IN THE UTAH COURT OF APPEALS

OREM CITY / STATE OF UTAH, Plaintiff/Appellee, v. **DAVID AMMON JAKEMAN,** Defendant/Appellant.	Lead Appellate Case No. 20260698-CA —— Consolidated with Nos. 20260700-CA, 20260702-CA, 20260704-CA, and 20260706-CA —— District Court Case Nos. 221300408, 221300553, 231300069, 231300079, and 231300162

REPLY BRIEF OF APPELLANT

Appeal from the May 20, 2026 *Ruling on Order to Show Cause Regarding Vexatious Litigant Findings* and the April 15, 2026 *Ruling on Various Requests by Defendant and Vexatious Litigant Findings*, Fourth Judicial District Court, Utah County, the Honorable Jared Eldridge

Appellant is not presently incarcerated in connection with these cases.

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PUBLISHED OPINION REQUESTED

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INTRODUCTION

The City's brief agrees that Issues 1 and 2 were preserved and are reviewed for correctness. City Br. 2–3. It agrees that Criminal Rule 33 "allows a court to strike individual papers containing immaterial, scandalous, or uncivil matters." Id. at 18. It acknowledges that the prior protective-order opinions "noted procedural defects (lack of preservation or invited error)." Id. at 28. And it does not answer the showing in Part V of Appellant's brief that the court's own findings do not place the designated filings within the Rule 83(a)(1)(C) categories it assigned. Nor does it respond to Part II.B, which shows that an imported Rule 83 brings its own prerequisites with it, so the lack of a finding on a defined claim defeats the order whichever way Rule 81(f) is read.

The City instead makes three new arguments. First, it defends a rationale the district court did not adopt: that every motion is a "petition," and so a "claim." Second, it argues that Appellant's challenges to the remedies were never raised below. Third, it asks this Court, in its response brief and without a motion, to declare Appellant a vexatious litigant under Utah Rule of Appellate Procedure 40A.

One development postdates the opening brief, which was filed on August 30, 2026, and the City relies on it. City Br. 9–10. The next day, this Court affirmed the June 30 and July 25, 2025 rulings, including the June 30 ruling that struck Appellant's Response and counted it toward a possible Rule 83 determination, and it later denied rehearing. Order, *Orem City v. Jakeman*, No. 20250896-CA (Utah Ct. App. Aug. 31, 2026) (Reply Add. A); Order Denying Petition for Rehearing, No. 20250896-CA (Utah Ct. App. Oct. 15, 2026) (Reply Add. B); see Utah R. App. P. 30(g). The opening brief's

description of that appeal as pending was accurate when filed. Opening Br. 8, 15–16 & n.1. As shown below, the order did not review the second through fourth designated filings, the Rule 83(c)(1)(B) finding, or the restrictions at issue here, and in several respects it supports Appellant's position.

ARGUMENT

I. The district court treated motions and other papers as "claims" without finding that any was a claim as Rule 83(a)(2) defines that word, and the City's "petition" theory cannot supply the missing finding.

A. The district court said it "construes" the filings and motions as claims; it did not find that any of them was a "petition."

The City argues that each designated paper was a "petition" under Rule 83(a)(2) because a petition is a "formal written request presented to a court." City Br. 15–17 (quoting Black's Law Dictionary (12th ed. 2024)). The district court did not rule that way. At the hearing it answered the definitional objection by pointing to the predicate-conduct paragraph: "the Court is proceeding under Section (a)(1)(c) of Rule 83." R.5414. In writing, it said that it "construes Defendant's various filings and motions as 'claims' for the purposes of rule 83(c)(1)(B)." R.5306. The City cites no authority permitting a court to "construe[]" papers outside a rule's definition as within it. Its theory is not a defense of that ruling; it is a different ruling.

The City's definition also does not fit the first paper the court treated as a claim. The court found no reasonable probability that Appellant would prevail on the Response in part because "the filing failed to identify a request for relief." R.5306. This Court has since described that paper as "not a motion seeking relief." Reply Add. A at 2. A paper

that requests nothing is not a "formal written request" for anything. The finding shows what treating papers as claims did: the court measured each paper against itself, not against any defined claim.

B. The rules call a written request for a court order a "motion," and Rule 83 treats motions and claims as different things.

The City's definition would turn every motion into a petition. But the civil rules already have a name for the paper the City describes: "A request for an order must be made by motion." Utah R. Civ. P. 7(b). And Rule 83 uses "motion" and "claim" side by side as different things. A pending-action prefiling order covers "any paper, pleading, or motion." Utah R. Civ. P. 83(b)(4). A future-claim prefiling order covers "any future claim for relief." Id. R. 83(b)(5). A litigant under the first must submit "any proposed paper, pleading, or motion." Id. R. 83(d)(1). A litigant under the second must submit "a copy of the proposed petition, complaint, counterclaim, cross-claim, or third party complaint." Id. R. 83(e)(2)(D). If every motion were a petition, paragraphs (b)(4) and (b)(5) would largely collapse into each other. Paragraph (c)(3), which requires the court to "dismiss the vexatious litigant's claim with prejudice" if ordered security is not furnished, would direct the dismissal with prejudice of a motion.

Paragraph (a)(1)(A) would change too. It makes a person vexatious who "has filed at least five claims for relief, other than small claims actions, that have been finally determined against the person" within seven years. Id. R. 83(a)(1)(A). On the City's reading, a litigant who lost five motions in seven years, and won fewer than two, would be vexatious without any finding of misconduct.

The word "petition" in Rule 83(a)(2) also keeps company. The definition lists "a petition, complaint, counterclaim, cross claim or third-party complaint." Each of the other four starts a claim for relief. Read with them, "petition" means the petitions that do the same thing, such as a petition to modify a decree or a petition for extraordinary relief. It does not mean every written request a litigant makes inside a case. Words "grouped in a list should be given related meaning." *GeoMetWatch Corp. v. Utah State Univ. Research Found.*, 2018 UT 50, ¶ 26 (cleaned up). That associated-words canon requires no showing of ambiguity; it is "a tool in our plain-language toolkit." *Armenta v. Unified Fire Auth.*, 2025 UT 26, ¶ 35. This Court's own vexatious-litigant rule draws the same line. It lists "a frivolous brief, motion, petition, or other document" as distinct items. Utah R. App. P. 40A(a)(1)(A). The City relies on that rule. City Br. 29.

This Court read "the claim" the same way on October 8, 2026, in *Huynh v. Witte*, 2026 UT App 150, which the City cites. There the Court observed that "rule 83 does not apply to the current case because it requires, among other things, a finding that 'there is no reasonable probability that the vexatious litigant will prevail on the claim,'" and that the court commissioner "could not 'make a finding that there is no reasonable probability that [Witte] will prevail on his Petition to Modify.'" Id. ¶ 44 n.14 (quoting Utah R. Civ. P. 83(c)(1)(B)); see id. ¶ 53 ("Although rule 83's requirements were not fully satisfied in this case, see supra note 14, both rules 11 and 83 address inappropriate and disruptive conduct."). The Court measured "the claim" against the initiating petition. It did not measure it against the motions filed in that case. That is the reading *Strand* and *Vashisht-Rota* describe: the second finding concerns "the litigant's claim pending before the court."

Vashisht-Rota v. Howell Mgmt. Servs., 2021 UT App 133, ¶ 15 (quoting *Strand v. Nupetco Assocs. LLC*, 2017 UT App 55, ¶ 5). The City does not address either opinion's statement.

The City also cites *Huynh* ¶ 44 for the proposition that Rule 83 "is designed to protect courts and opposing parties from bad-faith, circular, and exhausting litigation tactics." City Br. 15. Paragraph 44 says something different. It states that Rule 83 "expressly authorizes courts to impose restrictive orders on vexatious pro se litigants for the purpose of curbing inappropriate conduct, including orders requiring such litigants to obtain legal counsel before proceeding." 2026 UT App 150, ¶ 44.

C. Under *Trapnell*, a caption can be strong evidence of substance, and here caption and substance both show that the City's "petitions" were motions.

The City says courts "look to the substance of a filing, not its title," citing *Trapnell & Associates, LLC v. Legacy Resorts, LLC*, 2020 UT 44, ¶ 55. City Br. 16, 26. In that paragraph the supreme court rejected that reasoning when the court of appeals applied it: "We disagree. Although a pleading's caption is 'not necessarily' dispositive of its substance, sometimes it can be pretty solid evidence of what the pleading contains." 2020 UT 44, ¶ 55. Here the caption and the substance are the same. The City describes the designated papers as "formal written requests for the court to take some action." City Br. 16. Those are motions, and Rule 83 treats motions as possible predicate papers under paragraph (a)(1)(C), not as the claim under paragraph (c)(1)(B).

D. Reading "claim" as Rule 83(a)(2) defines it is not absurd, because courts keep Criminal Rule 33, contempt, and inherent authority.

The City says that if Rule 83 "only applied to original complaints as Jakeman argues," a vexatious litigant could file post-judgment motions "with total impunity." City Br. 15. Under Appellant's reading, abusive motions still count toward a Rule 83 designation. The definition includes petitions, counterclaims, crossclaims, and third-party complaints, and Rule 83(a)(1)(C) counts motions and other papers as possible predicate acts. Opening Br. 24–25 (Part I.A). The rule then adds a second step: before imposing a Rule 83(b) restriction, the court must also find that there is no reasonable probability of success on a defined claim.

Nor would a criminal court be left without tools. Rule 83 itself "does not affect the authority of the court under other statutes and rules or the inherent authority of the court." Utah R. Civ. P. 83(i). A criminal court can disregard or strike noncompliant papers and impose sanctions under Criminal Rule 33(a). The district court did exactly that with the Response, and this Court affirmed. R.2896–2902; Reply Add. A at 2–3. A court keeps its contempt power and its inherent authority to strike pleadings for conduct designed to improperly influence the court. *Taylor v. Lawlor*, 2026 UT App 118, ¶ 22. *Huynh* itself upheld an order to retain counsel entered under Rule 11, not Rule 83. 2026 UT App 150, ¶¶ 53, 69. What a court may not do is impose Rule 83's restrictions without Rule 83's findings. A rule that reserves its strongest remedies for litigants pressing defined claims reflects a policy choice, not an absurdity.

The absurdity doctrine does not change that. It is "a narrow, exacting standard for determining whether to apply the absurdity doctrine and read a statute contrary to its plain meaning," and it applies only if "the operation of the plain language . . . [is] so overwhelmingly absurd that no rational legislator could have intended the statute to operate in such a manner." *Bagley v. Bagley*, 2016 UT 48, ¶ 28 (cleaned up). To invoke the doctrine, the City must accept that the plain text excludes motions, and then show that no rational drafter could have intended a rule under which Criminal Rule 33, contempt, and inherent authority remain available. The City has not attempted that showing.

E. *Watson* does not control this case, and affirming on another ground cannot supply the missing finding on a defined claim.

The City reads *Watson v. Prestwich*, 2026 UT App 122, ¶ 22, as treating a vexatious litigant's filings as claims. City Br. 16. *Watson* did refer to "the nebulous claims in her filings." 2026 UT App 122, ¶ 22. But Appellant's brief showed why *Watson* does not reach this case. *Watson* was a civil parentage action begun by the other parent's petition. Id. ¶ 2. The defined-term question was not raised there, and the appellant made no effort to establish preservation. Id. ¶ 13 n.5. Here the objection was made expressly, R.5398, and the court answered it by treating the motions as claims, R.5306. And the *Watson* filings were incomprehensible sovereign-citizen assertions, not conventional motions. Opening Br. 27–28 (Part I.C). The City does not engage these distinctions.

Nor can the Rule 83(c)(1)(B) finding be affirmed "on any ground apparent on the record." City Br. 16. An appellate court affirming on another ground "is limited to the findings of fact made by the trial court." *Bailey v. Bayles*, 2002 UT 58, ¶ 20. The district

court made no finding about any petition, complaint, counterclaim, cross claim, or third-party complaint. Its findings address papers it "construe[d]" as claims, R.5306, and, only in the alternative, protective-order challenges it did not treat as one, R.5307–5308.

II. Rule 81(f) borrows a civil rule only when no other statute or rule applies, and the City itself defends the blanket strike under Criminal Rule 33.

Rule 81(f) makes the civil rules govern an aspect of a criminal proceeding only "where there is no other applicable statute or rule." Utah R. Civ. P. 81(f). The City concedes that Criminal Rule 33 "allows a court to strike individual papers containing immaterial, scandalous, or uncivil matters." City Br. 18. It argues only that Rule 33 lacks "a comprehensive framework to manage a chronic pattern of abuse or impose prospective filing restrictions." Id. That is a different test. Rule 81(f) asks whether another rule applies to the matter, not whether that rule supplies every remedy a court might want. See *State v. Honorable Ann Boyden*, 2019 UT 11, ¶¶ 32–34; Opening Br. 30–31 (Part II.A). The City does not discuss *Boyden*.

The City's own position confirms that Rule 33 applies. At the hearing it asked the court to strike Appellant's papers "pursuant to Rule 33." R.5406. On appeal it defends that strike under Rule 33(a). City Br. 20–21. And this Court, reviewing the June 30, 2025 strike in these same cases, described it as made "pursuant to rule 33 of the Utah Rules of Criminal Procedure." Reply Add. A at 2. A rule applicable enough to support striking the papers at issue is an "applicable . . . rule" under Rule 81(f).

Two of the City's quotations do not support its point. First, the City attributes to *Vashisht-Rota* ¶ 12 the phrase "the burden on the machinery of justice." City Br. 18. That

phrase is not in the opinion. See 2021 UT App 133, ¶ 12. Second, the City quotes Rule 83(b)(6) as authorizing "any other action necessary to curb the vexatious litigant's abusive conduct." City Br. 18. The rule says "reasonably necessary." Utah R. Civ. P. 83(b)(6).

Vashisht-Rota cuts against the City on this question. When this Court relied on Rule 83(j) there, it relied on Civil Rule 1 and on its own status as "a Utah state court handling a civil matter," "in the absence of an inconsistent appellate rule on vexatious litigants." 2021 UT App 133, ¶ 22. This is a criminal case, and the civil rules reach it only through Rule 81(f).

Finally, the City does not answer Part II.B. Even if Rule 83 could fill some gap Rule 33 leaves, the imported rule carries its definition and its findings with it. A court may not borrow Rule 83(b)'s restrictions while leaving behind Rule 83(a)(2)'s definition and Rule 83(c)(1)(B)'s finding. Opening Br. 31–32 (Part II.B). So Part I controls whichever way the Court decides the Rule 81(f) question.

III. The remedy challenges are preserved: Appellant opposed the remedies the City requested, and the notice to the Administrative Office of the Courts first appeared in the written order.

The City argues that Appellant's challenges to the notice to the Administrative Office of the Courts (AOC), the blanket strike, the clerk ban, and the counsel requirements are "raised for the first time on appeal." City Br. 18–19. It cites the whole hearing transcript, "R5393-5423." Id. at 19. It does not address the pinpoint preservation citations in Appellant's Statement of the Issues. Opening Br. 12 (Issue 5).

"An issue is preserved for appeal when it has been presented to the district court in such a way that the court has an opportunity to rule on it." *Vashisht-Rota*, 2021 UT App 133, ¶ 18 (quoting *Patterson v. Patterson*, 2011 UT 68, ¶ 12) (cleaned up). "Issues must be preserved, not arguments for or against a particular ruling on an issue raised below." *Gressman v. State*, 2013 UT 63, ¶ 45. And where the district court took up and decided the question, "the district court's decision to take up the question conclusively overcame any objection that the issue was not preserved for appeal." *Fort Pierce Indus. Park Phases II, III & IV Owners Ass'n v. Shakespeare*, 2016 UT 28, ¶ 13. In *Vashisht-Rota*, by contrast, the unpreserved points were ones the litigant never raised in her response to the vexatious-litigant motion. 2021 UT App 133, ¶¶ 18–21. Here each requested remedy was opposed and decided below.

The written opposition. Before the hearing, Appellant argued that the order to show cause "does not identify which remedy is contemplated, its scope, its duration, or its affected filings," and that the Rule 83(b) remedies "are not interchangeable": "a counsel requirement is not a prefiling order." R.5097–5098. He argued that a pending order to show cause "is not itself a Rule 83 order," and that "[t]reating the OSC as a reason to deny, strike, reject, or refuse to adjudicate filings reverses Rule 83's sequence." R.5105–5106. He argued that any order had to preserve notices of appeal and filings needed for review. R.5106; see also R.4943, R.5121, R.5215. The district court acknowledged that opposition, R.5410; R.5301, summarized it, R.5302, addressed its Rule 81(f) and claim arguments, R.5303–5306, and then imposed the remedies it opposed, R.5308–5309; R.5418–5420.

The hearing. Appellant asked for "more definite written notice, identifying the exact Rule 83 basis, the proposed restriction, the operative Rule 83 claim . . . and of the scope and duration of any proposed restriction, as well as any exemptions." R.5397. The City acknowledges that this request was made: Appellant "asked the district court for further information regarding the scope of the order." City Br. 7. At the hearing the City answered the request on its merits: "There's no need for the Court to further -- to put a finer point on what it may or may not do." R.5405. The City asked for counsel requirements, prefiling orders, "any other curving [sic] actions," and a strike of all post-April 15 filings "pursuant to Rule 33." R.5405–5406. Appellant answered: "I disagree with everything that the Orem City has suggested." R.5407. He then opposed each requested option by number: "it did request number 2, 3, 4, 5, and 6. To the extent that -- request for Number 1, I oppose that as well as I oppose all the other options that it requested." R.5408.

The rulings. The court imposed both counsel requirements and the clerk ban and granted the strike. R.5418–5420; R.5308–5309. Appellant immediately asked the court to appoint counsel, to clarify how the order affected his pending appeals, and to exempt those appeals and his post-conviction matter or stay the order. R.5420–5421. The court declined to limit the order "as far as it applies to other courts," leaving that question to those courts, and declined to appoint counsel. R.5422.

The AOC notice. The City requested notice to the Administrative Office of the Courts only after the oral ruling. Even then it asked for notice that Appellant had "been found to be a vexatious litigant and that curbing orders have been issued." R.5422. The

court did not rule on that request from the bench. The directive that the clerk notify the AOC "that a pre-filing order has been entered" first appeared in the written order. R.5309. Appellant had already argued in writing that "a counsel requirement is not a prefiling order." R.5098. And where an alleged error "first arises in the lower court's final order or judgment and thus, leaves no opportunity for the party to object below," the preservation rule does not bar review. *State ex rel. D.B.*, 2012 UT 65, ¶ 34 (quoting *Albores v. Bracamontes*, 2006 UT App 204, ¶ 4); see *State v. Johnson*, 2017 UT 76, ¶ 35 (describing *D.B.*).

The City's remaining preservation point is that Appellant "did not offer any supporting evidence or legal authority in the district court" on the scope of the counsel order. City Br. 7. He cited Rule 83(b), (c), (d), and (e) and the differences among them. R.5097–5098, R.5105–5106. Additional authority on a preserved issue is permitted. *Gressman*, 2013 UT 63, ¶ 45.

IV. Each remedy lacks the authority or the findings it requires.

A. The notice to the Administrative Office of the Courts reports a "pre-filing order" that the court declined to enter.

The City argues that "pre-filing order" should be read to mean "any order which imposes a restriction on future filings," so that the counsel requirement triggered notice under Rule 83(f). City Br. 20. Rule 83 does not use the term that way. Paragraphs (b)(2) and (b)(3) authorize counsel requirements. Paragraphs (b)(4) and (b)(5), and the procedures in (d) and (e), are the only provisions that create "prefiling order[s]." Rule 83(f)(1) directs notice "that a pre-filing order has been entered or vacated," and the AOC

list identifies litigants "subject to a prefiling order." Utah R. Civ. P. 83(f)(1)–(2). If every counsel requirement were a prefiling order, the rule's separate categories would serve no purpose. The City used the term the same way at the hearing. It asked for counsel orders under paragraphs (b)(2) and (b)(3), and separately for orders to "abide by a pre-filing order requiring the vexatious litigant to obtain the Court's permission before filing." R.5405.

The label has consequences. Papers filed by a litigant subject to a prefiling order must include an order authorizing the filing, and without one "the clerk or court shall reject" them. Utah R. Civ. P. 83(d)(4); see id. R. 83(e)(5). A statewide notice of an order the court declined to enter could lead clerks elsewhere to apply those provisions.

The City's reading also conflicts with the order it defends. The court "decline[d] to enter restrictions under rule 83(b)(1), (b)(4), or (b)(5)," and in the next paragraph directed notice that "a pre-filing order has been entered." R.5309. The City does not reconcile those two sentences, and it asked for something different at the hearing. R.5422. The directive should be vacated.

B. The blanket strike paragraph cites no rule, and no finding addresses any struck paper.

The City defends the strike under Rule 83(b)(6), Criminal Rule 33(a), and inherent authority. City Br. 20–22. Below, the City asked for the strike only "pursuant to Rule 33." R.5406. The written order granted it in a paragraph that cites no rule, struck "any pleadings filed by Defendant pro se after the Court's April 15, 2026 order," and required refiling through counsel. R.5309. The order did not identify any struck paper. It made no

finding that any paper contained burdensome, irrelevant, immaterial, scandalous, or uncivil matter. See Utah R. Crim. P. 33(a). A rule that permits striking papers containing specified matter does not apply where the court did not "make any determination" that the papers contained it. *Taylor*, 2026 UT App 118, ¶ 20.

The City fills that gap with a sentence of its own: "A reasonable person could adopt the view that documents filed while a vexatious litigant sanctions hearing was pending were burdensome, irrelevant, or immaterial." City Br. 22. No court adopted that view. Abuse-of-discretion review asks whether the district court acted reasonably. It does not ask whether the appellee can now describe a reasonable decision the court did not make. Even when this Court affirms on an alternate ground apparent on the record, it "is limited to the findings of fact made by the trial court and may not find new facts or reweigh the evidence in light of the new legal theory or alternate ground." *Bailey*, 2002 UT 58, ¶ 20. There is no finding here for the City's ground to rest on.

Rule 83(b)(6) does not help. The order invoked paragraph (b)(6) only for the clerk ban; the strike paragraph cites no rule beyond the order's general preface. R.5308–5309. It is a Rule 83(b) order. It requires the Rule 83(c) findings and reaches only action "reasonably necessary to curb the vexatious litigant's abusive conduct." Utah R. Civ. P. 83(b)(6). When these papers were filed, no Rule 83 order of any kind existed, and the court later declined to enter a pending-action prefiling order. R.5309. That is the point Appellant made below: a pending order to show cause "is not itself a Rule 83 order." R.5105–5106.

Inherent authority does not help either. *Chen v. Stewart* recognizes inherent authority to strike pleadings "if the party engages in conduct designed to improperly influence the court's decision on the merits of the case, such as perjury or obstruction of justice, or if the conduct itself tends to demonstrate bad faith or a lack of merit." 2005 UT 68, ¶ 43. The court applied that rule to misconduct "giving rise to a reasonable inference that the party's case lacks merit." Id. ¶ 44. No such conduct was found here, and the court did not invoke inherent authority. In *Taylor*, this Court declined to rest a sanction on contempt, inherent authority, or Rule 83 because "the district court here did not purport to be drawing upon these sources of authority, and it certainly made no express findings to support invocation of any of these powers." 2026 UT App 118, ¶ 22. The same is true here.

The City also says the strike was not a terminating sanction because counsel could refile the papers. City Br. 21. Refiling after the ruling could not undo what the strike did within the Rule 83 proceeding: it nullified the written opposition to the very order under review, R.5090–5112, and it reached a protective notice of appeal from the April 15 ruling, R.5245–5262. Before a terminating sanction is imposed for "rule violations regarding the form of papers," "our supreme court has required a showing of prejudice." *Taylor*, 2026 UT App 118, ¶ 23; Opening Br. 42 (Part IV.B). The City identifies no prejudice and does not discuss *Taylor*.

C. The ban on requests to court clerks identifies no request or misuse that it is meant to stop.

The City quotes the oral ruling that Appellant "made numerous burdensome requests of the Court clerks…that has required the clerks to undertake and consume many clerk hours." City Br. 22 (quoting R.5419). The sentence reads in relevant part: "Mr. Jakeman has made numerous burdensome requests of the Court clerks, which they've largely complied with, but that has required the clerks to undertake and consume many, many clerk hours to satisfy his requests." R.5419. Neither the oral ruling nor the written order identifies a request, a date, a subject, or a misuse. R.5303 ¶ 9; R.5308; R.5419. The City answers that requests may be made through counsel. City Br. 22. But the same court declined to appoint counsel minutes later, after Appellant said he could not afford one. R.5420–5422. A ban whose only exception depends on counsel, imposed without identifying the conduct it addresses, cannot be reviewed for whether it was "reasonably necessary." Utah R. Civ. P. 83(b)(6). Compare *Huynh*, 2026 UT App 150, ¶¶ 49, 55 (affirming a Rule 11 counsel order where the court incorporated an 18-page summary of the litigant's violations and found 27 separate violations).

D. The counsel requirements reach only a pending action and future claims for relief, not notices of appeal or motions in future cases.

The City says Appellant "claims that the district court denied him counsel." City Br. 24. Appellant's brief described the hearing to show "concrete prejudice from ambiguity" in the counsel requirements, and it accepts *Liender v. Harris*, 2025 UT App 2. Opening Br. 45 (Part IV.D). The argument about the counsel requirements is this: they

cannot stand without the Rule 83(c) findings. Paragraph (b)(2) reaches "a pending action." Paragraph (b)(3) reaches a future "claim for relief," which carries the Rule 83(a)(2) definition. Neither reaches a notice of appeal, which Rule 83 protects even under its most restrictive order. Utah R. Civ. P. 83(b)(4), (d)(1). The City's "petition" reading would extend paragraph (b)(3) to every motion Appellant files in any future case. That result shows why the definition matters.

The City's own account confirms the scope problem. It says appointed counsel was unavailable because "the case was closed." City Br. 24; see R.5422. The only matter the court described as open was the continuous protective order, R.5422; R.5309, and the court did not treat that matter as the claim; it addressed it only in the alternative. R.5307–5308. Paragraph (b)(2) reaches only "a pending action." The City cannot treat the case as closed for one purpose and the postjudgment papers as pending "claims" for another.

V. Rule 83(a)(1)(C) requires at least three qualifying acts, and the court's own findings do not show that the second, third, or fourth instance qualifies.

A. This Court's August 31, 2026 order held that the first paper qualifies but did not decide whether the other three do.

After Appellant's brief was filed, this Court affirmed the June 30 and July 25, 2025 rulings. As to the June 30 strike, it held that, "[b]ecause the court found that the document was immaterial, the filing of the document comes within the plain language of" Rule 83(a)(1)(C)(ii). Reply Add. A at 3. Appellant accepts that decision for purposes of this appeal.

The order stated that the June 30 ruling "merely cautioned" Appellant that the filing could count toward a later determination, and that "[t]he court did not enter any order that would require notice under the rule." Id. It affirmed the rulings that the second and fourth designated motions, and part of the third, asked the district court to revisit. Reply Add. A at 1–5; see R.4913, R.4915–4918. But it did not decide whether those motions were vexatious, and it did not address the Rule 83(c)(1)(B) finding, Rule 81(f), or any Rule 83(b) restriction. Those designations, findings, and restrictions were first made on April 15 and May 20, 2026, and they are what this appeal reviews. A motion does not become unmeritorious because the ruling it challenged is later affirmed. Cf. *Pang v. International Document Services*, 2015 UT 63, ¶ 13.

The order does not decide this appeal. Rule 83(a)(1)(C) requires at least three qualifying acts. Appellant's brief showed that the district court's own findings do not support the second, third, or fourth instance, and that "[a]ny two of those failures leave fewer than three instances." Opening Br. 57 (Part V.G). The City does not respond to that analysis.

B. The court's findings on the second, third, and fourth instances do not fit the categories it assigned, and the City does not show otherwise.

The City recites the four designated filings and argues that a rule-authorized motion can still be vexatious. City Br. 24–27. Appellant agrees; his brief said that "[a] reconsideration motion is not immune from Rule 83." Opening Br. 34 (Part III.B). The question is whether the findings, taken as true, place each filing within the category the court assigned to it. On that question the City is silent. In particular:

1. **Second instance.** The April 15 order identified "[t]he only material unique to" the Rule 59 motion and resolved part of it on the merits: "any error in ruling prior to a Request to Submit was harmless error." R.4913. An order that isolates unique content in a motion and decides it on the merits cannot also find by clear and convincing evidence that the motion was "the exact same" as what came before. Opening Br. 53 (Part V.D). The City does not mention this finding.
2. **Third instance.** The April 15 order held part of the second record-correction motion "timely," filed "eleven and twelve days after the transcripts were filed," and denied it on the merits. R.4916. It counted "these two motions" as one "third strike." R.4918. The City now calls the third instance "multiple vexatious acts" and "an improper delay tactic." City Br. 26. No court so found: the May 20 order designated this instance under paragraph (a)(1)(C)(ii) alone, R.5305, and delay counts only in tactics "solely for the purpose of harassment or delay," Utah R. Civ. P. 83(a)(1)(C)(iv). The May 20 order then cited "Docket Nos. 385-387, 399" as "successive motions," R.5302, a list that omits Docket No. 358, one of the "two motions" the April 15 order counted. R.4917–4918; Opening Br. 33, 54–55 (Parts III.B, V.E). The City calls the docket discrepancies "harmless clerical details." City Br. 27. But Rule 83(a)(1)(C) turns on counting acts, so the number of motions found is not a clerical detail, and a count the court did not make cannot be supplied on appeal. *Bailey*, 2002 UT 58, ¶ 20.
3. **Fourth instance.** The City's list of the papers the court treated as claims describes the paper the order called the "Motion to reconsider," R.5307, as a motion to

reconsider a different ruling, and cites no record page for it. City Br. 16. The designated paper was the motion to alter or amend the June 30 order finding the Response burdensome. R.3073; R.4918–4920. The City's own brief quotes the April 15 finding, City Br. 11, which reads: the motion was "immaterial because Defendant has failed to cite any legal authority demonstrating he has a right to have his objections, filed after the hearing itself, on the record." R.4920. That is a finding about authority for one proposition, not a finding that the motion cited no authority. The motion invoked Rules 59(e), 59(a)(7), and 7(g) and cited four decisions with explanatory parentheticals. R.3073, R.3075–3076, R.3080. The April 15 order's Rule 83 findings section, and then the May 20 order, restated that narrow finding as a failure to cite "any legal authority" demonstrating error. R.4922; R.5305; Opening Br. 55–56 (Part V.F). One motion challenging one ruling is not a "persistent refusal to accept finality." R.5305.

Nor does the City answer the textual points. "Unmeritorious" does not mean "denied": "This is a high bar. Even bad arguments are not necessarily frivolous." *Pang*, 2015 UT 63, ¶ 13. A Rule 59 motion need not "make winning arguments to be procedurally proper." *B.A.M. Development, L.L.C. v. Salt Lake County*, 2012 UT 26, ¶ 14. "Solely" is exclusive. And a finding that "simply paraphras[es]" the rule without particularized findings is "insufficiently specific as a matter of law." *Griffith v. Griffith*, 1999 UT 78, ¶ 10. Opening Br. 47–50 (Parts V.A–B). Even counting the first instance, any two failures among the other three leave fewer than three qualifying acts.

The City also says the district court evaluated the filings "as evidence of harassment, intent to burden the court system, and bad faith." City Br. 27. Neither order makes a bad-faith finding. The only purpose finding in either order is the first-instance finding of a tactic "solely for the purpose of harassment or delay." R.5304. Findings the court did not make cannot be added on appeal. *Bailey*, 2002 UT 58, ¶ 20. Nor can the footnote the City quotes, City Br. 25, supply more: the court said the record "demonstrates many other instances" but identified none, and "only addresse[d] the four instances addressed in this ruling." R.5304 n.1.

C. The alternative protective-order finding relies on opinions that turned on preservation and invited error, which do not show that a later issue is barred.

The City says the district court relied on the prior protective-order opinions only "to show that the litigant was continually re-raising the exact same settled issues," and acknowledges that those opinions "noted procedural defects (lack of preservation or invited error)." City Br. 28. A disposition on preservation or invited error does not establish, by clear and convincing evidence, that a later issue presented to the district court is barred as a matter of law, especially where the controlling opinion described the relevant law as "far from settled." *Orem City v. Jakeman*, 2025 UT App 187, ¶ 14; Opening Br. 38–39 (Part III.D).

VI. The Court should decline the City's request, made in its brief without a motion, to declare Appellant a vexatious litigant.

The City asks this Court to "adopt the district court's vexatious litigant findings and orders as its own" under Rule 83(j) and Utah Rule of Appellate Procedure 40A(a)(2),

or to "independently find Appellant to be a vexatious litigant" under Rule 40A(a)(1) and enter restrictions under Rule 40A(b). City Br. 28–30. The Court should decline.

First, the request is not made by motion. "Unless another form is elsewhere prescribed by these rules, an application for an order or other relief must be made by filing a motion for such order or relief with proof of service on all other parties," stating "the relief sought" and "the factual grounds." Utah R. App. P. 23(a). Rule 40A contemplates action "on [the Court's] own motion or on the motion of any party." Utah R. App. P. 40A(b). Where the appellate rules permit a request for relief inside an appellee's brief, they say so. See Utah R. App. P. 33(c)(1) (damages may be requested "as part of the appellee's brief"). Rule 40A contains no such provision.

Second, Rule 40A requires notice and an opportunity to be heard. The Court may enter a Rule 40A order only "after notice and an opportunity to be heard." Utah R. App. P. 40A(b). This Court has stated that notice and an opportunity to be heard "come into play when orders are entered requiring a vexatious litigant to take certain actions." *Watson*, 2026 UT App 122, ¶ 22. It said the same in No. 20250896-CA: "Under rule 83(b), a court may enter an order restricting the conduct of a vexatious litigant only after notice and an opportunity to be heard." Reply Add. A at 3. A reply brief limited to answering the City's arguments, see Utah R. App. P. 24(b), is not that proceeding. The City does not say what restrictions it seeks or on what specific grounds.

Third, Rule 40A(a)(2) and Rule 83(j) cannot rest on the orders under review. The only prior determinations the City identifies are the April 15 and May 20 orders this appeal challenges. If they are vacated, nothing remains to rely on. If they are affirmed,

they already apply as written. *Vashisht-Rota* adopted restrictions under Rule 83(j) "in the absence of an inconsistent appellate rule on vexatious litigants," as "a Utah state court handling a civil matter." 2021 UT App 133, ¶ 22. And the restrictions it adopted reached only "future proceedings in this action." Id. ¶ 23. Rule 40A has since taken effect, see Utah R. App. P. 40A (eff. May 1, 2025), and this is not a civil matter.

Fourth, Rule 40A(a)(1) is unsupported. That provision requires, among other things, the filing of "a frivolous brief, motion, petition, or other document," or a document containing "redundant, immaterial, impertinent, or scandalous material," "on more than one occasion." Utah R. App. P. 40A(a)(1)(A)–(B). The City does not identify a single filing in this Court, or any finding by this Court, that meets that description. It states that Appellant "has filed over 30 separate appellate actions" and "has yet to prevail," and concludes: "That record speaks for itself and is per se evidence of frivolity." City Br. 30. The statement has no record citation. Losing is not frivolity. A frivolous document is one "not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law." Utah R. App. P. 33(b); see *Pang*, 2015 UT 63, ¶ 13. A count of appellate case numbers also says little on its own: this consolidated appeal alone carries five. Order, *Orem City v. Jakeman*, No. 20260698-CA (Utah Ct. App. June 1, 2026) (Opening Br. Add. 8). If the Court is inclined to consider the City's request at all, Appellant asks that it do so in a separate proceeding under Rule 40A, with notice of the specific grounds and proposed restrictions.

CONCLUSION

The Court should grant the relief requested in Appellant's opening brief and deny the City's request for new relief:

1. vacate the April 15, 2026 Ruling and the May 20, 2026 Rule 83 order, including their vexatious-litigant designations, findings and restrictions;
2. vacate the directive to notify the Administrative Office of the Courts that a prefiling order had entered and, if notice was transmitted, direct corrective notice of the vacatur;
3. vacate the legal effect of the blanket strike of post-April 15 pro se papers already present at R.4924–5296;
4. remand for any filing-specific proceeding otherwise authorized by an applicable rule, with findings and remedies limited to that authority;
5. grant such other relief necessary to implement the vacatur; and
6. deny the City's request that this Court adopt the district court's findings and orders or enter vexatious-litigant findings and restrictions under Utah Rule of Appellate Procedure 40A.

Respectfully submitted,

/s/ David Ammon Jakeman
David Ammon Jakeman
Appellant, self-represented

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Utah Rule of Appellate Procedure 24(g) because it contains **6,980 words**, excluding the table of contents, table of authorities, addendum, and certificates.

I further certify that this brief and its addendum comply with Utah Rule of Appellate Procedure 21(h), governing public and private records; neither contains non-public information.

/s/ David Ammon Jakeman

CERTIFICATE OF SERVICE

I certify that on November 1, 2026, I served a true and correct copy of this brief and its addendum by email on counsel for Appellee Orem City:

Aliisa N. Leon (anleon@orem.gov); D. Jacob Summers (djsummers@orem.gov; djsummers@orem.org); Orem City Prosecutor's Office (oremprosecutor@orem.gov), 56 North State Street, Orem, Utah 84057.

/s/ David Ammon Jakeman

ADDENDUM INDEX

The reply addendum, filed with this brief, supplies copies of the following unpublished orders under Utah Rule of Appellate Procedure 30(g):

A. Order, *Orem City v. Jakeman*, No. 20250896-CA (Utah Ct. App. Aug. 31, 2026), as served.

B. Order Denying Petition for Rehearing, No. 20250896-CA (Utah Ct. App. Oct. 15, 2026).

REPLY ADDENDUM

Orem City v. Jakeman, No. 20260698-CA

Supplied under Utah R. App. P. 30(g)

A. Order, *Orem City v. Jakeman*, No. 20250896-CA
(Utah Ct. App. Aug. 31, 2026), as served (6 pages)

B. Order Denying Petition for Rehearing, No. 20250896-CA
(Utah Ct. App. Oct. 15, 2026) (1 page)

REPLY ADDENDUM A

Order, *Orem City v. Jakeman*, No. 20250896-CA
(Utah Ct. App. Aug. 31, 2026)

The order (5 pages) and the clerk's certificate of service (1 page) follow, as served.

FILED
UTAH APPELLATE COURTS

AUG 31 2026

IN THE UTAH COURT OF APPEALS

OREM CITY, Appellee, *v.* DAVID AMMON JAKEMAN, Appellant.	ORDER Case No. 20250896-CA

Before Judges Mortensen, Tenney, and Luthy.

In this consolidated appeal, David Ammon Jakeman appeals multiple rulings of the district court made in two postjudgment orders. For the reasons set forth below, we affirm.

Jakeman first challenges the district court's denial of his motion to correct the record. Jakeman filed the motion in the district court pursuant to rule 11(d)[1] of the Utah Rules of Appellate Procedure. He sought to include in the record a declaration in support of his pro se motion to withdraw his guilty pleas filed in September 2023. Through appointed counsel at the time, however, that motion was withdrawn in open court and was not addressed further in any district court proceedings. As a result, the district court denied the motion to correct the record as immaterial and moot. We determine that the district court correctly denied the motion as immaterial for a different but related reason.[2]

Rule 11 defines the record on appeal as "the documents and exhibits filed in or considered by the trial court." Utah R. App. P. 11(a). "If anything material to either party is omitted from or misstated in the record by error of the trial court or court personnel, [or] by accident . . . the omission or misstatement may be corrected and a supplemental record may be created and forwarded." *Id.* 11(d). It is clear that rule 11 regards "records on appeal" and provides a mechanism to address errors in records in appellate

[1]. This was formerly paragraph 11(f) as cited by Jakeman.

[2] . An appellate court may affirm a ruling on any ground apparent on the record. *See State v. Rynhart*, 2005 UT 84, ¶ 10, 125 P.3d 938.

proceedings. Here, although Jakeman asserts that there was an omission, the proffered document is not relevant or material to any record on appeal.

After being sentenced in multiple cases in November 2023, Jakeman appealed. In that consolidated appeal, Jakeman sought to challenge the district court's handling of his motion to withdraw his guilty pleas. *See Orem City v. Jakeman*, Case No. 20231060-CA. However, in May 2024, Jakeman moved to voluntarily dismiss his appeal regarding his guilty pleas and motion to withdraw.[3] This court granted the motion, and that appeal was dismissed. The voluntary dismissal of his appeal has placed any issue regarding his motion to withdraw his pleas beyond review. At minimum, there is no pending appeal, and thus no record on appeal. As a result, the alleged omission linked to Jakeman's motion to withdraw his guilty pleas is not material to any record on appeal. Accordingly, the trial court did not err in denying Jakeman's motion to correct the record as immaterial.

Jakeman next asserts that the district court erred in striking a document he filed and assessing "a strike" against Jakeman for purposes of a possible vexatious litigant determination. Jakeman filed a document captioned "Defendant's Response to Statements Made During the Hearing on 3/28/2025." The document was not a motion seeking relief and it attached approximately 300 pages of irrelevant and redundant material. The district court struck the document as burdensome, irrelevant, and immaterial pursuant to rule 33 of the Utah Rules of Criminal Procedure. *See* Utah R. Crim. P. 33(a) (providing that "[a]ll pleadings, written motions and other papers must be free from burdensome, irrelevant, [and] immaterial . . . matters"). The court also cautioned Jakeman that the filing would count as one of a potential three events that may lead to a vexatious litigant determination under rule 83 of the Utah Rules of Civil Procedure. *See* Utah R. Civ. P. 83(a)(1)(C) (providing that a court may "find a person to be a 'vexatious litigant' if the person . . . three or more times . . . files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter").

Jakeman has not shown that the court erred. He acknowledges that the document "was not a motion seeking relief." Rather, he asserts it was submitted to create a record and present evidence. However, he cites no rule that permits this type of filing. "In our system, the rules provide the source of available relief. They are designed to provide a pattern of regularity of procedure which the parties and the courts can follow and rely upon." *Gillett v. Price*, 2006 UT 24, ¶ 8, 135 P.3d 861. Jakeman's filing of the document at issue in an attempt to create a record has no basis in the rules. His unilateral allegations in the document, with no evidentiary hearing or court findings of fact, have no legal basis

[3]. To the extent that we rely on the appellate docket rather than the trial court record on appeal, we take judicial notice of our own records. *See* Utah R. Evid. 201.

or effect in the underlying case. Furthermore, the hearing to which the document referred resulted in Jakeman obtaining the relief he sought, and there was no further dispute before the court regarding Jakeman's legal representation. In sum, the district court properly determined that the document was irrelevant and immaterial.

Moreover, Jakeman's argument that the district court did not comply with the requirements of rule 83 is without merit. A person may be found to be a vexatious litigant if, among other things, he three or more times "files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter." Utah R. Civ. P. 83(a)(1)(C)(ii). Because the court found that the document was immaterial, the filing of the document comes within the plain language of the rule. The court merely cautioned Jakeman that the document was one instance that could lead to a vexatious litigant determination if Jakeman continued similar conduct. Jakeman asserts that he was entitled to notice and an opportunity to be heard. However, "the right to notice and an opportunity to be heard [comes] into play when orders are entered requiring a vexatious litigant to take certain actions." *Watson v. Prestwich*, 2026 UT App 122, ¶ 22 (citing Utah R. Civ. P. 83(b)). Under rule 83(b), a court may enter an order restricting the conduct of a vexatious litigant only after notice and an opportunity to be heard. The court did not enter any order that would require notice under the rule.

Finally, Jakeman contends that the district court erred in denying his request for a hearing. In July 2025, Jakeman filed a document captioned "Request for Hearing to Modify Continuous Protective Orders." The document stated in its entirety: "Defendant respectfully requests that a hearing be held at the earliest convenience of the court pursuant to Utah Code section 78B-7-804(3)(c) to consider the propriety of modifying or dismissing the existing continuous protective orders pursuant to Utah Code section 78B-7-804(4)." Utah Code section 78B-7-804(3) provides that, under certain circumstances related to domestic violence convictions, "the court shall issue a continuous protective order at the time of the conviction or sentencing limiting the contact between the perpetrator and the victim . . . unless the court determines by clear and convincing evidence that the victim does not have a reasonable fear of future harm or abuse" and "the court conducts a hearing." Utah Code § 78B-7-804(3)(b)(i), (ii). This section further provides that "[t]he court shall notify the perpetrator of the right to request a hearing," *id.* § 78B-7-804(3)(c)(i), and that "[i]f the perpetrator . . . requests a hearing under this Subsection (3)(c), the court shall hold the hearing at the time determined by the court," *id.* § 78B-7-804(3)(c)(iii).

The district court denied the request for a hearing. The court noted that the September 2024 hearing on the protective orders satisfied Jakeman's rights under the statute and that he was not entitled to an additional hearing. The court additionally noted

that Jakeman had not provided any information that would indicate any change in circumstances that might support a hearing to consider modifying the orders.

Jakeman asserts that he has not had a hearing on the continuous protective orders (CPO). He asserts that the September 2024 hearing was not regarding the CPOs and that he is entitled to a hearing. However, his position at the September 2024 hearing was that the orders were indeed CPOs. His 2024 request cited the statute regarding CPOs and he vehemently argued at the hearing that the orders were CPOs. Moreover, this court has affirmed the CPOs from the September hearing on Jakeman's appeal of those orders. *See Orem City v. Jakeman*, 2025 UT App 187. That decision highlighted Jakeman's position at the September 2024 hearing, noting that "Jakeman was correct" in his argument that the district court "had no choice but to enter a continuous protective order at the time of sentencing." *Id.* ¶ 9. "So, whatever the court or Orem City may have originally called the protective order, it was a *continuous* protective order." *Id.* In sum, the nature of the September hearing as regarding CPOs is established and the district court correctly determined that Jakeman had already received a hearing.

Jakeman also contends that he is entitled to a hearing whenever he requests one under the statute, even if he has already had a hearing. However, he has not shown that the district court erred in its determination that a single hearing is contemplated under the statute. Jakeman does not address the district court's rationale in determining that only one hearing is mandatory under the statutory process for issuing CPOs. Although he offers his own interpretation, we are not persuaded that his interpretation is a correct reading of the statute, especially where he fails to address the district court's reasoning. *See Duchesne Land, LC v. Division of Consumer Prot.*, 2011 UT App 153, ¶ 8, 257 P.3d 441.[4]

[4]. Jakeman also asserts that he demonstrated a material change in circumstances in his reply to the City's objection to his request for a hearing. As noted above, however, the request for a hearing was properly denied. There was no other request for affirmative relief before the court. The request for a hearing does not constitute a motion for relief, and Jakeman provided no motion that set forth a request for relief and grounds for relief. Accordingly, the material in the reply was not properly before the court as a request for further relief. *See* Utah R. Crim. P. 12(a) ("A motion shall state succinctly and with particularity the grounds upon which it is made and the relief sought.").

IT IS HEREBY ORDERED that the district court's orders are affirmed.

Dated this 31st day of August, 2026.

FOR THE COURT:



John D. Luthy, Judge

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2026, a true and correct copy of the foregoing ORDER was deposited in the United States mail or was sent by electronic mail to be delivered to:

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By /s/ EMILY GILMORE

Case No. 20250896-CA
FOURTH DISTRICT, SPANISH FORK, 221300408, 221300553, 231300069, 231300079, 231300162

REPLY ADDENDUM B

Order Denying Petition for Rehearing, No. 20250896-CA
(Utah Ct. App. Oct. 15, 2026)

FILED
UTAH APPELLATE COURTS
OCT 15 2026

IN THE UTAH COURT OF APPEALS

DAVID AMMON JAKEMAN, Petitioner, *v.* OREM CITY, Respondent.	ORDER Case No. 20250896-CA

Before Judges Mortensen, Tenney, and Luthy.

This matter is before the court on petitioner David Ammon Jakeman's petition for rehearing pursuant to Utah Rule of Appellate Procedure 35.

IT IS HEREBY ORDERED that the petition is denied.

DATED this 15th day of October, 2026.

FOR THE COURT:



John D. Luthy, Judge