IN THE UTAH COURT OF APPEALS

DAVID AMMON JAKEMAN, Appellant, v. **OREM CITY,** Appellee.	Appellate Case No: 20250896-CA (Consolidated with Case Nos.: 20250897-CA, 20250898-CA, 20250899-CA, 20250900-CA, 20250901-CA, 20250902-CA, 20250903-CA, 20250904-CA, 20250905-CA) ——— Trial Court Case No: 221300408 221300553 231300069 231300079 231300162

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. THE DISTRICT COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN DENYING APPELLANT'S MOTION TO CORRECT THE RECORD

A. URAP 11(d) authorizes trial-court correction of record omissions, and the district court misread the rule.

Appellee's threshold contention—that Utah Rule of Appellate Procedure 11 is "inapplicable" in the district court and therefore could not supply authority for Jakeman's motion—conflicts with the text and function of Rule 11, which expressly assigns the trial court a role in ensuring the record on appeal is complete and accurate. Utah R. App. P. 11(d)(1)–(2).

Rule 11 defines what the "record on appeal" is and how it must be prepared. "The record on appeal consists of the original papers and exhibits filed in or considered by the trial court, transcripts of proceedings, and docket entries." Utah R. App. P. 11(a). Rule 11 further requires the clerk to compile "all original documents in chronological order" and "all exhibits offered in the proceeding." Utah R. App. P. 11(b)(1)(A), (E).

Most importantly, Rule 11 expressly contemplates trial-court involvement to ensure completeness and accuracy. If a dispute arises as to whether the record is "complete and accurate," "the dispute may be submitted to and resolved by the trial court," and "the trial court will ensure that the record accurately reflects the proceedings." Utah R. App. P. 11(d)(1). And where "anything material to either party is

omitted from or misstated in the record … by error of the trial court or court personnel, by accident, or by mistake," "the omission or misstatement may be corrected and a supplemental record may be created and forwarded." Utah R. App. P. 11(d)(2)(A). The rule further clarifies that correction may occur "by the trial court before or after the record has been forwarded." Utah R. App. P. 11(d)(2)(B).

Those provisions defeat appellee's central premise. Rule 11 does not merely operate "in the appellate court." It assigns the trial court an affirmative role in correcting omissions and settling disputes about what occurred below so the record "accurately reflects the proceedings." Utah R. App. P. 11(d)(1)–(2). Utah precedent explains the same record-truth function. When the record is inaccurate, Rule 11 supplies "a reliable method for the reconstruction of events." *Olson v. Park-Craig-Olson, Inc.*, 815 P.2d 1356, 1359 (Utah Ct. App. 1991). Relatedly, Utah decisions quoting older versions of Rule 11 state that if any difference arises as to whether the record "truly discloses what occurred," the difference must be submitted to the trial court and the record "made to conform to the truth." *State v. Moosman*, 794 P.2d 474, 479 (Utah 1990) (quoting then-appellate rule); accord *Arreguin-Leon v. Hadco Constr.*, LLC, 2020 UT 59, ¶ 27.

Appellee's own cited cases point the same direction. In *State v. Law*, the Court of Appeals reaffirmed that Rule 11 is the proper vehicle for correcting an "omission or exclusion" or resolving a dispute as to record accuracy. *State v. Law, 2003 UT App 228, ¶ 2*. And in *Smith v. Four Corners Mental Health Center*, the Utah Supreme Court likewise described Rule 11's procedure for augmenting the record when necessary because of "an

omission or exclusion" or "a dispute as to the accuracy of reporting." *Smith v. Four Corners Mental Health Ctr., Inc.*, 2003 UT 23, ¶ 33. That is precisely the kind of correction Jakeman sought: inclusion of a declaration that was filed simultaneously with and in support of his plea-withdrawal motion and that was omitted from the docket/record by clerical error—i.e., "omitted … by error … accident, or mistake." Utah R. App. P. 11(d)(2)(A). R001722–1737; R002433–2448; R000486–0499.

B. Jakeman's motion satisfied Utah motion-practice requirements and fairly presented the grounds and relief.

Appellee argues that, because Jakeman did not include extended legal citations within the body of his motion, the district court could deny it as insufficient under Utah R. Crim. P. 12(a) and cases discussing motion-practice rules. That argument mischaracterizes what Rule 12 requires and what Jakeman actually filed. URCrP. 12(a).

Rule 12 requires that a motion state "succinctly and with particularity the grounds upon which it is made and the relief sought," and it further provides that a motion "need not be accompanied by a memorandum unless required by the court." Utah R. Crim. P. 12(a). Jakeman's motion did exactly that. It identified the specific declaration; asserted it was filed contemporaneously with, and in support of, the September 21, 2023 motion to withdraw guilty pleas; explained it is missing from MyCase and the record; and requested a narrow set of corrective actions—search for a signed copy (including from the City's records), inclusion in the record, and notification to the Court of Appeals. Utah R. Crim. P. 12(a). R001722–1726; R002433–2448. Those particulars satisfy the policies behind

motion-particularity rules, which exist to mitigate prejudice by enabling a response and to ensure the court is apprised of the basis for the requested relief. *Holmes Dev., LLC v. Cook*, 2002 UT 38, ¶ 58.

Moreover, Utah appellate courts have repeatedly cautioned against elevating a motion's label over its substance. In *State v. Parker*, the Court of Appeals explained that "the substance of the motion, not its caption, is controlling." *State v. Parker*, 872 P.2d 1041, 1044 (Utah Ct. App. 1994). Here, the substance of Jakeman's motion was unmistakable: it presented a record-accuracy dispute and asked the trial court to correct an omission so the record would reflect what was filed. Utah R. App. P. 11(d)(1)–(2).

To the extent Appellee invokes cases emphasizing adherence to motion-practice rules, those authorities do not compel denial in these circumstances. *Menzies* recognizes that noncompliance may justify denial as a discretionary matter, but that discretion is tethered to the underlying motion-practice policies of notice and court understanding—policies satisfied by a focused motion identifying the specific missing filing, the omission, and the corrective relief requested. *Menzies v. Galetka*, 2006 UT 81, ¶ 68; *Holmes Dev.*, 2002 UT 38, ¶ 58; Utah R. Crim. P. 12(a).

C. This is not an attempt to add "new material"; it is a request to restore a document filed below but omitted from the docket/record.

Appellee repeatedly characterizes Jakeman's motion as an attempt to "introduce new material into the record." That is not what the motion requests and not what Rule 11(d) governs. Utah R. App. P. 11(d)(2)(A); *Law*, 2003 UT App 228, ¶ 2.

Rule 11(d)(2) allows correction where an item "material to either party" is omitted "by error of the trial court or court personnel, by accident, or by mistake," and it authorizes creation and forwarding of a "supplemental record." Utah R. App. P. 11(d)(2)(A). That is a classic "omission/exclusion" scenario. *Olson*—one of appellee's key cases—describes Rule 11's supplementation procedure as a "reliable method for the reconstruction of events when the record has failed in some limited respect," and it distinguishes that function from attempts to "introduce new material into the record." *Olson*, 815 P.2d at 1359. Smith likewise describes Rule 11 augmentation as appropriate when needed because of "an omission or exclusion" or "a dispute as to the accuracy of reporting." *Smith*, 2003 UT 23, ¶ 33.

State v. Law underscores the same distinction. There, the Court of Appeals reiterated that Rule 11 addresses omissions/accuracy disputes and "does not allow a party to add new material to the record on appeal." *Law*, 2003 UT App 228, ¶ 2. Jakeman is not attempting to append extra-record advocacy exhibits; he is asking the court to correct an omission so the record reflects what was filed. Utah R. App. P. 11(d)(2)(A).

D. The district court applied the wrong materiality standard and erred by denying correction as "moot/immaterial."

The district court denied Jakeman's motion on the ground that counsel "withdrew" the underlying motion to withdraw guilty pleas at an October 13, 2023 hearing and therefore inclusion of the missing declaration was "immaterial and moot." That reasoning applies the wrong legal standard to a Rule 11(d) request. Utah R. App. P. 11(d)(1)–(2);

Olson, 815 P.2d at 1359; *Moosman*, 794 P.2d at 479.

Rule 11(d) is a record-accuracy rule. Its touchstone is whether the record "accurately reflects the proceedings" and whether "anything material to either party" was "omitted … by error … accident, or mistake." Utah R. App. P. 11(d)(1)–(2)(A). The rule does not condition correction on whether the underlying filing was later withdrawn, later denied, or later rendered moot on the merits; rather, it empowers the trial court to correct qualifying omissions and ensure the record reflects what occurred below. Utah R. App. P. 11(d)(1)–(2)(A). It also expressly rejects any "too late / moot" framing by permitting correction "before or after the record has been forwarded." Utah R. App. P. 11(d)(2)(B).

Appellee's "materiality" gloss is misplaced because it substitutes a merits-based question for Rule 11(d)'s record-based question. *Olson* explains Rule 11's function as "reconstruction of events when the record has failed in some limited respect," not merits screening. *Olson*, 815 P.2d at 1359. And Utah cases quoting the rule's earlier formulation describe the same objective: when a dispute arises about whether the record "truly discloses what occurred," the trial court must settle it and conform the record "to the truth." *Moosman*, 794 P.2d at 479; accord *Arreguin-Leon*, 2020 UT 59, ¶ 27.

In other words, even assuming arguendo that the plea-withdrawal motion was later withdrawn, that would not make the filing disappear from the record of proceedings—and Rule 11's function is to ensure the record "speaks the truth" about what was filed and what happened below. Utah R. App. P. 11(d)(1)–(2); *Moosman*, 794 P.2d at 479; *Olson*, 815 P.2d at 1359.

E. Appellee's waiver/mootness narrative conflates merits with record accuracy and does not defeat Rule 11(d) relief.

Appellee argues that Jakeman abandoned or waived plea-withdrawal issues, that some appeal was voluntarily dismissed and remitted, and that therefore any correction is "immaterial and moot." This conflates merits finality with record integrity. Utah R. App. P. 11(d)(1)–(2); *Olson*, 815 P.2d at 1359; *Smith*, 2003 UT 23, ¶ 33; *Law*, 2003 UT App 228, ¶ 2.

First, a Rule 11(d) correction motion is not a motion to reopen convictions or relitigate pleas; it is a motion to correct the appellate record so it accurately reflects what occurred in the trial court. Utah R. App. P. 11(d)(1)–(2). Even if appellee's merits waiver narrative were accepted in some other posture, it does not answer the Rule 11(d) question: whether "anything material to either party" was omitted from the record by error, accident, or mistake. Utah R. App. P. 11(d)(2)(A).

Second, appellee's reliance on *Jeschke* does not support denial here. *Jeschke* states that under appropriate circumstances, the court may deny a motion to supplement "in the interest of judicial economy." Jeschke v. Willis, 793 P.2d 428, 428–29 (Utah Ct. App. 1990). Those circumstances relate to delay-inducing attempts to enlarge the record; they do not justify refusing to correct an asserted omission of an allegedly filed document, where Rule 11(d) is designed to resolve precisely such record-accuracy disputes. *Id.*; Utah R. App. P. 11(d)(1)–(2); *Law*, 2003 UT App 228, ¶ 2; *Olson*, 815 P.2d at 1359; *Smith*, 2003 UT 23, ¶ 33.

Third, Rule 11(d) itself defeats appellee's "too late / moot" framing: it permits correction "before or after the record has been forwarded." Utah R. App. P. 11(d)(2)(B). Record accuracy is not mooted merely because related proceedings have ended. Utah R. App. P. 11(d)(2)(B); *Olson*, 815 P.2d at 1359.

F. Appellee's "wrong rule / unpreserved Rule 30 or Rule 60" argument fails because the governing standard is URAP 11(d), not post-judgment merits relief.

Appellee contends that if the district court had authority, Jakeman should have proceeded under Utah R. Crim. P. 30 or Utah R. Civ. P. 60, and that any reliance on those rules is unpreserved. This argument fails for two independent reasons. Utah R. App. P. 11(d)(1)–(2); Law, 2003 UT App 228, ¶ 2; *Smith*, 2003 UT 23, ¶ 33; *Olson*, 815 P.2d at 1359.

First, the relief sought is quintessential URAP 11(d) relief: correcting an omission from the record. Utah R. App. P. 11(d)(1)–(2). Rule 11—not post-judgment merits rules—provides the mechanism for correcting omissions and resolving disputes about whether the record accurately reflects the proceedings below. *Law*, 2003 UT App 228, ¶ 2; *Smith*, 2003 UT 23, ¶ 33; *Olson*, 815 P.2d at 1359; *Moosman*, 794 P.2d at 479.

Second, even if the court looks to analogous trial-court correction concepts, the rules appellee invokes actually confirm the existence of trial-court authority to correct clerical/omission errors in "other parts of the record." Utah R. Crim. P. 30(b) ("Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising

from oversight or omission may be corrected by the court at any time …."); Utah R. Civ. P. 60(a) ("The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record."). Those provisions reinforce, rather than negate, the corrective authority reflected in Rule 11(d) for appellate-record purposes. Utah R. App. P. 11(d)(1)–(2).

And appellee's preservation objection misunderstands preservation doctrine. Jakeman preserved the issue presented—denial of a record-correction request—by filing the motion in the district court and obtaining a ruling denying correction as "moot/immaterial." Utah R. App. P. 11(d)(1)–(2). Appellee's insistence on a different rule label does not convert this into an unpreserved issue where Utah law instructs courts to evaluate motions by substance. *Parker*, 872 P.2d at 1044. In any event, Utah preservation doctrine focuses on whether the grounds were presented to the trial court; Rule 12(a) provides the "grounds and relief" requirement, and Jakeman's motion met that requirement by specifying the omission and the corrective relief sought. Utah R. Crim. P. 12(a); *Holmes Dev.*, 2002 UT 38, ¶ 58. And where appellee claims a mismatch between trial-court grounds and appellate grounds, *Isom* states that "Where the grounds upon which a motion is made before the trial court differ from the grounds argued on appeal, appellate courts will generally dismiss those arguments as unpreserved." *State v. Isom*, 2015 UT App 160, ¶ 21 (quotation omitted). Here, Jakeman's grounds remain the same: Rule 11(d) record omission/correction and the trial court's denial on "moot/immaterial" reasoning. Utah R. App. P. 11(d)(1)–(2).

G. Judicial-economy considerations favor granting relief.

Finally, appellee's invocation of "finality" and "judicial economy" points the other way. The appellate system depends on a record that includes the papers and exhibits "filed in or considered by the trial court" and is compiled with "all original documents" and "all exhibits offered." Utah R. App. P. 11(a), 11(b)(1)(A), (E). Rule 11(d) exists so the trial court can ensure the record "accurately reflects the proceedings" and correct omissions "material to either party" caused by error/accident/mistake. Utah R. App. P. 11(d)(1)–(2).

Correcting an alleged omission is efficient because it prevents collateral disputes over what was filed and allows appellate review confined to the record to proceed on an accurate record—precisely Rule 11's "reconstruction of events" purpose when the record fails in a limited respect. *Olson*, 815 P.2d at 1359; *Smith*, 2003 UT 23, ¶ 33; *Law*, 2003 UT App 228, ¶ 2. Utah cases recognize that appellate review is limited to the record on appeal, reinforcing the importance of correcting omissions that undermine meaningful record-based review. *State v. Pliego*, 1999 UT 8, ¶ 7, 974 P.2d 279. And Utah appellate courts have likewise observed that "[w]ithout a proper record" against which to review a claimed error, a reviewing court cannot evaluate competing assertions—another reason record accuracy serves judicial economy rather than undermines it. *State v. Van Matre*, 777 P.2d 459, 463 (Utah 1989).

Where, as here, the movant identifies a specific document allegedly filed below, explains the omission, and requests narrow corrective steps to locate and include it,

denying correction on a merits-mootness rationale undermines—rather than serves—judicial economy. Utah R. App. P. 11(d)(1)–(2); *Olson*, 815 P.2d at 1359.

H. Requested relief.

For these reasons, Jakeman respectfully requests that this Court reverse the denial of his Rule 11(d) motion and remand with directions that the district court resolve the completeness/accuracy dispute and correct the record by locating and including the missing declaration in the record and its MyCase system.

II. THE DISTRICT COURT ERRED BY STRIKING APPELLANT'S "RESPONSE TO STATEMENTS" UNDER URCrP 33 AND BY ENTERING A "VEXATIOUS-LITIGANT STRIKE" OUTSIDE URCP 83.

Appellee defends the order on three theories: (A) URCrP 33 gave the court discretion to strike the filing as "burdensome, irrelevant, [and] immaterial"; (B) the filing could also be struck because it did not satisfy URCrP 12's particularity requirements; and (C) the court could issue a "vexatious strike" without notice and hearing because no Rule 83 "order" restricting litigation was entered. Each theory fails.

A. The court's URCrP 33 ruling rests on legal error and a material misapprehension of what Rule 33 authorizes.

1. Rule 33 is not a roving license to purge the record of filings a court deems unnecessary or inconvenient.

URCrP 33(a) requires that papers be "free from burdensome, irrelevant, immaterial, scandalous, or uncivil matters" and provides that noncompliant filings "may be disregarded or stricken, in whole or in part," with sanctions available in appropriate

cases. Utah R. Crim. P. 33(a). But the existence of discretion does not mean the court can strike anything it dislikes or believes is unnecessary. Even in contexts governed by abuse-of-discretion review, a court must apply the correct legal standard and make a reasoned decision tethered to the governing rule. *See Murray v. Utah Labor Comm'n*, 2013 UT 38, ¶ 30, 308 P.3d 461 (explaining that discretion operates within a range of acceptable outcomes); *Gunnison Valley Bank v. Crotts*, 2012 UT App 308, ¶ 2, 293 P.3d 944 (reviewing a ruling on a motion to strike for abuse of discretion).

Appellee's citations to broad "courtroom control" principles do not expand Rule 33 beyond its text. *See Pratt v. Nelson*, 2005 UT App 541, ¶ 12, 128 P.3d 141 (recognizing broad discretion in how a case proceeds in the courtroom); *Chen v. Stewart*, 2005 UT 68, ¶ 43, 123 P.3d 416 (recognizing inherent authority to strike where a party's conduct demonstrates a lack of merit). Those authorities do not authorize striking a filing simply because (i) it is not styled as a motion for relief, (ii) the court deems the subject matter "complete," or (iii) attachments are lengthy. Rule 33's remedy must be applied to *Rule 33's problem*: improper matter that is burdensome, irrelevant, immaterial, scandalous, or uncivil—and, burdensome is not a synonym for a short filing with long or multiple addendum, or even for a long filing, or for a filing the judge would rather not read or believes was unnecessary.

2. The court's "no relief requested" rationale is not a Rule 33 ground and (as appellee frames it) collapses Rule 33 into Rule 12.

The order repeatedly faults Appellant for not "includ[ing] a request for any sort of

relief" and for making it "unclear what relief" he sought. But that is not a Rule 33 criterion. Utah R. Crim. P. 33(a). Rule 33 does not say a filing may be stricken because it is not a motion, or because it does not request relief. Appellee's defense thus depends on importing Rule 12's motion-particularity doctrine into Rule 33's striking authority—an issue addressed separately below. (And even under Rule 12, the remedy is not "strike it as scandalous/immaterial"; the question would be whether a *motion* is sufficient for decision. See Utah R. Crim. P. 12(a).)

3. The court's irrelevance/immateriality analysis is legally and factually flawed because it assumes the "only purpose" of the March 28 hearing defined the permissible contents of the record.

Appellee insists the March 29 filing was "irrelevant and immaterial to any matter pending before the court" because the attorney withdrawal/pro se representation issue was resolved. But the order and the filing themselves acknowledge the filing's stated purpose: to address record accusations that Appellant was attempting to file frivolous or improper documents. Those accusations were made on the record at the hearing, and the court did not strike *those* statements. Having allowed that subject to be aired in open court, it was legal error to deem Appellant's written response categorically "irrelevant" on the theory that the record should be limited to filings relating specifically and only to the hearing's original purpose of adjudicating the withdrawal request.

Nor does Utah authority support Appellee's premise that "relevance" is limited to whether a filing is necessary to obtain immediate judicial action. Even in a case criticizing "voluminous briefing on extraneous issues," the Utah Supreme Court

explained that relevance/materiality turns on whether the matter pertains to the issues before the court—not on whether a party's filing asks for relief in a formally perfect way. See *Menzies v. Galetka*, 2006 UT 81, ¶¶ 51–53, 150 P.3d 480 (declining to strike where arguments were supported by record citations; admonishing parties to constrain litigiousness to matters "relevant and material" to what is before the court). Here, the subject matter Appellant addressed (the on-the-record accusations about his litigation conduct and the merits of filings he sought to present) was introduced at the withdrawal hearing as part of the narrative offered to the court. The court could not logically deem Appellant's rebuttal irrelevant while treating the accusations as proper components of the record.

4. "Burdensome" cannot mean "contains many pages of exhibits," especially where Rule 33 authorizes tailored relief rather than wholesale erasure.

Appellee treats "322 pages" as virtually dispositive. (It was actually only 6 pages long with a 312-page addenda. R001856–2177.) But Rule 33 expressly contemplates that, where noncompliance exists, a filing may be "stricken, in whole or in part." Utah R. Crim. P. 33(a) (emphasis added). That text presupposes judicial tailoring—separating any truly improper matter from material that is proper. A categorical strike because exhibits are numerous is the opposite of the calibrated approach Rule 33 contemplates.

Appellee relies on abuse-of-discretion rhetoric—"no reasonable person" would disagree. *See State v. Sanchez*, 2017 UT App 229, ¶ 2, 407 P.3d 1024 (quoting *State v. Valdovinos*, 2003 UT App 432, ¶ 14, 82 P.3d 1167). But discretion is abused where the

court applies the wrong standard or reaches a result unsupported by a correct understanding of the governing rule. See *Murray*, 2013 UT 38, ¶ 30. Here, the order's reasoning demonstrates a categorical rule of the court's own invention: *if a filing follows a hearing where the moving relief was granted, then nothing said at that hearing may be responded to unless the response asks for new relief; and if exhibits are lengthy, the filing is "burdensome."* Rule 33 contains no such standard, and that misapprehension is itself reversible error.

B. Appellee's URCrP 12 "particularity" defense fails because the March 29 filing was not an "application to the court for an order," and the authorities appellee cites concern insufficient motions—not record-clarifying responses.

URCrP 12(a) provides: "An application to the Court for an order shall be by motion," and a motion must state "with particularity the grounds upon which it is made and the relief sought." Utah R. Crim. P. 12(a). Appellee argues the filing was properly stricken because it "did not make any request for relief" and cited no legal authority. But that argument assumes what it must prove: that Appellant's March 29 filing was an "application to the Court for an order." It was not.

1. Rule 12 governs motions seeking court action; it does not forbid a party from filing a response designed to correct or balance an on-the-record narrative.

The Rule 12 authorities appellee cites address *motions* that asked the court to act but did so inadequately. *See State v. Parker*, 872 P.2d 1041, 1044 (Utah Ct. App. 1994)

(substance controls; motions must sufficiently state grounds); H*olmes Dev., LLC v. Cook*, 2002 UT 38, ¶¶ 58–59, 48 P.3d 895 (formal motion practice rules require particularity to mitigate prejudice and allow informed decisionmaking; denial was proper where no adequate motion/proposed pleading was filed); *Menzies*, 2006 UT 81, ¶ 68 (explaining that where a party fails to comply with formal motion-practice rules, a court may deny a motion as insufficient, quoting *Holmes Development*); *State v. Clegg*, 2002 UT App 279, ¶ 8, 54 P.3d 1110 (no abuse of discretion in denying a subsequent hearing request where defendant failed to place a material fact in dispute).

None of those cases holds that a court may strike any non-motion filing that does not request relief. They instead stand for a narrower proposition: when a party *seeks an order*, Rule 12's particularity safeguards help prevent prejudice and enable meaningful response and informed rulings. *Holmes Dev.*, 2002 UT 38, ¶ 58; *Menzies*, 2006 UT 81, ¶ 68. Appellant's March 29 filing—by its nature and title—was not "an application to the court for an order." It was a response placed in the record to address accusations made on the record. Rule 12 does not convert every filing into an "application" simply because it is written.

2. **Even if the court believed the filing improperly sought relief, the Rule 12 remedy would be to treat it as not properly presented for decision—not to strike it as "irrelevant/immaterial" under Rule 33.**

Holmes Development and *Menzies* confirm that the appropriate consequence for noncompliance with motion practice is denial (or refusal to act) due to insufficiency—not

a punitive record strike under an unrelated rule. *Holmes Dev.*, 2002 UT 38, ¶ 59; *Menzies*, 2006 UT 81, ¶ 68. That distinction matters because Appellant's appellate complaint is not "the judge didn't grant me relief"; it is that the court *erased a filing from the record* and added a vexatious-litigation "strike" based on grounds not authorized by the governing framework.

C. The "vexatious strike" cannot be sustained as a harmless "warning"; Rule 83 does not authorize adjudicative "strikes" untethered to its procedural and evidentiary prerequisites.

Appellee's third argument is that Rule 83 requires "notice and an opportunity to be heard" only before the court enters a Rule 83(b) order imposing *restrictions*, and because the court entered no restrictions—only a "strike" or "warning"—no hearing was required. That reframing fails for three independent reasons.

1. Rule 83 does not create a freestanding "strike" mechanism.

Rule 83 is structured around "vexatious litigant orders" entered "after notice and an opportunity to be heard." Utah R. Civ. P. 83(b). Before entering such an order, "the court must find by clear and convincing evidence" both that the person "is a vexatious litigant" and that "there is no reasonable probability" the litigant "will prevail on the claim." Utah R. Civ. P. 83(c)(1). The rule then specifies permissible restrictions and security requirements. Utah R. Civ. P. 83(b), (d), (e). Nothing in Rule 83 authorizes a court to unilaterally adjudicate that a filing constitutes "the first act of three" toward a vexatious-litigant designation—without invoking Rule 83's procedures and without

making Rule 83(c)(1)'s clear-and-convincing findings.

2. Strand confirms that Rule 83 determinations are evidence- and procedure-driven, not informal "strike" bookkeeping.

In *Strand v. Nupetco Assocs. LLC*, the court explained that, "[t]o be found vexatious," a court must find "by clear and convincing evidence" that the pro se litigant committed "three or more proscribed acts" in a single action. 2017 UT App 55, ¶ 19, 397 P.3d 724 (emphasis added). That is a finding—not a warning—and it requires a defined evidentiary standard. *Strand* does not endorse preliminary "first strike" labels as an end-run around Rule 83(c)(1)'s findings and Rule 83(b)'s notice-and-hearing requirement.

3. Appellee's due-process pivot is irrelevant and, in any event, does not validate ignoring Rule 83's mandatory procedures.

Appellee argues Appellant "waived" due process and that no liberty/property interest is implicated because there was "merely a warning." But Appellant's claim is primarily *rule-based*: the court invoked Rule 83 to impose a formal adverse designation ("first act of three") without complying with Rule 83. Whether a constitutional due-process claim is independently available does not cure the court's failure to follow the rule it purported to apply.

Moreover, even on appellee's preferred constitutional framing, *Angilau* underscores that procedural due process concerns are triggered when significant interests are at stake and that "procedural due process guarantees minimal requirements of notice and a hearing where there are significant interests of life, liberty, or property at stake."

State v. Angilau, 2011 UT 3, ¶ 13, 245 P.3d 745. A Rule 83 "strike" is not a harmless aside; it is an express judicial step toward restricting a litigant's access to court processes. And Rule 83 itself embodies the legislature's and judiciary's judgment that such measures must be preceded by notice, hearing, and clear-and-convincing findings. Utah R. Civ. P. 83(b), (c)(1); *Strand*, 2017 UT App 55, ¶ 19.

D. Conclusion and Requested relief.

Because appellee's defenses depend on expanding URCrP 33 beyond its text, misapplying URCrP 12 to a non-motion response, and treating Rule 83 as authorizing informal "strikes" without Rule 83's mandatory procedures, the June 30 order cannot stand. This Court should reverse the striking of Appellant's March 29 filing under URCrP 33 and vacate the court's Rule 83 "first act"/"strike" designation as unauthorized by Rule 83 and inconsistent with *Strand's* clear-and-convincing requirement. Utah R. Crim. P. 33(a); Utah R. Civ. P. 83(b), (c)(1); *Strand*, 2017 UT App 55, ¶ 19.

III. THE DISTRICT COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN DENYING APPELLANT'S REQUEST FOR A HEARING TO CONSIDER THE MODIFICATION OF THE CPOs.

Appellee's brief asks this Court to read into Utah Code section 78B-7-804 a sweeping "one-hearing-only" rule and an implied gatekeeping power to deny a requested hearing whenever the district court predicts the defendant will lose on the merits. The statute does not say that. Section 78B-7-804 expressly (1) mandates a hearing when requested ("the court shall hold the hearing"), and (2) separately establishes a stringent

merits standard for modifying or dismissing an existing continuous protective order as a result of the evidence presented during the hearing ("may be modified or dismissed only if …"). Utah Code Ann. § 78B-7-804(3)(c)(iii), (4). The district court's order committed reversible legal error by transforming merits language and victim-rights policy into a power to refuse to hold the hearing the statute requires. (Ruling on Defendant's Request for Hearing to Modify Continuous Protective Orders at 1–2 (July 25, 2025)).

Because statutory interpretation is reviewed for correctness, and because legal error is an abuse of discretion, the order should be reversed and the case remanded with instructions to schedule the hearing.

A. UTAH CODE § 78B-7-804 DOES NOT MAKE POST-ISSUANCE HEARINGS "DISCRETIONARY."

1. Appellee's reading conflicts with the statute's mandatory hearing command.

Appellee argues that hearings on modification or dismissal under § 78B-7-804(4) are "discretionary," because subsection (4) uses "may" ("A continuous protective order may be modified or dismissed…"). But subsection (3)(c)(iii) independently commands that if either party requests a hearing, "the court shall hold the hearing at the time determined by the court." Utah Code Ann. § 78B-7-804(3)(c)(iii) (emphasis added).

Utah's codified rules of construction confirm the force of that command:

- "'Shall' means that an action is required or mandatory." Utah Code Ann. § 68-3-12(1)(j).

- "'May' means that an action is authorized or permissive." Utah Code Ann. § 68-3-12(1)(g).

So subsection (3)(c)(iii) imposes a mandatory procedural duty: once a hearing is requested, the court must hold it. Subsection (4)'s "may" cannot erase subsection (3)(c)(iii)'s "shall." These subsections are easily harmonized be because is straightforward, making the hearing mandatory when requested, while making the ultimate relief (modification/dismissal) conditional on satisfying the evidentiary standard.

That harmonized reading is reinforced by subsection (4) itself. It does not say the court "may hold a hearing." It says a CPO "may be modified or dismissed only if the court determines by clear and convincing evidence that the statutory conditions are met and the victim does not have a reasonable fear of future harm or abuse." Utah Code Ann. § 78B-7-804(4). The phrase "only if" is a merits limitation on the granting of relief, not a license to refuse to schedule the hearing the statute elsewhere mandates.

2. The district court's "singular hearing" theory reads a numerical limit into the statute that is not there.

The district court reasoned that because § 78B-7-804(3) refers to "a hearing," "only a singular hearing is mandatorily required," and therefore Defendant "is not entitled to further hearings." (Ruling at 1–2 (July 25, 2025)). That is not statutory interpretation; it is judicial amendment.

Nothing in § 78B-7-804 states: "only one hearing," "one and only one hearing," "a single hearing," or "no additional hearings." To the contrary, the statute expressly

includes a hearing mechanism and victim-notice provisions that function whenever a hearing is requested. See Utah Code Ann. § 78B-7-804(3)(c)(iii), (v). If the Legislature had intended a one-hearing cap, it knew how to say so. It did not.

Moreover, even if the district court's "a hearing = only one hearing ever" premise were linguistically plausible, it would conflict with the rest of the statute—particularly subsection (4), which explicitly contemplates that an existing CPO may later be "modified or dismissed." Utah Code Ann. § 78B-7-804(4). A statute that authorizes later modification/dismissal necessarily contemplates later adjudication of that request. Nothing authorizes the court to refuse to adjudicate a statutory request by denying the hearing outright.

3. Appellee's "victim revictimization" policy argument cannot override the enacted procedure.

Appellee relies heavily on victim-rights principles and legislative purpose to argue that courts must be able to deny hearings to spare victims "repeat and unnecessary protective order hearings." But the Legislature itself built victim-rights policy into § 78B-7-804 while still mandating the hearing procedure. See Utah Code Ann. § 78B-7-804(3)(a) (legislative findings), (3)(c)(v) (victim notice of hearing). The statute's structure reflects legislative balancing: a CPO is permanent by default (§ 78B-7-804(3)(d)), modification/dismissal is extremely difficult (§ 78B-7-804(4)), and the hearing occurs when requested (§ 78B-7-804(3)(c)(iii)).

Victim-rights statutes likewise do not supply authority to nullify a separate

statute's mandatory process. Victims must be treated with dignity and respect, and victim rights must be protected vigorously, see Utah Code Ann. § 77-37-1(1)(b); victims and witnesses should have speedy disposition, see Utah Code Ann. § 77-37-3(1)(h); and victims have rights to prompt and final conclusion of cases and collateral attacks, see Utah Code Ann. § 77-38-7(2). But none of those provisions rewrites § 78B-7-804's hearing mandate. The district court's job is to apply both schemes as written—not to elevate general victim-rights policies into a power to refuse the very process § 78B-7-804 provides.

B. THE SEPTEMBER 27, 2024 HEARING WAS NOT A HEARING ON A JULY 2025 REQUEST TO MODIFY OR DISMISS EXISTING CPOs BECAUSE NO CPOs EXISTED WHEN THE REQUEST WAS MADE

Appellee argues the September 27, 2024 hearing satisfied Defendant's hearing entitlement and made the July 3, 2025 request a request for a "second hearing." That characterization conflates fundamentally different proceedings and statutory questions.

1. The September 27 hearing was scheduled and framed as a hearing on "modification of the sentencing protective order."

The transcript shows the court described the matter as "a hearing regarding a modification of the sentencing protective order," and explained that "that's why we scheduled today's hearing." (Sept. 27, 2024 Hr'g Tr. at beginning (court's introductory remarks)). That framing matters. A hearing convened to address an SPO is not the same thing as a later post-issuance proceeding to modify or dismiss an already-entered CPO.

2. The CPO did not exist until the court issued it at the end of the September 27 hearing.

By definition, a hearing to modify or dismiss an existing order presupposes the order already exists. In September 2024, the operative protective orders were SPOs, and the City sought conversion to CPOs during that hearing. (See Hr'g Tr. (City request); see also Appellant's procedural narrative in opening brief). The court's ultimate act—issuing the CPO—cannot retroactively transform the earlier SPO-modification hearing into a post-issuance modification/dismissal hearing of a CPO.

3. A hearing on whether to issue a CPO is not the same as a hearing on whether to later modify or dismiss it.

Appellee's position collapses issuance and modification/dismissal into the same "hearing," but the statute separates them:

- Subsection (3) governs issuance and the hearing right connected to issuance. Utah Code Ann. § 78B-7-804(3)(b)–(c).
- Subsection (4) governs later modification/dismissal and imposes a demanding merits standard. Utah Code Ann. § 78B-7-804(4).

Even if the September 2024 hearing could be characterized as an issuance-related hearing, that does not answer whether the court must hold a hearing when the defendant later seeks modification/dismissal under subsection (4), particularly where subsection (3)(c)(iii) says the court "shall hold the hearing" upon request.

C. THE DISTRICT COURT ERRED BY IMPOSING A "MATERIAL CHANGE OF CIRCUMSTANCES" SCREEN TO OBTAIN THE HEARING—AND ERRED FACTUALLY BY CLAIMING DEFENDANT PROVIDED "NO INFORMATION WHATSOEVER."

1. The statute does not require a "material change" showing as a precondition to holding the hearing.

Appellee tries to reframe the "material change" concept as merely a reason for denying a "second hearing," not as a judicially imposed prerequisite. But the order explicitly denied relief because Defendant "failed to demonstrate a material change of circumstances necessitating a hearing." (Ruling at 1 (July 25, 2025)). That is a threshold screen.

Section 78B-7-804 contains no "material change" prerequisite to requesting a hearing. The Legislature did include a demanding merits requirement—clear and convincing evidence and no reasonable fear of future harm or abuse. Utah Code Ann. § 78B-7-804(4). If the Legislature wanted a preliminary "material change" threshold before the hearing is even held, it could have said so. It did not.

The district court therefore erred as a matter of law by adding a precondition the statute omits. *Marion Energy*, 2011 UT 50, ¶ 12 (statutory interpretation reviewed for correctness).

2. Even if "material change" were relevant, Defendant proffered it—so the order's "no information whatsoever" finding is wrong.

The order states Defendant "failed to provide any information whatsoever

indicating his victims no longer have a reasonable fear of harm or abuse." (Ruling at 2 (July 25, 2025)). That statement is directly contradicted by the record.

In hiis July 21, 2025 reply in the district court, Appellant expressly asserted that "a material change of circumstances has occurred" due to "(1) the significant amount of time that has elapsed since the CPOs were issued and (2) the weighty and voluminous evidence accumulated by Jakeman" demonstrating no danger to the protected persons that was appended to the reply. (Def.'s Reply to City's Objection at § II & n.2 (July 21, 2025)).

The district court's "no information whatsoever" finding is therefore a factual error at minimum, and more importantly it shows the court treated the July 3 filing in isolation while ignoring the proffered support submitted as part of Appellant's reply to the City's objection.

D. VICTIM-RIGHTS AUTHORITIES DO NOT AUTHORIZE DENIAL OF THE HEARING REQUIRED BY § 78B-7-804.

Appellee argues that reading § 78B-7-804 to require a hearing upon request would violate victim rights by allowing "endless" hearings. The district court adopted that rationale, stating another hearing would violate victims' rights under Utah Const. art. I, § 28 and Utah Code § 77-37-3 and would "needlessly harm" victims by "dragging" them into another hearing. (Ruling at 1–2 (July 25, 2025)).

But victim-rights authorities require respectful treatment and prompt resolution; they do not confer authority to nullify a separate statute's mandatory process.

- Utah Constitution article I, section 28 guarantees victims rights "[t]o be treated with fairness, respect, and dignity, and to be free from harassment and abuse throughout the criminal justice process." Utah Const. art. I, § 28.
- Utah Code § 77-37-3(1)(h) states victims and witnesses "should have a speedy disposition of the entire criminal justice process."
- Utah Code § 77-37-1(1)(b) requires victim rights be honored vigorously.
- Utah Code § 77-38-7(2) recognizes a victim's interest in prompt and final conclusion, including collateral attacks.

None of these texts says: "A court may refuse to hold a hearing mandated by § 78B-7-804." If a hearing is required, the court must hold it—and can protect victim dignity through courtroom management and procedure. But the court cannot refuse to schedule the hearing altogether on the ground that holding it is stressful. That logic would justify denying many hearings criminal law requires. The Legislature intentionally balanced victim's rights and the accused rights in § 78B-7-804: permanence by default, stringent merits standard, and a hearing procedure when requested.

E. APPELLEE'S RULE 12 "NO MOTION BEFORE THE COURT" THEORY DOES NOT JUSTIFY AFFIRMANCE.

Appellee argues the July 3 request was not a proper "motion" because it was one sentence and did not state grounds with particularity under Utah R. Crim. P. 12(a). But:

1. The district court did not deny on Rule 12 grounds. The written ruling denies

because Defendant allegedly was not entitled to "an additional hearing," did not show a "material change," and because another hearing would violate victim rights. (Ruling at 1 (July 25, 2025)). The absence of a Rule 12 ruling underscores that this was not the actual basis for the order appealed.

2. Rule 12 does not authorize a court to nullify a statutory hearing request simply because the request cites the statute rather than previewing the merits. Rule 12(a) requires that a motion "state succinctly and with particularity the grounds upon which it is made and the relief sought." Utah R. Crim. P. 12(a). Appellant's July 3 filing did exactly that at the procedural level: it invoked § 78B-7-804(3)(c) and requested the relief of a hearing to consider modification/dismissal under § 78B-7-804(4). (Def.'s Hearing Requested filing (July 3, 2025)).

3. Any arguable particularity issue was cured by the fully supported reply and exhibits. After the City objected, Appellant filed a detailed reply explaining why the hearing is mandatory, why a material-change screen is improper, and proffering appended evidence bearing on the statutory merits question. (Def.'s Reply to City's Objection (July 21, 2025)).

4. Appellee's reliance on motion-practice cases does not fit this statutory setting. Appellee cites motion-practice authorities (including *State v. Parker*, 872 P.2d 1041 (Utah Ct. App. 1994), and Rule 12 cases), but § 78B-7-804 creates a specialized statutory hearing procedure and uses mandatory language ("shall hold the hearing"). A court may enforce basic filing rules, but it cannot use generalized

motion-practice doctrine to defeat a specific statutory entitlement—especially where the defendant's later filings supplied detail and the court reached the merits reasons it gave.

F. CONCLUSION

The district court's order rests on legal error: it rewrote § 78B-7-804 to (1) impose a one-hearing-only cap, (2) require a "material change" threshold to schedule a hearing, and (3) allow victim-rights policy to override the statute's mandatory hearing procedure. It also contains a record-factual error in claiming Defendant provided "no information whatsoever" when Defendant filed a detailed reply with appended evidence. R002320–2322; R002475–2489. (It was actually only 6 pages long. R001856–2177.)

This Court should reverse and remand with instructions to schedule the hearing required by Utah Code § 78B-7-804(3)(c)(iii) to adjudicate Defendant's modification/dismissal request under § 78B-7-804(4).

CONCLUSION

For the foregoi8ng reasons, Appellant respectfully requests that the Court:

1. Reverse the district court's order denying Appellant's motion to correct the record, and remand with instructions to correct the record;
2. Reverse the district court's order striking Appellant's "Response to Statements" under Utah R. Crim. P. 33 and vacate the court's "vexatious-litigant strike" designation as unauthorized under Utah R. Civ. P. 83;
3. Reverse the district court's order denying Appellant's request for a statutory hearing to consider modification/dismissal of the continuous protective orders under Utah Code section 78B-7-804, and remand with instructions to schedule and hold the hearing required by statute; and

4. Grant such other relief as the Court deems just and proper.

Respectfully submitted,

Dated: December 26, 2025 /s/ David Ammon Jakeman
DAVID AMMON JAKEMAN, pro se

CERTIFICATE OF COMPLIANCE WITH UT. R. APP. P. 24(F)(1)(C)

(UTAH R. APP. P. 24(a)(11))

I, Appellant David Ammon Jakeman, hereby certify pursuant to UT. R. APP. P. 24(a)(11)(A) and (B) that the Brief of Appellant complies with the following:

1. UT. R. APP. P. 24(g)(1) and (2) in that the brief is not longer than 30 pages and contains less than 14,000 words as determined by the Microsoft Word 365 system used to prepare the Brief of Appellant, excluding the certificates, the cover/title page, and the table of contents.

2. UT. R. APP. P. 21(g) in that the filing herein and addenda do not contain any non-public "information classified as private, controlled, protected, safeguarded, sealed, juvenile court legal or juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order or case law."

Dated: December 26, 2025 */s/ David Ammon Jakeman*
DAVID AMMON JAKEMAN, pro se

CERTIFICATE OF SERVICE

I, Appellant David Ammon Jakeman, hereby certify that I emailed a true and correct copy of the foregoing Opening Brief of Appellant, and all addenda, on December 26, 2025, to:

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