Waddoups concluded that *Gobbo Farms*’ holding is limited to dismissing claims—not parties—and so “*Gobbo* should not ... block [a] plaintiff’s use of Rule 41(a)(1)(A)(i) to dismiss all claims against” fewer than all defendants. Id. at 696. Based upon his interpretation of the rule, Judge Waddoups held that the plaintiff’s voluntary dismissal of all claims against one defendant was a proper dismissal under R. 41(a)(1)(A)(i) and was not a dismissal of the entire case in a multi-party case. Id. at 697.

Judge Nuffer, however, came to exactly the opposite conclusion in *Peter E. v. United HealthCare Servs., Inc.*, No. 2:17-CV-00435, 2018 WL 6068107, at *1 (D. Utah Nov. 20, 2018). Judge Nuffer held: “Generally, the dismissal of single claims is not permitted under Rule 41 because it speaks to dismissal of an action, not just a claim within an action. *Gobbo Farms & Orchards v. Poole Chemical Co., Inc.*, 81 F.3d 122, 123 (10th Cir.1996). When a plaintiff wishes to dismiss certain claims without dismissing the entire case, ‘the proper procedure is to amend the complaint under Rule 15.’ *Utah Republican Party v. Cox*, 177 F.Supp.3d 1343, 1372 (D. Utah, Apr. 6, 2016).”

Rule 41. Dismissal of Actions

(a) VOLUNTARY DISMISSAL.

(1) *By the Plaintiff.*

(A) *Without a Court Order.* Subject to Rules 23(e), 23.1(c), [23.2](#), and [66](#) and any applicable federal statute, the plaintiff may dismiss an action without a court order by filing:

(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(ii) a stipulation of dismissal signed by all parties who have appeared.

(B) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(2) *By Court Order; Effect.* Except as provided in [Rule 41\(a\)\(1\)](#), an action may be dismissed at the plaintiff's request only by court order, on terms that the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (2) is without prejudice.

(b) INVOLUNTARY DISMISSAL; EFFECT. If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under [Rule 19](#)—operates as an adjudication on the merits.

(c) DISMISSING A COUNTERCLAIM, CROSSCLAIM, OR THIRD-PARTY CLAIM. This rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under [Rule 41\(a\)\(1\)\(A\)\(i\)](#) must be made:

(1) before a responsive pleading is served; or

(2) if there is no responsive pleading, before evidence is introduced at a hearing or trial.

(d) COSTS OF A PREVIOUSLY DISMISSED ACTION. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court:

(1) may order the plaintiff to pay all or part of the costs of that previous action; and

(2) may stay the proceedings until the plaintiff has complied.

Rule 41. Dismissal of actions.**(a) Voluntary dismissal; effect.****(a)(1) By the plaintiff.**

(a)(1)(A) Subject to Rule [23\(e\)](#) and any applicable statute, the plaintiff may dismiss an action without a court order by filing:

(a)(1)(A)(i) a notice of dismissal before the opposing party serves an answer or a motion for summary judgment; or

(a)(1)(A)(ii) a stipulation of dismissal signed by all parties who have appeared.

(a)(1)(B) Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal- or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.

(a)(2) By court order. Except as provided in paragraph (a)(1), an action may be dismissed at the plaintiff's request by court order only on terms the court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication by the court. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

(b) Involuntary dismissal; effect. If the plaintiff fails to prosecute or to comply with these rules or any court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order otherwise states, a dismissal under this paragraph and any dismissal not under this rule, other than a dismissal for lack of jurisdiction, improper venue, or failure to join a party under Rule [19](#), operates as an adjudication on the merits.

(c) Dismissal of counterclaim, crossclaim, or third-party claim. This rule applies to the dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under paragraph (a)(1) must be made before a responsive pleading is served or, if there is no responsive pleading, before evidence is introduced at a trial or hearing.

(d) Costs of previously-dismissed action. If a plaintiff who previously dismissed an action in any court files an action based on or including the same claim against the same defendant, the court may order the plaintiff to pay all or part of the costs of the previous action and may stay the proceedings until the plaintiff has complied.

(e) Bond or undertaking to be delivered to opposing party. If a party dismisses a complaint, counterclaim, crossclaim, or third-party claim, under paragraph (a)(1) after a provisional remedy has been allowed the party, the bond or undertaking filed in support of the provisional remedy must be delivered to the party against whom the provisional remedy was obtained.

[Advisory Committee Notes](#)

Effective November 1, 2016.