

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

2 **(a) Written motion required.** An application to a court commissioner for an order must
3 be by motion which, unless made during a hearing, must be made in accordance with
4 this rule.

5 (1) A motion must be in writing and state succinctly and with particularity the
6 relief sought and the grounds for the relief sought. Any evidence necessary to
7 support the moving party's position must be presented by way of one or more
8 affidavits or declarations or other admissible evidence. The ~~moving party~~ motion
9 may also ~~file~~ include a supporting memorandum.

10 (2) All motions must provide the bilingual Notice to Responding Party approved
11 by the Judicial Council.

12 (3) Each motion to a court commissioner must include the following caution
13 language at the top right corner of the first page, in bold type: **This motion will**
14 **be decided by the court commissioner at an upcoming hearing. If you do not**
15 **appear at the hearing, the Court might make a decision against you without**
16 **your input. In addition, you may file a written response at least 14 days before**
17 **the hearing.**

18 (4) Failure to provide the bilingual Notice to Responding Party or to include the
19 caution language may provide the non-moving party with a basis under Rule
20 60(b) for excusable neglect to set aside any resulting order or judgment.

21 **(b) Time to file and serve.** The moving party must file the motion and any supporting
22 papers with the clerk of the court and obtain a hearing date and time. The moving party
23 must serve the responding party with the motion and supporting papers, together with
24 notice of the hearing at least 28 days before the hearing. If service is more than 90 days
25 after the date of entry of the most recent appealable order, service may not be made
26 through counsel.

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

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

34 **(e) Counter motion.** Responding to a motion is not sufficient to grant relief to the
35 responding party. A responding party may request affirmative relief by way of a
36 counter motion. A counter motion need not be limited to the subject matter of the
37 original motion. All of the provisions of this rule apply to counter motions except that a
38 counter motion must be filed and served with the response. Any response to the
39 counter motion must be filed and served no later than the reply to the motion. Any
40 reply to the response to the counter motion must be filed and served at least 3 business
41 days before the hearing. The reply must be served in a manner that will cause the reply
42 to be actually received by the party responding to the counter motion (i.e. hand-
43 delivery, fax or other electronic delivery as allowed by rule or agreed by the parties) at
44 least 3 business days before the hearing. A separate notice of hearing on counter
45 motions is not required.

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

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

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

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

66 (2) If papers or exhibits referred to in a motion or necessary to support the moving
67 party's position are not served with the motion, the responding party may file and
68 serve an objection to the defect with the response. If papers or exhibits referred to in
69 the response or necessary to support the responding party's position are not served
70 with the response, the moving party may file and serve an objection to the defect
71 with the reply. The defect must be cured within 2 business days after notice of the
72 defect or at least 3 business days before the hearing, whichever is earlier.

73 (3) Voluminous exhibits which cannot conveniently be examined in court may not
74 be filed as exhibits, but the contents of such documents may be presented in the
75 form of a summary, chart or calculation under Rule 1006 of the Utah Rules of
76 Evidence. Unless they have been previously supplied through discovery or
77 otherwise and are readily identifiable, copies of any such voluminous documents
78 must be supplied to the other parties at the time of the filing of the summary, chart
79 or calculation. The originals or duplicates of the documents must be available at the
80 hearing for examination by the parties and the commissioner. Collections of
81 documents, such as bank statements, checks, receipts, medical records, photographs,
82 e-mails, calendars and journal entries that collectively exceed ten pages in length

83 must be presented in summary form. Individual documents with specific legal
84 significance, such as tax returns, appraisals, financial statements and reports
85 prepared by an accountant, wills, trust documents, contracts, or settlement
86 agreements must be submitted in their entirety.

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

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

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

103 **(l) Hearings.**

104 (1) The court commissioner may not hold a hearing on a motion for temporary
105 orders before the deadline for an appearance by the respondent under Rule 12.

106 (2) Unless the court commissioner specifically requires otherwise, when the
107 statement of a person is set forth in an affidavit, declaration or other document
108 accepted by the commissioner, that person need not be present at the hearing. The
109 statements of any person not set forth in an affidavit, declaration or other acceptable

110 document may not be presented by proffer unless the person is present at the
111 hearing and the commissioner finds that fairness requires its admission.

112 **(m) Motions to judge.** The following motions must be to the judge to whom the case is
113 assigned: motion for alternative service; motion to waive 30-day waiting period; motion
114 to waive divorce education class; motion for leave to withdraw after a case has been
115 certified as ready for trial; and motions in limine. A court may provide that other
116 motions be considered by the judge.

117 **(n) Objection to court commissioner's recommendation.** A recommendation of a court
118 commissioner is the order of the court until modified by the court. A party may object
119 to the recommendation by filing an objection under Rule 108.

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