UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – May 28, 2025
via Webex

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Chair	X		Stacy Haacke, Staff
Justin T. Toth, Vice Chair	X		Keri Sargent
Ash McMurray		X	
Michael Stahler	X		
Loni Page	X		
Bryan Pattison	X		
Trevor Lee	X		
Laurel Hanks	X		
Tonya Wright	X		
Judge Rita Cornish	X		
Judge Catherine Conklin	X		
Jonas Anderson	X		
Heather Lester	X		
Brett Chambers	X		
Judge Blaine Rawson		X	
Judge Ronald Russell	X		
Judge Patrick Corum		X	
Rachel Sykes	X		
Michael Young	X		
Tyler Lindley	X		
Judge Laura Scott, *Emeritus*	X		
James Hunnicutt, *Emeritus*	X		

(1) INTRODUCTIONS

The meeting began at 4:12 p.m. after forming a quorum. Mr. Rod Andreason welcomed the Committee Members and guests.

(2) APPROVAL OF MINUTES

Mr. Andreason acknowledged proposed edits to the minutes by Jim Hunnicutt that had been circulated via email. Judge Rita M. Cornish moved to approve the minutes subject to Jim Hunnicutt's proposed revisions. Justin Toth seconded the motion. The motion to approve the minutes passed unanimously with all members voting in favor.

(3) NEW RULE 103 – CHILD PROTECTIVE ORDERS TRANSFERRED TO DISTRICT COURT

Judge Catherine Conklin introduced the proposed new Rule 103, explaining it originated from a joint effort between the Utah Rules of Civil Procedure (URCP) Committee and the Utah Rules of Juvenile Procedure (URJP) Committee. The rule addresses procedures for child protective orders when they are transferred from juvenile court to district court under Utah Code 78A-6-104(5). Judge Conklin noted that previously, when these orders transferred, some specific procedures from the URJP, such as those for interviews or recordings with children, were lost, leading to inconsistent rulings. The new rule aims to coordinate between the two sets of rules to ensure that certain URJP rules continue to apply to child protective order proceedings in district court, preventing contradictory orders and promoting judicial economy. Judge Conklin stated that much of the language for the proposed rule was "plagiarized" (cut and pasted verbatim) from Utah Rule of Juvenile Procedure 37A, but specifically excluded a provision for prevailing party attorney fees, as it is inconsistent with typical domestic action attorney fees in district court.

Rod Andreason questioned the re-use of Rule 103, which was previously repealed, and asked if its former content could create ambiguity or if enough time had passed to safely replace it. Jim Hunnicutt clarified that the previous Rule 103 had been repealed for a "very long time" and he was unable to find its historical content through searches, effectively making it an "empty slot." Judge Conklin explained that the placement of the new Rule 103 within the "domestic section" of the civil procedure rules (alongside Rule 100 on inter-court communication, Rule 101 on commissioners, and Rule 102 on attorney fees) made thematic sense.

Regarding subsection (b) of the proposed rule, Michael Stahler asked about the origin of the 21-day time limit for holding a hearing if an ex parte order has been issued. Judge Conklin clarified that this time limit is statutory and begins when the juvenile court initially issues the order, not when the case is transferred to district court. Rod Andreason suggested

adding "child protective" to "ex parte order" in subsection (b) for clarity, and Judge Conklin agreed. Judge Rita M. Cornish further suggested inserting "child protective order" between "ex parte" and "order" to enhance clarity. The committee agreed to the refined phrasing.

A discussion also took place on the formatting and flow of subsection (c), particularly the introductory sentence. Jim Hunnicutt explained the intent was to establish a presumption against child testimony unless extenuating circumstances exist, after which specific rules for testimony apply. Judge Rita M. Cornish proposed revising the introductory sentence to "a child's testimony can be presented in one of the following ways," which was favored by Judge Conklin and Rod Andreason.

Additionally, an issue with the placement of a sub-paragraph within subsection (c)(2) was identified, as it was noted as applying to both recorded testimony and live testimony, rather than just the former. After reviewing the source juvenile rule, Judge Conklin and Jim Hunnicutt confirmed that this provision was a separate subpart in the original rule. The committee agreed to move it to a new subsection. Jim Hunnicutt clarified that the intent of this prohibition is to prevent a child from having to testify multiple times.

Judge Rita M. Cornish moved to send the proposed Rule 103, with the agreed-upon amendments, to the Supreme Court for public comment. Justin Toth seconded the motion. The motion passed unanimously.

(4) RULE 102 – REVIEW SUBPARAGRAPHS (B) AND (C).

Stacy Haacke reported that Rule 102 was reviewed by the Justices at a recent Supreme Court Conference, and Justice Pohlman suggested changes, particularly concerning how subparagraphs (b) and (c) interact in practice. The Justices questioned if subsection (c) allows a court to deny a motion for costs and fees even if all the requirements of subsection (b) are met, or if it permits awarding limited costs and fees when all or some of the grounds in (b) are met. Justice Pohlman sought clarification on whether these two paragraphs could read more clearly together. Rod Andreason asked if the committee could address this in the current meeting or if it required a subcommittee. Justin Toth suggested deferring the discussion to the next meeting, proposing that he would take the lead in framing specific questions to guide the committee's review of the ambiguity.

(5) RULE 35 – RECORDING PHYSICAL AND MEDICAL EXAMINATIONS

Rachel Sykes initiated the discussion by explaining that she was asked to weigh in on a new issue regarding Rule 35, which pertains to the recording of physical and mental examinations. She explained that during the last legislative session, attorneys representing State Farm insurance company approached a legislator to propose a rule change to remove the language allowing video recording of psychological or neuropsychological evaluations

from the rule. Currently, Rule 35 has a presumption that all examinations should be recorded. The defense bar argues that their neuropsychological experts refuse to conduct recorded exams due to concerns about proprietary testing methods becoming public, making it difficult to find qualified examiners. Conversely, the plaintiff's bar views these exams as adversarial and believes recording is necessary, especially given instances where neuropsychologists have been exposed for dishonest practices through video evidence.

Rachel Sykes clarified that this issue had never been formally brought before the URCP Committee, despite representations made to the legislator that the committee had refused to address it. Stacy Haacke also noted that the legislative liaison for the courts expressed a desire for the committee to have discussions on the matter before the next legislative session as it was on their radar for action.

Rachel Sykes proposed forming a subcommittee to address the issue, offering to co-chair it with Michael Stahler. She emphasized the goal of soliciting input in a constructive manner. Michael Stahler agreed to serve on the subcommittee, acknowledging the importance of the issue and the need to hear directly from the neuropsychological community regarding their concerns about proprietary methods and the "unduly interfere" clause in the Rule.

Michael W. Young and J. Brett Chambers also volunteered to join the subcommittee. Judge Rita M. Cornish, though no longer practicing personal injury law, noted the inconsistency of judicial rulings on the issue as a concern. Rachel Sykes proposed that the subcommittee first meet internally to establish a procedure for soliciting input from stakeholders (e.g., UDLA) before inviting external parties. Rod Andreason supported this approach, emphasizing the importance of working through the committee's normal processes rather than allowing legislative circumvention.

(6) RULES 56, 26, AND 26.2 – MOTIONS FOR SUMMARY JUDGMENT AND EXPERT WITNESSES

Michael Stahler presented the proposed changes to Rules 56, 26, and 26.2, which were previously discussed by the subcommittee and the full committee. The primary goal of these amendments was to provide clarity on the deadline for filing a motion for summary judgment (MSJ) by precisely defining "the close of all discovery" within Rule 26. Michael Stahler also noted stylistic changes and updated statutory references in Rules 26 and 26.2.

A specific comment received pertained to Rule 26, lines 43-45 (in the materials), regarding the disclosure of non-retained expert testimony. The concern was whether Rule 26(a)(4)(A), which primarily addresses retained experts, clearly includes the requirement for summary disclosure of non-retained experts, despite Rule 26(a)(4)(E) addressing this later in the rule. Brett Chambers expressed confusion, suggesting the current drafting of Rule

26(a)(4)(A) could imply that all detailed information for retained experts also applies to non-retained experts, which is not the intent. Michael Stahler suggested reverting Rule 26(a)(4)(A) to its original language, removing the specific reference to non-retained experts, and instead, reordering Rule 26 to place the section on non-retained experts immediately after retained experts to improve clarity and ensure it is not missed103. However, Ash McMurray and Judge Ronald Russell cautioned against reordering due to the potential for introducing new confusion, breaking existing internal references, and the general complexity of such a structural change. They suggested that practitioners would eventually learn the rule's structure.

Judge Rita M. Cornish questioned the complexity of the proposed "decision tree" in Rule 26 for defining the close of discovery, suggesting a simpler fixed date (e.g., 56 days after the close of fact discovery) might be preferable. Michael Stahler and Tonya Wright explained the necessity of the detailed decision tree. Tonya Wright provided a historical account, noting that the ambiguity in the previous rule regarding when "all discovery" closed led to disputes over MSJ deadlines, particularly when a party did not designate an expert in a subsequent phase of discovery. She recalled an instance where their office filed an MSJ based on their interpretation of the expert disclosure timeline, but the opposing party argued it was late due to a different interpretation of the rule's silence. This ambiguity led to wasted time on litigation over the deadline itself. Tonya Wright also recounted that a previous proposal to simplify the rule (allowing MSJ filing "whenever") was met with significant public comment and was ultimately rejected by the Supreme Court, leading to the current, more detailed approach. Rod Andreason acknowledged the challenge of picking a single date given the wide variability of expert discovery in different cases. The committee's time was limited, and this topic will be taken up next meeting.

(6) ADJOURNMENT

The meeting was adjourned at 6:03 p.m. The next meeting will be June 25, 2025, at 4:00 p.m.