Utah Supreme Court
Advisory Committee on the Utah Rules of Civil Procedure
Meeting Agenda
Rod Andreason, Chair

Location: WebEx Webinar: Link

Date: November 19, 2025

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Rod Andreason
Judicial Interviews of Children – Rule Proposal (*Discussion*)	Tab 2	Justice Wilkins
Rules back from public comment – Rules 5, 42, 103 (*Discussion – Motion to approve as final, or additional amendments*)	Tab 3	Rod Andreason
Rule 62 – Stay of proceedings to enforce judgment or order (*Discussion – Motion for public comment*)	Tab 4	Jim Hunnicutt
Rules 74 and 76 – Motions to withdraw as counsel (*Discussion – Motion for public comment*)	Tab 5	Michael Stahler
Subcommittees (*Informational*)	Tab 6	

Reminder: Check style guide for conformity before rules are sent to the Supreme Court.

Upcoming Items:
- Subcommittees!

URCP Committee Website: Link

2025 Meeting Schedule:

Jan 22 • Feb 26 • Mar 26 • April 23 • May 28 • June 25 • Sep 24 • Oct 22 • Nov 19 • Dec 17

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – Oct. 22, 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		
Joshua Jewkes	X		
Meagan Rudd	X		
Laurel Hanks	X		
Tonya Wright	X		
Judge Rita Cornish		X	
Judge Catherine Conklin		X	
Jonas Anderson		X	
Heather Lester	X		
J. Brett Chambers	X		
Judge Blaine Rawson		X	
Judge Ronald Russell		X	
Judge Patrick Corum	X		
Rachel Sykes	X		
Michael Young		X	
Tyler Lindley		X	
Commissioner Marian Ito	X		
Judge Laura Scott, *Emeritus*		X	
James Hunnicutt, *Emeritus*	X		

(1) INTRODUCTIONS

The meeting began at 4:04 p.m. after forming a quorum. Mr. Rod Andreason welcomed the returning Committee Members and new Committee Members.

(2) APPROVAL OF MINUTES

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

(3) RULE 102 – MOTION AND ORDER FOR PAYMENT OF COSTS AND FEES

Mr. Justin Toth led discussion on proposed amendments to Rule 102, developed by a subcommittee of Commissioner Marian Ito, Ms. Meagan Rudd, and Ms. Stacy Haacke, with input from Mr. Jim Hunnicutt and Justice Jill Pohlman. Mr. Toth explained that the rule codifies the process for awarding fees in domestic cases under Utah Code § 81-1-203(1), which allows the court to order payments to "enable the moving party to prosecute or defend the action," thereby equalizing economic power between parties.

The revisions aimed to clarify the awarding process and improve statutory drafting. Key changes included: updating the Utah Code reference; replacing "shall" with "must" where appropriate; moving "in whole or in part" to subsection (b) for conciseness; and deleting prior subsection (c) as redundant, since the court's power to deny is implied if (b)'s findings are unmet.

Mr. Toth noted that the discussion section was divided into new subsections (c) and (d): (c) addresses the amount and timing of payment, and (d) the recipient of payment. Commissioner Ito clarified that the court style guide uses "will" for the court's future actions and "must" for parties' obligations. The deletion of the "undue hardship" language avoided adding an unnecessary criterion, as the four factors in (b) already cover that inquiry.

Mr. Michael Stahler moved to send the amendments to Rule 102 for public comment. Mr. Brett Chambers seconded the motion. The motion passed unanimously.

(4) NEW RULE 88 - AFFIDAVITS AND DECLARATIONS

Mr. Ash McMurray presented the proposal for a new Rule 88 and consequential conforming edits throughout the Utah Rules of Civil Procedure (URCP). Mr. McMurray explained that the foundational goal is to standardize the ambiguous language including "affidavits," "declarations," and "verified documents" which are currently used throughout the URCP into the single, encompassing term "signed declaration." This move aligns the rules with the existing Uniform Unsworn Declarations Act, ensuring parties can certify

authenticity under criminal penalty rather than requiring traditional notarization. The committee focused on key definitions within the proposed Rule 88.

In Rule 88(a)(3)(A) (Sworn declaration), Commissioner Ito raised concern that the restriction "or any notary public in this state" could invalidate declarations sworn before out-of-state notaries, particularly in domestic cases. Mr. Andreason agreed that deleting these limiting words would better reflect the current practice of granting comity to notarizations from other states.

In Rule 88(a)(7) (Declarant), Mr. Hunnicutt pointed out that the definition erroneously included the phrase "under oath," which contradicts the committee's goal of including both sworn and unsworn declarations. Mr. McMurray agreed that the phrase should be deleted.

In Rule 88(c) (Form of unsworn declaration), Mr. Andreason questioned the phrasing that required the declaration "must be in substantially the following form," noting this language was taken directly from the statute but could be misinterpreted if it didn't clearly state that the language was to be included at the end of the declarant's facts. The consensus was that the rule should mandate inclusion of the proper language.

In Rule 88(d) (Verified documents), Mr. Andreason proposed replacing the word "part" in the phrase "or any part thereof," with "portion" when describing what must be verified to provide greater clarity and flexibility for verifying specific sections of voluminous documents, such as responses to discovery requests. This suggestion was incorporated.

Given the foundational nature of Rule 88 and the numerous conforming edits required throughout all other rules (Rules 1 through 108), Ms. Haacke proposed sending Rule 88 to the Justices immediately for preliminary feedback prior to the next meeting. This would prevent the subcommittee from revising all conforming rules in the event the Justices had concerns with the core terminology.

Mr. Michael Stahler moved to approve Rule 88 as amended by the committee during discussion. Ms. Laurel Hanks seconded the motion. The motion passed unanimously.

(5) RULES BACK FROM PUBLIC COMMENT – RULES 5, 42, 103

Mr. Andreason led the discussion on rules returned from the public comment period.

Rule 42 (Consolidation; separate trials; venue transfer): The committee reviewed public comments concerning Rule 42 and confirmed that no public comments were received. Ms. Meagan Rudd moved to finalize Rule 42. Mr. Stahler seconded the motion. The motion passed unanimously.

Rule 5 (Service and filing of pleadings and other documents): Mr. Andreason noted that Rule 5 received two public comments. The first comment addressed proposed Rule 5(a)(2)(D), which requires a party in default to be served with notice if they are "represented by an attorney, with notice to the attorney, even if that attorney has not formally appeared in the action." Mr. Henderson expressed concern that an opposing party might not be aware of all "hidden" attorneys, potentially invalidating a default judgment. Mr. Stahler affirmed that the addition of this subsection was in response to a mandate from a Supreme Court decision

to ensure compliance with professional standards of civility. Judge Patrick Corum and Mr. Andreason agreed that the rule should be clarified to specify that this duty only applies if the attorney is "known to the party seeking default judgment" to address the ambiguity and avoid creating issues of fact in later proceedings.

The second comment addressed Rule 5(a)(2)(E), which specifies that a defaulting party must be served via Rule 4 procedures for pleadings asserting new claims or motions to modify or augment default judgment. Ms. Heather Lester explained that this presents significant challenges in eviction and unlawful detainer cases, where damages frequently augment after the initial complaint, and the tenant's current address is often unknown, making repeat Rule 4 service extremely difficult and increasing costs. Ms. Laurel Hanks noted that a proposed solution involving allowing service at the last known service address, intended to address this issue, was inadvertently missing from the rules sent out for public comment.

Mr. Andreason noted that given the remaining complexities, the rule could not be finalized today, especially since there was follow-up needed regarding an intended amendment that did not go out for public comment.

Rule 103 (Child protective orders): The proposed new Rule 103, concerning Child Protective Orders, received extensive and complex public comments from numerous stakeholders, leading to a discussion about whether the rule should move forward. Mr. Hunnicutt, part of the drafting subcommittee, explained that the rule was drafted urgently and modeled directly on Juvenile Rule 37A to address a statutory gap. It was also noted that the substantially identical Juvenile Rule 37A received no comments during its public comment period. Ms. Hanks suggested that stakeholders likely misunderstood the rule, fearing it might permit unqualified individuals to conduct child interviews, or were generally confused because of differing interpretations of whether these orders should be governed by that procedure. Mr. Andreason agreed that, due to the breadth of input and stakeholder requests for further discussion, the rule could not be finalized.

(6) ADJOURNMENT

The meeting was adjourned at 6:00 p.m. The next meeting will be November 19, 2025, at 4:00 p.m.

Tab 2

Uniform Judicial Interview of Children Act

drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

WITH PREFATORY NOTE AND COMMENTS

September 22, 2025

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Uniform Judicial Interview of Children Act

The committee appointed by and representing the Uniform Law Commission in preparing this act consists of the following individuals:

Barbara A. Atwood	Arizona, *Chair*
Maxine Eichner	North Carolina, *Vice Chair*
Thad H. Balkman	Oklahoma
Sarah E. Bennett	New Mexico
Gail Hagerty	North Dakota
Anne E. Hartnett	Delaware
Debra H. Lehrmann	Texas
Michael K. McKell	Utah
Keith F. Pickard	Nevada
Ethan N. Samsel	Mississippi
David J. Clark	California, *Division Chair*
Timothy J. Berg	Arizona, *President*

Other Participants

Melissa A. Kucinski	District of Columbia, *Reporter*
Kathryn Root	Washington, *American Bar Association Advisor*
Ernestine Gray	Louisiana, *American Bar Association Section Advisor*
Leah Ramirez	District of Columbia, *American Bar Association Section Advisor*
Mark J. Cutrona	Delaware, *Style Liaison*
Eric Weeks	Illinois, *Executive Director*

Copies of this act may be obtained from:

Uniform Law Commission
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Uniform Judicial Interview of Children Act

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Uniform Judicial Interview of Children Act

Prefatory Note

Existing law in many states permits judges in certain private civil proceedings to interview children outside of open court to ascertain the child's views. The law in most states, however, does not provide a comprehensive framework for conducting judicial interviews of children. In 1973, the Uniform Law Commission took the position that judicial interviews should be recorded, that courts had discretion to permit attorneys to attend, and that the recording should become part of the record in the case. Uniform (Model) Marriage & Divorce Act, Sec. 404. This act moves beyond that cursory approach to provide procedures and standards relating to such interviews in proceedings regarding child custody, visitation, parenting time, relocation, other custodial rights, and some other ancillary private matters. This act uses the term "covered proceeding" to encompass the various civil proceedings in the family law domain in which children's views are relevant. This act provides the procedural framework for interviewing children, but it is not the source of authority for a judicial officer to conduct an interview. See Section 3(a).

The act balances two compelling, but sometimes competing, interests: protecting a child when that child's views are elicited by a judicial officer and protecting the due process rights of the parties. In a judicial interview, the court must assess the child's maturity and ability to communicate and express views free of parental influence. The relatively free-ranging conversation that may result from a judicial interview means that contested factual information may surface during that interview. Accordingly, this act includes provisions that protect a party's due process rights when a child communicates information that may impact these rights. The act ensures that when a child communicates factual information that may have a direct impact on the outcome of the proceeding, the parties have the opportunity to respond.

Judicial officers retain discretion to use other means of eliciting a child's views in a covered proceeding. For instance, a judicial officer may authorize the use of a forensic expert to evaluate the child or the child's family, testimony by a guardian ad litem or other child representative, or direct testimony by a child in court. Regarding a child's testimony in court, this act may operate alongside the Model Child Witness Testimony by Alternative Methods Act (MCWTAMA), but this act distinguishes judicial interviews from sworn testimony by a child in court. In judicial interviews, the child is not a fact witness and is not placed under oath.

Courts faced with international disputes relating to children may use judicial interviews as an important step in their decision-making. In proceedings under the International Child Abduction Remedies Act (22 U.S.C. Section 9001, et. seq. [as amended]), implementing the Convention on the Civil Aspects of International Child Abduction, concluded at The Hague on October 25, 1980 (Hague Abduction Convention), state and federal courts in the United States frequently conduct judicial interviews of children in assessing a child's objection to return to a foreign jurisdiction. This act applies to such proceedings when conducted in state court.

In addition, the 2013 conditional amendments to the Uniform Child Custody Jurisdiction and Enforcement Act were drafted to implement the custody jurisdiction and enforcement

provisions of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children, concluded at The Hague on October 19, 1996 (Hague Child Protection Convention). Although not yet ratified by the United States, the Hague Child Protection Convention has been widely adopted in Europe and Latin America. In addressing various aspects of child protection, the Hague Child Protection Convention provides for the recognition and enforcement of custody orders or measures of protection of other Contracting States. One of the inquiries relevant to recognition and enforcement of a custody order under the Hague Child Protection Convention (art. 23) is whether the child had an opportunity to be heard in the original proceeding. Judicial interviews under this act provide the child with an effective opportunity to be heard and thus should support enforcement and recognition of state court custody decrees outside the United States.

Importantly, this act does not prescribe the weight to be given to a child's communications during a judicial interview, leaving that question to other law. In some states, the wishes of older children carry presumptive weight, but in most states family courts have broad discretion in determining a custodial arrangement that will serve the child's best interest. Rather than setting forth substantive guidelines, this act establishes a procedural framework designed to protect children's well-being and the due process interests of parties.

This act expressly excludes from its scope proceedings under a state's child welfare and juvenile delinquency statutes. Child welfare proceedings are defined by a comprehensive framework of federal and state law. While this act may be a helpful resource for judges when conducting judicial interviews in those cases, it is not designed to accommodate the specialized legal framework applicable to the child welfare context. Similarly, proceedings within the juvenile justice system entail unique constitutional concerns and are governed by a separate legal structure.

For analyses of state law on judicial interviews of children, see Donald G. Tye, *The Preferences and Voices of Children in Massachusetts and Beyond*, 50 FAM. L. Q. 471 (2016); LINDA D. ELROD, CHILD CUSTODY PRACTICE & PROCEDURE Secs. 4:12 – 4:17 (2024).

Uniform Judicial Interview of Children Act

Section 1. Title

This [act] may be cited as the Uniform Judicial Interview of Children Act.

Legislative Note: *A state may choose to adopt this act as a court rule.*

Comment

The title clarifies that the interviewer is a judicial officer in a legal proceeding and the interviewee is a subject child of that legal proceeding. The word "interview" is used to contrast with other processes through which a child's views may be shared with a judicial officer. This act applies only to a judicial interview and not to testimony by a child in court.

If a state determines that this act is more appropriate for adoption by court rule than by legislative enactment, it should be entitled the Uniform Judicial Interview of Children Rule.

Section 2. Definitions

In this [act]:

(1) "Child" means:

(A) an unemancipated individual who is under [18] years of age; and

(B) an individual who is [18] years of age or older and, because of physical or mental incapacity, is the subject of a covered proceeding.

(2) "[Child's attorney]" means an attorney who provides legal representation for a child in a covered proceeding.

(3) "Child's views" means the child's wishes, preferences, or perspectives. The term includes a child's objection to being returned in a proceeding under the International Child Abduction Remedies Act, 22 U.S.C. Section 9001, et seq.[, as amended].

(4) "Court" means a tribunal authorized under other law to adjudicate a covered proceeding.

(5) "Covered proceeding" means:

(A) a civil judicial proceeding relating to a child to determine:

(i) legal or physical custody;

(ii) parenting time or visitation;

(iii) relocation;

(iv) nonparent custody or visitation;

(v) private adoption;

(vi) guardianship or conservatorship; or

(vii) another matter involving custodial responsibility; and

(B) a proceeding under the International Child Abduction Remedies Act, 22 U.S.C. Section 9001, et seq.[, as amended].

(6) "[Guardian ad litem]" means an individual appointed by the court to represent a child's best interest in a covered proceeding.

(7) "Interview record" means a verbatim record of a judicial interview.

(8) "Judicial interview" means communication not under oath or affirmation between a child and a judicial officer in a covered proceeding through which the judicial officer elicits the child's views.

(9) "Judicial officer" means a judge, magistrate, hearing officer, or other individual who is permitted by other law to conduct:

(A) a covered proceeding and make or recommend a final decision in the covered proceeding; and

(B) a judicial interview.

(10) "Party" means a litigant with a direct interest being adjudicated in a covered proceeding. The term does not include a child who is the subject of the covered proceeding.

(11) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(12) "Record" means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(13) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(14) "Testimony" means evidence provided by a witness under oath or affirmation.

Legislative Note: *In paragraph (2) and throughout this act, a state should insert the appropriate term for a "child's attorney" used in the state.*

It is the intent of this act to incorporate future amendments to the federal law cited in paragraphs (3) and (5). A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase ", as amended". A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.

In paragraph (6) and throughout this act, a state should insert the appropriate term for a "guardian ad litem" used in the state.

Comment

The definition of "child" is reformulated from various uniform acts, including the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), the Uniform Deployed Parents Custody and Visitation Act (UDPCVA), and the Uniform Interstate Family Support Act (UIFSA). This act is not intended to expand the age range covered by any existing law. The age of 18 is bracketed because slight differences in the age of majority may exist across the United States. In addition, for some proceedings that fall under this act, the relevant law may establish an age by which a child "ages out" of the application of the law. In particular, under the Hague Abduction Convention, the protections afforded to a party cease when the child attains the age of

16, and this act does not change that limitation. Similar to UIFSA Sec. 102(1), the definition of "child" makes clear that the act applies to an individual past the age of majority who has been determined to be disabled and is the subject of a covered proceeding.

The definitions of "child's attorney" and "guardian ad litem" distinguish the distinct role of an attorney for the child from the role of a non-attorney advocate for a child's best interest. The term "child's attorney" as used in this act does not include a guardian ad litem appointed for the child, whether or not the guardian ad litem is an attorney. States may use different terms for these roles. For example, a child's attorney may be referred to as "Attorney-For-Child" (New York) or "Ad Litem Attorney" (Texas), and a guardian ad litem may be referred to as a "Best Interest Advocate" (Arizona). Throughout the act, any reference to "child's attorney" or "guardian ad litem" will relate back to the roles defined in this section of the act.

The definition of "judicial interview" makes clear that the purpose of the interview is to elicit the child's views. The definition also clarifies that the child's communication in the interview is not made under oath and is not testimony. "Testimony" is defined in this act to distinguish it from the unsworn judicial interview. Testimony is generally in open court, entails placing a witness under oath, and following the applicable rules of evidence. Testimony may also involve cross-examination. An interview is a less formal process, not conducted in open court and not governed by the rules of evidence. While some states blur the distinction between children's testimony and children's communications in a judicial interview, *see, e.g.*, Rule 16.215, Nev. R. Civ. Pro., this act clearly distinguishes between the two processes.

In 2002, the Uniform Law Commission approved the Uniform (Model) Child Witness Testimony by Alternative Methods Act (MCWTBAMA). That act gives judicial officers authority to allow children to testify by an alternative method to protect a child witness from the potential emotional impact of giving testimony in open court. The MCWTBAMA is distinct from this act in that it applies when a child is otherwise obligated to give testimony as a witness, while this act provides a framework for eliciting a child's views through the mechanism of a judicial interview. The two acts should work in parallel, and a state that considers enacting one should contemplate enacting both.

"Covered proceeding" is the term used throughout the act to refer to the listed civil proceedings in which a potential need for a judicial interview may arise. The word "proceeding" is broad enough to encompass temporary proceedings and emergency proceedings, such as those that may be brought under the UCCJEA or Uniform Child Abduction Prevention Act (UCAPA). Insofar as domestic violence proceedings involve temporary or emergency custody determinations, those proceedings would also be covered by this act.

Other law may impose an obligation with respect to participation by the child in the proceeding. For example, Section 205 of the Uniform Guardianship, Conservatorship, and other Protective Arrangements Act (UGCOPAA) addresses a child's attendance at hearings. A judicial interview in this act may nonetheless play a role in the proceeding without undermining the requirements of guardianship law. This act does not cover arbitration, but parties may choose to use the principles set out in this act in addressing the powers of an arbitrator in interviewing children. *See* Uniform Family Law Arbitration Act (UFLAA) Sec. 13(c)(5) (recognizing power

of arbitrator to meet with or interview child in arbitration of child-related proceeding).

This act uses the term "judicial officer" to refer to the person presiding over the covered proceeding who makes the ultimate decision in the proceeding. Other dispute resolution professionals who may involve children in their dispute resolution processes, such as mediators, arbitrators, and parent coordinators, are not judicial officers under this act. In some states, the judicial officer who interviews a child does not make the ultimate decision in the proceeding but instead recommends the ultimate decision, based on a legal and factual analysis. The recommendation is not final and binding until it is approved by a judge. For example, Maryland rules provide for the referral of certain matters, including domestic relations matters, to a magistrate. Md. R. Civ. P. Cir. Ct. 2-541(b). In Maryland, magistrates are appointed by the court in which they serve, and are empowered to conduct a hearing, take evidence, and file a report with the court containing proposed findings of fact, conclusions of law, and a recommended disposition of the matter. *See* Md. R. Ct. Admin. 16-807. The magistrates act, in all respects, as a judge, short of having the legal authority to sign a final judgment. This act is intended to include them as judicial officers.

This act only applies to judicial interviews conducted by judicial officers who are subject to judicial ethics rules and standards. It does not cover situations where a judicial officer refers the case to a third person, such as a mental health professional. It also does not cover those jurisdictions in which cases are routinely referred to an independent office or court-annexed office to conduct an interview. A state can decide whether to use the standards in this act for such alternative processes that are established in that state in lieu of judicial interviews.

The act uses the common Uniform Law Commission definition of "record," but it also includes a separate definition of "interview record" to mean a verbatim recording or transcription of a judicial interview. An "interview record" is a fundamental component of this act in that it is the primary mechanism by which parents' due process rights are protected. The term is intended to be flexible and recognizes that different courts use different means of recording a covered proceeding, such as audio recordings, video recordings, transcripts, and other methods.

The term "views" defines what a judicial officer seeks from a child in a covered proceeding through a judicial interview. "Views" are intended to be broad and to encompass various existing terms used among states, such as a child's preferences or wishes. The word "views" also includes a child's particularized objection to being returned under the Hague Abduction Convention. To discern a child's views, judges should use a form of questioning tailored to the child's communication style and abilities. Often, a judicial officer will ask open-ended questions rather than directly asking the child for the child's wishes or preferences. Generally, the goal is to acquire an understanding of the child's views in context. The information gained from a judicial interview, while rarely dispositive, should be given the weight deemed appropriate by the judicial officer in evaluating the full evidentiary record in the covered proceeding.

The act excludes the child who is the subject of the covered proceedings from the definition of "party." While a few states give the child party status, most states do not consider the child to be a party in covered proceedings. *See, e.g., Oscar M. v. Marilyn P.*, 555 P.3d 40

(Alaska 2024) (reasoning that a child's participation as a party would unduly complicate the proceeding and exacerbate tensions in the litigation); *Vance v. Locke*, 279 A.3d 689, 700 (Vt. 2023) (recognizing that while no one has a greater interest in a child custody dispute than the child, the child is not generally afforded party status). States should accept this act's definition of party for purposes of conducting judicial interviews, regardless of the state's existing stance on child party status. This act governs a litigant's participation in an interview, rights of access to the record of an interview, stipulations by parties, and other core aspects of the interview process. While the child has a fundamental interest in the proceeding, recognizing the child as a formal party would be inconsistent with the procedural framework of the act.

Section 3. Scope

(a) Except as provided in subsection (b)(1), this [act] applies to a covered proceeding in which other law permits a judicial interview of a child who is the subject of the covered proceeding.

(b) This [act] does not apply to:

(1) an interview conducted in a proceeding under [cite to the state's juvenile delinquency statutes] or [cite to the state's child welfare statutes];

(2) testimony by a child; or

(3) an interview conducted by a person other than a judicial officer.

Comment

This act is limited to judicial interviews permitted by other law in the various civil proceedings listed in the definition of "covered proceeding" in Section 2(4). The act has no application to criminal proceedings. While provisions of this act may restrict access to the interview record in particular circumstances, the act does not govern access to evidence in criminal proceedings.

This section makes clear that the act is limited to interviews of children who are the direct subjects of the proceeding before the court and does not extend to other children (for example, a neighbor child who may have information relevant to the proceeding or a sibling of the subject child). The act distinguishes between a judicial interview and testimony by a child witness. A court's decision to permit a child to testify is governed by other law. *See* Section 6(f). Further, the act does not cover securing information about children's views through other means, including evaluation of the child by a forensic expert, testimony by a guardian ad litem. or advocacy by a child's attorney.

The scope of a judicial interview is intentionally open-ended to allow the judicial officer

to elicit the child's views in a covered proceeding as provided under other law. Existing law dictates the information to be sought by the judicial officer in the covered proceeding. In custody cases, some states may require a judicial officer to determine a child's wishes or preferences as to their physical or legal custodian. Under the Hague Abduction Convention, in contrast, a court's focus by law may be the child's objections to being returned to a foreign jurisdiction. Where existing law does not require or specify which information a judicial officer should elicit, a judicial officer has discretion under this act to determine the focus of the interview. Other law need only permit a judicial officer to undertake a judicial interview of a subject child.

This act does not apply to child welfare proceedings in which the government or a private party is seeking to restrict a parent's legal rights to a child based on an allegation of abuse or neglect. The act excludes such proceedings because they are different in scope and structure and are already the subject of separate state and federal legislation. The federal Child Abuse Prevention and Treatment Act, for example, establishes detailed standards for child welfare proceedings that states must meet to be eligible for federal funding. *See* 42 U.S.C. Sec. 5106a(b)(2) (mandating, among other requirements, that states must protect confidentiality of investigations of abuse or neglect and must appoint a representative for any child subject to abuse and neglect proceedings). In addition, in child welfare proceedings, state law may require that counsel for all parties be permitted to attend an interview of the child. *See, e.g.*, *Interest of J.F.*, 308 A.3d 1252 (Pa. Super. Ct. 2024) (child's attorney and child's best interest attorney as well as parties' counsel entitled to attend in camera interview of child in child welfare proceedings). Similarly, the distinct procedural, statutory, and constitutional protections for youth in juvenile delinquency proceedings are not applicable to proceedings covered by this act. *See generally* Elizabeth S. Scott, *Restating the Law of Children and Youth: The Evolution of Reform*, 58 Fam. L. Q. 105 (2024-25).

Section 4. Decision to Conduct Judicial Interview

(a) Unless prohibited by other law, the child, [child's attorney], [guardian ad litem], or a party may request a judicial interview. The decision to conduct a judicial interview is within the judicial officer's discretion and may be at the judicial officer's own initiative.

(b) A judicial officer may conduct a judicial interview if the judicial officer determines the judicial interview is in the child's best interest and the requirements of other law are satisfied.

(c) Except as provided by other law, in deciding whether a judicial interview is in the child's best interest, the judicial officer shall consider the child's expressed desire to communicate or not communicate with the judicial officer and, to the extent applicable and readily ascertainable:

(1) the likelihood that the judicial interview will assist the judicial officer in adjudicating the covered proceeding;

(2) the child's age, maturity, and capacity to formulate and communicate the child's views to the judicial officer;

(3) the likely benefit to the child from the judicial interview;

(4) the potential harm to the child from the judicial interview, including embarrassment, harassment, retaliation, and breach of a relationship, and the judicial officer's ability to mitigate harm while eliciting the child's views;

(5) the availability and suitability of other processes to elicit the child's views;

(6) the likelihood that conducting the judicial interview may facilitate recognition or enforcement in another state or foreign court of the decision in the covered proceeding; and

(7) any other relevant factor.

(d) A judicial officer who conducts a judicial interview must have training in interviewing a child. [The training must be in accordance with [cite to judicial training standards established under other law of this state].].

Legislative Note: *In subsection (d), a state with judicial training standards should include the bracketed language and insert a citation to the judicial training standards. A state that does not have judicial training standards should omit the bracketed language.*

Comment

This section sets forth factors for the judicial officer to consider in determining whether to conduct a judicial interview. These include the child's desire to speak to the judge and the benefit to the child of being heard. Conversely, if a child does not want to communicate directly with a judicial officer, that too should be considered by the judicial officer in determining whether a judicial interview is the appropriate process. Courts often give significant weight to a child's expressed desire to speak with the judge or, conversely, the child's expressed opposition to being questioned. *See In re Samantha W.W.*, 217 A.D.3d 1081 (NY App. Div. 2023) (finding that the trial court abused its discretion in not interviewing a teenaged child who had asked to speak to the judge); *Interest of C.R.D.*, 2021 WL 3779224 (Tex. App. 2021) (unreported) (affirming trial court's decision not to interview a 12–year-old child who had opposed the

interview and would likely have suffered trauma).

A court's decision whether to interview a child involves consideration of the child's cognition, mental and emotional health and maturity, and the impact of an interview on the specific child. A court should also consider whether the child's communication of the child's views will be helpful to the court. The child may be guarded in the interview and reticent to share the child's perspective, particularly if the record of the interview will be disclosed to the child's parents. A judicial officer must also consider the difficulty in interpreting a child's words and may conclude that a judicial interview is only helpful to the extent it is part of a more robust evidentiary process or is buttressed by other methods of hearing from the child, such as through a forensic evaluation. A court should consider whether an interview could disrupt the child's relationship with parents or with another person with whom the child has a close relationship, such as a childcare provider, grandparent, stepparent, or sibling. Finally, if the proceeding falls under the Hague Abduction Convention, a judicial officer should be mindful that the Convention requires courts to act expeditiously in proceedings for the return of a child. The Convention's requirement for the judicial officer to act expeditiously may inform the judicial officer's decision whether to conduct a judicial interview, if conducting such an interview will delay resolution of the proceeding. Conversely, in some circumstances a judicial interview may expedite resolution where, for example, credibility of the child's objection is at issue.

It is within a judicial officer's discretion whether to conduct a judicial interview. A judicial officer may conclude after considering the factors in this section that a judicial interview is not the appropriate process for obtaining the child's views. In light of due process concerns, a judicial interview should not be used to elicit facts from a child to resolve a factual dispute.

This act does not require a separate evidentiary hearing to determine whether a judicial interview is the judicial officer's preferred process for eliciting the child's views, nor does it preclude such an evidentiary hearing if the judicial officer determines one is appropriate and/or necessary. Some judicial officers may postpone holding a judicial interview until later in the covered proceeding to allow for the presentation of evidence germane to the decision under Section 4. In contrast, some judicial officers may elect to hold a judicial interview earlier in the covered proceeding to provide additional time and opportunity for the parties to rebut information from the child's communication without need for scheduling additional hearings. This act is not intended to favor scheduling a judicial interview, if one is appropriate, at a particular time in the covered proceeding; instead, it gives a judicial officer discretion as to timing.

Other processes may be available to ascertain a child's views, separate from a judicial interview. The available processes will vary by state but may include referral of a child to a mental health professional for an evaluation, appointment of a guardian ad litem or child's attorney, and testimony by a child.

This act also requires training for judicial interviewing, consistent with that available under the law of the state. Such training is necessary because the process of eliciting children's views is different from questioning adults and generally requires familiarity with children's developmental levels, language abilities, and unique emotional vulnerability. *See generally*

Nicholas Bala, Rachel Birnbaum, Francine Cyr, & Denise McLolley, *Children's Voices in Family Court: Guidelines for Judges Meeting Children*, 47 FAM. L.Q. 379 (2013). If a judicial officer is not qualified to conduct an interview under this act, a party may take action under the state's judicial disqualification rules. Because all states require ongoing judicial education, the requirement for training in this act is unlikely to have a fiscal impact.

For judicial officers who wish to augment their required training or expertise, professional groups such as the National Judicial College and the Association of Family and Conciliation Courts offer programming on a wide range of practical skills in cases involving children. This act includes bracketed optional language that makes clear that it does not require training beyond what is already prescribed by the state. There is no restriction, however, on a judicial officer seeking out their own training, separate from that which is otherwise required of them, including available online training courses. Judicial officers should be cognizant, however, of the distinction between training for interviewing children who are the subject of child welfare cases and children who are the subject of covered proceedings, as defined in this act.

Section 5. Judicial Interview Procedure

(a) The judicial officer shall permit a party, [child's attorney], and [guardian ad litem] to propose questions in a record for the judicial interview. The judicial officer shall determine the questions asked of the child.

(b) The judicial officer shall require an interview record to be made.

(c) The judicial officer shall permit the [child's attorney] and [guardian ad litem] to attend the judicial interview in person.

(d) The judicial officer may not permit a party or the party's attorney to attend the judicial interview [in person but may permit a party, the party's attorney, or both, to observe or listen to the judicial interview remotely, in real time, with the opportunity to submit additional questions before the judicial officer concludes the judicial interview].

(e) If all parties agree, the parties may stipulate on the record that they waive access to the interview record [and the opportunity to observe or listen to the judicial interview under subsection (d)]. A stipulation is not valid unless approved by the judicial officer. The judicial officer may not approve a stipulation unless each party stipulates that the party waives any right

to access the interview record [and to observe or listen to the judicial interview], to be informed of communication by the child during the judicial interview, and to respond to the child's communication. Unless otherwise stated in the stipulation, a stipulation under this section precludes access to the interview record by the parties in any covered proceeding relating to the child, including an appeal.

(f) Before starting the judicial interview, the judicial officer shall explain to the child in an age-appropriate manner information about the judicial interview, including:

(1) that the child is not required to answer the judicial officer's questions;

(2) that the child's views will be considered but the judicial officer is the decision-maker;

(3) that an interview record will be made;

(4) whether any individual will be observing or listening to the judicial interview in real time;

(5) whether the interview record will be provided to the parties; and

(6) that the judicial officer may be required in some circumstances to share with another person the child's communication.

Legislative Note: *A state that selects Alternative A in Section 6 should include the bracketed language in subsections (d) and (e) in this section. A state that selects Alternative B in Section 6 should not include the bracketed language in either subsection (d) or (e) in this section.*

Comment

This section provides a procedural framework designed to meet the dual goals of protecting the child's interests and protecting the due process rights of the parties. That framework, drawn from caselaw, statutes, and court rules, also gives the judicial officer discretion to further tailor the procedures to balance these interests.

On the issue of which individuals may attend the interview in person, this section requires the judicial officer to permit the attendance of a child's attorney or guardian ad litem. Including these individuals directly in the interview may help the child to communicate more

clearly and may provide the child with emotional support. On the other hand, this section prohibits parties and their attorneys from attending the interview in person. Given the sheer volume of self-represented litigants in covered proceedings, this section intends to create a level playing field so that the same rules apply to represented litigants as to self-represented parties.

This section permits the parties (through their attorneys, if they are represented), the child's attorney, and guardian ad litem to submit questions to the judicial officer for consideration before the interview is conducted. The judicial officer should establish reasonable timeframes for submitting questions to avoid undue delay in the resolution of the proceeding. Judges traditionally accept questions from the parties before they conduct an interview, and parties who may be observing the interview in real time may be given the opportunity to submit additional questions. A judge has full discretion to determine the questions to be asked during the interview, including discretion not to ask any questions proposed by a party or a child's representative.

State law varies on how to balance the key goals of protecting a child's privacy and protecting the parties' due process rights. In a few states, statutory law expressly permits a judicial officer to allow a child's attorney or guardian ad litem to attend the interview. *See, e.g.,* Ohio Rev. Code Ann. Sec. 3109.04(B)(2)(c) (permitting child's attorney to be present during in camera interview); 43 Okla. Stat. Sec. 113 (E) (requiring attendance of guardian ad litem at judicial interview if guardian ad litem has been appointed). In most states, judicial interviews are conducted without the presence of parties or parties' attorneys to minimize emotional discomfort for the child. Some states, however, do permit the parties' attorneys to attend the judicial interview as a matter of course. *See, e.g.*, Mo. Rev. Stat. Sec. 452.385. In still other states, courts require that the record of the interview be disclosed to the parties if parties and counsel are not permitted to attend the interview. *See, e.g., Haase v. Haase*, 460 S.E.2d 585 (1995).

In order to protect parties' due process rights and the opportunity for meaningful review by appellate courts, this act requires a record of all judicial interviews. States have addressed due process concerns regarding the making of a record of the judicial interview through different approaches, and the options provided in this section and in Section 6 reflect those differences. In a majority of states, trial courts must always make a record of the judicial interview because the interview is part of the court proceeding, and a record is necessary to protect the opportunity for appellate review. *See, e.g., N.D. McN. v. R.J.H., Sr.,* 979 A.2d 1195, 1201 (D.C. 2009) (reasoning that the interview, while not in open court, is still part of a judicial proceeding and must be recorded, and the record must be made available to the parties and the appellate court); *Robinson v. Lanford*, 841 So.2d 1119, 1125 (Miss. 2003) (holding that a court reporter must be physically present to make a record of the in-chambers interview, and the interview record becomes part of the record of the case). In some states, however, parties may waive the requirement of a record, *see, e.g., Ex Parte Wilson,* 450 So.2d 104 (Ala. 1984), and in a few states a party must affirmatively object to a private, unrecorded judicial interview. *See, e.g., KES v. CAT*, 107 P.3d 779 (Wyo. 2005) (trial court violated parent's due process rights by conducting private unrecorded interview with child over parent's objection).

In accordance with established practice, the act recognizes that parties may stipulate that they will not have access to the record. To ensure that such waivers are fully informed, Section

5(e) imposes a duty on the judicial officer to explain to the parties the effect of the stipulation. Interview procedures in several states allow parties to waive the participation of their attorney in the judicial interview or waive access to the interview record, but the parties have a due process objection if a valid waiver is not obtained. *See, e.g., Barrett v. Wright*, 897 So.2d 398 (Ala. Civ. App. 2004) (trial court violated parent's due process rights by conducting private interview without obtaining consent of all parties).

States vary regarding the point in time during the covered proceeding when the judicial interview should occur. In some states the judicial interview is held after fact-finding evidence is adduced during a covered proceeding, on the rationale that the judicial interview is intended to corroborate the information already presented. *See, e.g., Lincoln v. Lincoln*, 24 N.Y.2d 270 (1969). This may also assist the judicial officer in deciding whether a judicial interview is the appropriate process for the subject child, or whether some alternative process is better suited to this child and family. In other states, the judicial interview must be conducted before a hearing on the merits unless the judicial officer has a principled reason to conduct it at another time. *See, e.g, Helen S.K. v. Samuel M.K.*, 288 P.3d 463 (Alaska 2013). Conducting a judicial interview early in the proceedings may assist the parties in rebutting the child's communication with the judicial officer under this act. This act gives the judicial officer discretion to set the timing of a judicial interview but recognizes that the timing may impact due process concerns and the scheduling of hearings to ensure efficiency and eliminate duplication of evidence gathering.

This section seeks to ensure that children understand the nature of the interview and the extent to which the record will be shared with others. Children should also be made aware that they retain the autonomy to refuse to answer questions, should they prefer to do so. In such cases, the judicial officer should not press for an answer. Some states require the court to provide information to the child at the beginning of the judicial interview, before the child commences communication with a judicial officer, such as requiring the court to advise the child who will have access to the record. *See, e.g,* Rule 12, Arizona Rules of Family Law Procedure.

Under this act, judicial officers have broad discretion to design a process specific to the child while protecting the due process rights of parties. Importantly, this act is limited to judicial interviews by judicial officers. In some states, a judicial officer may delegate the interviewing role to a third person, with certain limitations. In such states, if a judicial officer does not feel equipped to interview a child, then the officer may seek assistance from court personnel. *See Helen S.K. v. Samuel M.K.*, 288 P.3d 463 (Alaska 2013). This act, however, limits its scope to judicial interviews conducted directly by a judicial officer – a person who is bound by rules of judicial ethics, is mandated to have certain training by this act, and is the direct decision-maker in the case at hand. That does not preclude a state, or other interviewer, from using the principles in this act as guidelines, particularly to ensure due process protections are adhered to in covered proceedings.

This section, consistent with other sections of the act, includes several references to both a child's attorney and a guardian ad litem. In some states, a court may appoint only a child's attorney. In others, courts may only appoint a guardian ad litem. In still other states, a court may appoint both representatives for a particular child. This section therefore refers to both distinct professionals who serve as representatives for a child and recognizes their right to participate in a

judicial interview. *See Interest of J.F.*, 308 A.3d 1252 (Pa. Super. Ct. 2024) (holding that the child's attorney and child's best interest attorney as well as the parties' counsel were entitled to attend the in camera interview of the child under state statutory law).

Section 6. Post-Interview Procedure

Alternative A

(a) Unless otherwise prohibited by a stipulation approved under Section 5(e), on request of a party and after payment of required costs, the judicial officer shall grant access to the interview record within a reasonable time and before making a final decision in the covered proceeding.

(b) After granting access to the interview record under subsection (a), on request of a party, the judicial officer shall provide the parties an opportunity to submit evidence and legal argument before making a final decision in the covered proceeding.

Alternative B

(a) Unless otherwise prohibited by a stipulation approved under Section 5(e) and except as provided under subsection (b), if a party appeals the final decision in the covered proceeding, on request of a party and after payment of required costs, the judicial officer shall grant access to the interview record.

(b) Unless otherwise prohibited by a stipulation approved under Section 5(e), if the child makes a factual allegation in the judicial interview, other than communication of the child's views, that is or may be contested and is potentially dispositive in the covered proceeding, the judicial officer shall disclose the allegation to the parties and provide the parties an opportunity to submit evidence and legal argument in response before making a final decision in the covered proceeding.

End of Alternatives

(c) The right of the child, [child's attorney], and [guardian ad litem] to access the interview record and participate in the covered proceeding is governed by other law.

(d) The judicial officer shall determine appropriate restrictions on the disclosure of the contents of the judicial interview and the interview record to nonparties during the covered proceeding and after its conclusion.

(e) On a finding required under [cite to the state's statute or court rule for sealing a judicial record], the court shall seal the interview record from public access.

(f) The decision whether to permit the child to provide testimony in a covered proceeding is governed by other law.

[(g) After conducting a judicial interview, if a judicial officer has reasonable cause to believe that the child is the victim of abuse or neglect as defined in [cite to the state's child welfare statutes], the judicial officer [may] [shall] inform [insert name of the state's child welfare agency] and take other appropriate action to protect the child.]

Legislative Note: *A state that wants to grant access to the interview record at the trial court level before a final decision in the covered proceeding should select Alternative A. A state that wants to grant access to the interview record only if a party appeals a final decision in the covered proceeding should select Alternative B.*

A state that has not imposed by statute or case law a mandatory duty on a judicial officer to report suspected child abuse or neglect should enact subsection (g). If the state wants to impose a mandatory duty on a judicial officer to report, the state should use the word "shall". If the state wants to leave the decision whether to report suspected child abuse or neglect up to judicial discretion, the state should use the word "may". A state that has imposed a mandatory duty on a judicial officer by other law should not enact subsection (g).

Comment

This section provides a procedural framework for the covered proceeding after an interview has been conducted. On the pivotal question of access to an interview record, states have developed different approaches. Many states require that parties have access to the interview record at the trial court level as a matter of due process, making the record available automatically, or upon payment of any required fees. *See, e.g., Couch v. Couch*, 146 S.W.3d 923 (Ky. 2004) (recognizing that the trial court's failure to provide a parent with the interview

transcript impaired the parent's ability to rebut the child's statements and violated the parent's due process rights); In re H.K.W., 417 P.3d 875 (Col. App. 2017) (noting that as a matter of due process and fundamental fairness, a parent has a right to the contents of a judicial interview both at trial and on appeal).

Other states give robust protection to children's interest in confidentiality and only permit access to an interview record if a party files an appeal from the judicial officer's decision. *See, e.g., Ynclan v. Woodward,* 237 P.3d 145 (Ok. 2010) (holding that parents' due process rights are adequately protected by providing access to the interview record on appeal); 43 Ok. Stat. Ann. Sec.113 (2024) (authorizing a child's expression of preferences in a judicial interview and allowing access to a record only on the filing of an appeal); *Myers v. Myers,* 867 N.E.2d 848 (Ohio Ct. App. 2007) (recognizing that the record of a judicial interview should be sealed for review on appeal). In a few states, a judicial summary of the interview may be viewed as sufficient to protect a parent's due process rights. *See, e.g., Helen S.K. v. Samuel M.K.*, 288 P.3d 463 (Alaska 2013).

Taking a different approach, New York appellate courts have cautioned trial judges not to divulge comments made during in camera interviews with children and instead urged courts to protect a child's right to confidentiality by avoiding disclosure. *See T.E.G. v. G.T.G.*, 44 Misc.3d 449, 454 (N.Y. Supp. 2014); *Lincoln v. Lincoln*, 24 N.Y.2d 270 (N.Y. 1969). The New York courts have concluded that conducting a closed interview does not violate a parent's due process rights because the trial court's role as an "impartial decision maker" is the "core guarantee of due process," and because the judge has an "obligation to be faithful to the law and maintain professional competence in it." *T.E.G. v. G.T.G.*, 44 Misc.3d 449, 454 (N.Y. Supp. 2014).

Some state courts have drawn due process distinctions between a child's expression of a preference during an interview and a child's allegation of facts relevant to the merits. As the Alaska Supreme Court explained, "In camera interviews are not to be used as a method of obtaining additional information on other issues in the custody proceeding. If a child happens to volunteer such information, the interview is still valid provided that, if the court intends to rely on such information, the parties are informed in a manner that enables them to adequately respond to that information**."** *Helen S.K. v. Samuel M.K*., 288 P.3d 463, 474 (Alaska 2013)*; see also Sandra S. v Abdul S*., 914 N.Y.S.2d 858 (N.Y. Fam. Ct. 2010) (explaining that while children's stated preferences should be redacted from the interview record, the entitled as a matter of due process to the recording of the children's factual allegations relevant to the custody determination).

This act provides for two alternatives in Section 6, to account for the differences in existing state law. Both alternatives are structured to protect the due process rights of the parties. Alternative A provides for access to the interview record at the trial court level, unless otherwise stipulated, and requires that parties have an opportunity to submit evidence and legal argument in response before the judicial officer makes a final decision. Alternative B provides for access to the interview record, unless otherwise stipulated, on appeal from the final decision of the trial court in the covered proceeding. This act recognizes that the record of the judicial interview is more accurate than a judicial officer's oral or written summary, inevitably filtered through the judicial officer's own biases and training. While not prohibiting a judicial officer's summary of

the interview, the act requires a record and does not consider a summary to be an adequate substitute, absent a stipulation by the parties.

Because of the potential impact of a judicial interview on the ultimate decision in the covered proceeding, subsection (b) of Alternative B requires the judicial officer to disclose factual allegations made by the child during an interview that may be dispositive on the merits. This safeguard will ensure that parties have the opportunity to respond at the trial level to material fact allegations that the judicial officer may rely on in reaching a decision in the covered proceeding. This provision is intended to ensure that the protection of confidentiality of the child's views offered in this alternative does not undermine the parties' due process rights.

Consistent with the law of most states, Alternatives A and B recognize that the parties may stipulate that they will not have access to the interview record. Accordingly, the mandatory disclosures under this section apply only if the parties have not otherwise stipulated.

The due process protections in this act acknowledge that information from a child is one piece of a larger evidentiary process, and the judicial officer hearing the case should consider the child's communications from the judicial interview within a broader context in arriving at the ultimate decision. This section provides that, under certain circumstances, parties are permitted to submit evidence and legal argument to address the child's communication with the judicial officer. Other law will determine what evidence is permitted in the proceeding, including additional witnesses, documentary evidence, legal argument, or testimony by the child. For example, if a child shares in a judicial interview that the child saw one parent hit the other with a baseball bat at a neighborhood gathering, the parent accused of violence would be entitled to be informed of the allegation and to have it weighed against other available evidence, such as testimony under oath from an adult who was present at the gathering. When the child makes potentially dispositive factual allegations, a party may seek to have the child testify as a witness and be subject to cross examination. Section 6(f) makes clear that the decision whether to permit a child to testify is governed by other law.

Privacy concerns may arise from party access to the child's communication in a judicial interview. In this age of social media, a record could become weaponized and widely shared with friends, family, or even strangers. In other situations, however, third parties, such as the child's private therapist or a privately retained custody evaluator in the case, may need access to the record to provide treatment or to more comprehensively evaluate the family's situation. This section therefore recognizes that the judicial officer has discretion to restrict disclosure to third parties. In addition, the record may become part of an otherwise public court file. Under subsection (e), the judicial officer must seal the record from public access on a finding required under the state's law governing sealing or shielding of public court records. State public records laws, to the extent applicable to judicial records, ordinarily exempt court proceedings implicating personal privacy concerns such as child custody disputes. *See* Jennifer Selin & Jordan Butcher, *How Free is Information? Transparency in State Governmen*t, 26 N.Y.U. J. Leg. & Pub. Pol'y 985 (2023-24). As with other provisions in this act, the sealing referred to in subsection (e) has no application to the criminal context. The rights of evidentiary access in criminal proceedings are governed by other law.

This section includes a bracketed subsection (g) for those states that do not already have clear law regarding a judicial officer's reporting of suspected child abuse or neglect. In most states, judicial officers are not under an express duty to report, but in some states judicial officers are listed as mandatory reporters. Under the bracketed subsection, states may choose to impose a mandatory duty to report or may clarify that the decision is within judicial discretion. Any referral by a judicial officer to a child welfare agency would be governed by the state's confidentiality laws regarding child welfare reports.

Section 7. Uniformity of Application and Construction

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among states that enact it.

Section 8. Transitional Provision

This [act] applies to a judicial interview requested or initiated on or after [the effective date of this [act]].

[Section 9. Severability]

[If a provision of this [act] or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.]

Legislative Note: *Include this section only if the state lacks a general severability statute or a decision by the highest court of the state adopting a general rule of severability.*

Section 10. Effective Date

This [act] takes effect [. . .].

Rule 000. Uniform Judicial Interview of Children Rule.

(a) **Definitions**. In this rule:

(1) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-702.

(2) "Child" means:

(A) an unemancipated individual who is under 18 years of age; and

(B) an individual who is 18 years of age or older and, because of physical or mental incapacity, is the subject of a covered proceeding.

(3) "Child's views" means the child's wishes, preferences, or perspectives. The term includes a child's objection to being returned in a proceeding under the International Child Abduction Remedies Act, 22 U.S.C. Section 9001, et seq., as amended.

(4) "Court" means a tribunal authorized under other law to adjudicate a covered proceeding.

(5) "Covered proceeding" means:

(A) a civil judicial proceeding relating to a child to determine:

(i) legal or physical custody;

(ii) parenting time or visitation;

(iii) relocation;

(iv) nonparent custody or visitation;

(v) private adoption;

(vi) guardianship or conservatorship; or

(vii) another matter involving custodial responsibility; and

(B) a proceeding under the International Child Abduction Remedies Act, 22 U.S.C. Section 9001, et seq., as amended.

(6) "Interview record" means a verbatim record of a judicial interview.

(7) "Judicial interview" means communication not under oath or affirmation between a child and a judicial officer in a covered proceeding through which the judicial officer elicits the child's views.

(8) "Judicial officer" means a judge, magistrate, hearing officer, or other individual who is permitted by other law to conduct:

(A) a covered proceeding and make or recommend a final decision in the covered proceeding; and

(B) a judicial interview.

(9) "Party" means a litigant with a direct interest being adjudicated in a covered proceeding. The term does not include a child who is the subject of a covered proceeding.

(10) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(11) "Record" means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(13) "Testimony" means evidence provided by a witness under oath or affirmation.

(b) **Scope.**

(1) Except as provided in subparagraph (2)(A) of this subsection, this rule applies to a covered proceeding in which other law permits a judicial interview of a child who is the subject of the covered proceeding.

(2) This rule does not apply to:

(A) an interview conducted in a proceeding under:

(i) Utah Code title 80, chapter 3, Abuse, Neglect, and Dependency Proceedings;

(ii) Utah Code title 80, chapter 4, Termination of Parental Rights;

(iii) Utah Code title 80, chapter 5, Juvenile Justice Services;

(iv) Utah Code title 80, chapter 6, Juvenile Justice; or

(v) Utah Code title 80, chapter 7, Emancipation;

(B) testimony by a child; or

(C) an interview conducted by a person other than a judicial officer.

(c) **Decision to Conduct Judicial Interview.**

(1) Unless prohibited by other law, the child, attorney guardian ad litem, or a party may request a judicial interview. The decision to conduct a judicial interview is within the judicial officer's discretion and may be at the judicial officer's own initiative.

(2) A judicial officer may conduct a judicial interview if the judicial officer determines the judicial interview is in the child's best interest and the requirements of other law are satisfied.

(3) Except as provided by other law, in deciding whether a judicial interview is in the child's best interest, the judicial officer shall consider the child's expressed desire to communicate or not communicate with the judicial officer and, to the extent applicable and readily ascertainable:

(A) the likelihood that the interview will assist the judicial officer in adjudicating the covered proceeding;

(B) the child's age, maturity, and capacity to formulate and communicate the child's views to the judicial officer;

(C) the likely benefit to the child from the interview;

(D) the potential harm to the child from the interview, including embarrassment, harassment, retaliation, and breach of a relationship, and the judicial officer's ability to mitigate harm while eliciting the child's views;

(E) the availability and suitability of other processes to elicit the child's views;

(F) the likelihood that conducting the interview may facilitate recognition or enforcement in another state or foreign court of the decision in the covered proceeding; and

(G) any other relevant factor.

(4) A judicial officer who conducts a judicial interview must have training in interviewing a child. [The training must be in accordance with Rule 3-403.]

NOTE: The bracketed provision is optional.

(d) **Judicial Interview Procedure.**

(1) The judicial officer shall permit a party and attorney guardian ad litem to propose questions in a record for the judicial interview. The judicial officer shall determine the questions asked of the child.

(2) The judicial officer shall require an interview record to be made.

(3) The judicial officer shall permit the attorney guardian ad litem to attend the judicial interview in person.

(4) The judicial officer may not permit a party or the party's attorney to attend the judicial interview **in person but may permit a party, the party's attorney, or both, to**

observe or listen to the judicial interview remotely, in real time, with the opportunity to submit additional questions before the judicial officer concludes the judicial interview.

(5) If all parties agree, the parties may stipulate on the record that they waive access to the interview record **and the opportunity to observe or listen to the judicial interview under subsection (4).** A stipulation is not valid unless approved by the judicial officer. The judicial officer may not approve a stipulation unless each party stipulates that the party waives any right to access the interview record **and to observe or listen to the judicial interview**, to be informed of communication by the child during the interview, and to respond to the child's communication. Unless otherwise stated in the stipulation, a stipulation under this section precludes access to the interview record by the parties in any covered proceeding relating to the child, including an appeal.

(6) Before starting the interview, the judicial officer shall explain to the child in an age-appropriate manner information about the judicial interview, including:

(A) that the child is not required to answer the judicial officer's questions;

(B) that the child's views will be considered but the judicial officer is the decision-maker;

(C) that an interview record will be made;

(D) whether any individual will be observing or listening to the judicial interview in real time;

(E) whether the interview record will be provided to the parties; and

(F) that the judicial officer may be required in some circumstances to share with another person the child's communication.

(e) **Post-Interview Procedure.**

(1) Unless otherwise prohibited by a stipulation approved under subsection (d)(5), on request of a party and after payment of required costs, the judicial officer shall grant access to the interview record within a reasonable time and before making a final decision in the covered proceeding.

(2) After granting access to the interview record under subparagraph (1) of this subsection, on request of a party, the judicial officer shall provide the parties an opportunity to submit evidence and legal argument before making a final decision in the covered proceeding.

(3) The right of the child and attorney guardian ad litem to access the interview record and participate in the covered proceeding is governed by other law.

(4) The judicial officer shall determine appropriate restrictions on the disclosure of the contents of the interview and the interview record to nonparties during the covered proceeding and after its conclusion.

(5) On a finding required under [cite to the state's statute or court rule for sealing a judicial record], the court shall seal the interview record from public access.

NOTE: Should Rule 4-202.02 be amended to include judicial interviews in the list of sealed records? Or is a citation to Rule 4-202.02 in this provision sufficient?

(6) The decision whether to permit the child to provide testimony in a covered proceeding is governed by other law.

[(7) After conducting a judicial interview, if a judicial officer has reasonable cause to believe that the child is the victim of abuse or neglect as defined in [cite to the state's child welfare statutes], the judicial officer [may] [shall] inform [insert name of the state's child welfare agency] and take other appropriate action to protect the child.]

NOTE: Utah's mandatory reporting requirement in Section 8-2-602 is broad but does include a carve-out for attorneys unless the attorney is permitted to reveal the suspected abuse or neglect of the child to prevent reasonably

certain death or substantial bodily harm in accordance with the Utah Rules of Professional Conduct, Rule 1.6. The committee needs to decide whether it would like to include this mandatory reporting provision.

(f) **Uniformity of Application and Construction.**

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among states that enact it.

(g) **Transitional Provision.**

This rule applies to a judicial interview requested or initiated on or after the effective date of this rule.

(h) **Severability.**

If a provision of this rule or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.

Effective date: DATE

Rule 000. Uniform Judicial Interview of Children Rule.

(a) **Definitions**. In this rule:

(1) "Attorney guardian ad litem" means the same as that term is defined in Section 78A-2-702.

(2) "Child" means:

(A) an unemancipated individual who is under 18 years of age; and

(B) an individual who is 18 years of age or older and, because of physical or mental incapacity, is the subject of a covered proceeding.

(3) "Child's views" means the child's wishes, preferences, or perspectives. The term includes a child's objection to being returned in a proceeding under the International Child Abduction Remedies Act, 22 U.S.C. Section 9001, et seq., as amended.

(4) "Court" means a tribunal authorized under other law to adjudicate a covered proceeding.

(5) "Covered proceeding" means:

(A) a civil judicial proceeding relating to a child to determine:

(i) legal or physical custody;

(ii) parenting time or visitation;

(iii) relocation;

(iv) nonparent custody or visitation;

(v) private adoption;

(vi) guardianship or conservatorship; or

(vii) another matter involving custodial responsibility; and

(B) a proceeding under the International Child Abduction Remedies Act, 22 U.S.C. Section 9001, et seq., as amended.

(6) "Interview record" means a verbatim record of a judicial interview.

(7) "Judicial interview" means communication not under oath or affirmation between a child and a judicial officer in a covered proceeding through which the judicial officer elicits the child's views.

(8) "Judicial officer" means a judge, magistrate, hearing officer, or other individual who is permitted by other law to conduct:

(A) a covered proceeding and make or recommend a final decision in the covered proceeding; and

(B) a judicial interview.

(9) "Party" means a litigant with a direct interest being adjudicated in a covered proceeding. The term does not include a child who is the subject of a covered proceeding.

(10) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(11) "Record" means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

(12) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(13) "Testimony" means evidence provided by a witness under oath or affirmation.

(b) **Scope.**

(1) Except as provided in subparagraph (2)(A) of this subsection, this rule applies to a covered proceeding in which other law permits a judicial interview of a child who is the subject of the covered proceeding.

(2) This rule does not apply to:

(A) an interview conducted in a proceeding under:

(i) Utah Code title 80, chapter 3, Abuse, Neglect, and Dependency Proceedings;

(ii) Utah Code title 80, chapter 4, Termination of Parental Rights;

(iii) Utah Code title 80, chapter 5, Juvenile Justice Services;

(iv) Utah Code title 80, chapter 6, Juvenile Justice; or

(v) Utah Code title 80, chapter 7, Emancipation;

(B) testimony by a child; or

(C) an interview conducted by a person other than a judicial officer.

(c) **Decision to Conduct Judicial Interview.**

(1) Unless prohibited by other law, the child, attorney guardian ad litem, or a party may request a judicial interview. The decision to conduct a judicial interview is within the judicial officer's discretion and may be at the judicial officer's own initiative.

(2) A judicial officer may conduct a judicial interview if the judicial officer determines the judicial interview is in the child's best interest and the requirements of other law are satisfied.

(3) Except as provided by other law, in deciding whether a judicial interview is in the child's best interest, the judicial officer shall consider the child's expressed desire to communicate or not communicate with the judicial officer and, to the extent applicable and readily ascertainable:

(A) the likelihood that the interview will assist the judicial officer in adjudicating the covered proceeding;

(B) the child's age, maturity, and capacity to formulate and communicate the child's views to the judicial officer;

(C) the likely benefit to the child from the interview;

(D) the potential harm to the child from the interview, including embarrassment, harassment, retaliation, and breach of a relationship, and the judicial officer's ability to mitigate harm while eliciting the child's views;

(E) the availability and suitability of other processes to elicit the child's views;

(F) the likelihood that conducting the interview may facilitate recognition or enforcement in another state or foreign court of the decision in the covered proceeding; and

(G) any other relevant factor.

(4) A judicial officer who conducts a judicial interview must have training in interviewing a child. [The training must be in accordance with Rule 3-403.]

NOTE: The bracketed provision is optional.

(d) **Judicial Interview Procedure.**

(1) The judicial officer shall permit a party and attorney guardian ad litem to propose questions in a record for the judicial interview. The judicial officer shall determine the questions asked of the child.

(2) The judicial officer shall require an interview record to be made.

(3) The judicial officer shall permit the attorney guardian ad litem to attend the judicial interview in person.

(4) The judicial officer may not permit a party or the party's attorney to attend the judicial interview.

(5) If all parties agree, the parties may stipulate on the record that they waive access to the interview record. A stipulation is not valid unless approved by the judicial officer. The judicial officer may not approve a stipulation unless each party stipulates that the party waives any right to access the interview record, to be informed of communication by the child during the interview, and to respond to the child's communication. Unless otherwise stated in the stipulation, a stipulation under this section precludes access to the interview record by the parties in any covered proceeding relating to the child, including an appeal.

(6) Before starting the interview, the judicial officer shall explain to the child in an age-appropriate manner information about the judicial interview, including:

(A) that the child is not required to answer the judicial officer's questions;

(B) that the child's views will be considered but the judicial officer is the decision-maker;

(C) that an interview record will be made;

(D) whether any individual will be observing or listening to the judicial interview in real time;

(E) whether the interview record will be provided to the parties; and

(F) that the judicial officer may be required in some circumstances to share with another person the child's communication.

(e) **Post-Interview Procedure.**

(1) Unless otherwise prohibited by a stipulation approved under subsection (d)(5) and except as provided under subparagraph (2) of this subsection, if a party appeals the final decision in the covered proceeding, on request of a party and after payment of required costs, the judicial officer shall grant access to the interview record.

(2) Unless otherwise prohibited by a stipulation approved under subsection (d)(5), if the child makes a factual allegation in the judicial interview, other than communication of the child's views, that is or may be contested and is potentially dispositive in the covered proceeding, the judicial officer shall disclose the allegation to the parties and provide the parties an opportunity to submit evidence and legal argument in response before making a final decision in the covered proceeding.

(3) The right of the child and attorney guardian ad litem to access the interview record and participate in the covered proceeding is governed by other law.

(4) The judicial officer shall determine appropriate restrictions on the disclosure of the contents of the interview and the interview record to nonparties during the covered proceeding and after its conclusion.

(5) On a finding required under [cite to the state's statute or court rule for sealing a judicial record], the court shall seal the interview record from public access.

NOTE: Should Rule 4-202.02 be amended to include judicial interviews in the list of sealed records? Or is a citation to Rule 4-202.02 in this provision sufficient?

(6) The decision whether to permit the child to provide testimony in a covered proceeding is governed by other law.

[(7) After conducting a judicial interview, if a judicial officer has reasonable cause to believe that the child is the victim of abuse or neglect as defined in [cite to the state's child welfare statutes], the judicial officer [may] [shall] inform [insert name of the state's child welfare agency] and take other appropriate action to protect the child.]

NOTE: Utah's mandatory reporting requirement in Section 8-2-602 is broad but does include a carve-out for attorneys unless the attorney is permitted to reveal the suspected abuse or neglect of the child to prevent reasonably certain death or substantial bodily harm in accordance with the Utah

Rules of Professional Conduct, Rule 1.6. The committee needs to decide whether it would like to include this mandatory reporting provision.

(f) **Uniformity of Application and Construction.**

In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among states that enact it.

(g) **Transitional Provision.**

This rule applies to a judicial interview requested or initiated on or after the effective date of this rule.

(h) **Severability.**

If a provision of this rule or its application to a person or circumstance is held invalid, the invalidity does not affect another provision or application that can be given effect without the invalid provision.

Effective date: DATE

Tab 3

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Posted: September 3, 2025

Utah Courts

Rules of Civil Procedure – Comment Period Closed October 20, 2025

URCP005. Service and filing of pleadings and other papers.
AMEND. The proposed amendments to this rule are primarily to address when service is required on parties in default, to clarify when a party in default must be served. There is also a new subparagraph (a)(2)(D) after review of the Standards of Professionalism and Civility, particularly Standard 16, and Utah Supreme Court case, *Arbogast Family Trust ex rel. Arbogast v. River Crossings, LLC*, 2010 UT 40. There is also a proposed amendment to (b)(3)(C) regarding a mailing address.

URCP042. Consolidation; separate trials; venue transfer.
AMEND. The proposed amendments to this rule clarify the filings to be made in each action and by the parties when there are requests to consolidate cases. This includes clarification on motions to intervene, notices, orders, the assigned judge, and the use of a single case number. There is also new proposed language regarding severance of matters, and reassignment of cases where the cases to be consolidated may not be of the same case type.

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

- -Alternate Dispute Resolution
- -Code of Judicial Administration
- -Code of Judicial Conduct
- -Fourth District Court Local Rules
- -Licensed Paralegal Practitioners Rules of Professional Conduct
- -Rules Governing Licensed Paralegal Practitioner
- -Rules Governing the State Bar

URCP103. Child protective orders. NEW. This new proposed rule will apply when child protective order cases are transferred from the juvenile court to the district court under Utah Code section 78A-6-104(5). This rule covers procedures for live child testimony, recorded statements, and recorded testimony, and follows generally the substance of Utah Rules of Juvenile Procedure Rule 37A.

This entry was posted in **Uncategorized**, **URCP005**, **URCP042**.

« Rules of Appellate Procedure – Comment Period Closes November 10, 2025

Mandatory Continuing Legal Education Rule Changes – Comment Period Closed October 20, 2025 »

UTAH COURTS

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11 thoughts on "Rules of Civil Procedure – Comment Period Closed October 20, 2025"

Clancey Henderson
September 3, 2025 at 1:43 pm

Proposed Rule change 5(a)(2)(D) ("if represented by an attorney, with notice to the attorney, even if that attorney has not formally appeared in the action.") needs to make clear that service is required only when an attorney's representation of the party in default is known to the serving attorney. See Standards of Professionalism and Civility, ¶ 16 ("whose identity is known"); Arbogast Fam. Tr. v. River Crossings, LLC, 2010 UT 40, ¶ 41, 238 P.3d 1035 (emphasizing "known parties").

Jeremy Shorts

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix A
- Appendix B
- Appendix F
- CJA 1-101
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0302
- CJA01-0303
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- CJA01-0305
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- CJA010-1-020
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September 25, 2025 at 11:30 am

Proposed Rule 5(a)(2)(c) would require Rule 4 service for a motion to augment:

Rule 76 already requires parties to maintain updated contact information in a lawsuit. In certain cases (at least those involving unlawful detainer), this change would conflict with Utah Code 78B-6-811(6)(a) and (b). Is there any exception if the Motion to Augment occurs within a short period of time (i.e. within 180 days under 78B-6-811(5)(b))?Requiring a second round of Rule 4 service would also increase work load on the courts because motions for alternate service would increase under Rule 4(d)(5)(A).

As an alternate option, would it be possible to effectuate Rule 5 service via at least two separate methods (emailing a second copy on top ofmailing, or mailing to two potential addresses, etc.)?

See also: Bodell Constr. Co. v. Robbins, 2014 UT App 203, ¶ 13, 334 P.3d 1004, 1009-1010 (2014 Utah Ct. App.) stating:

…we note that the Utah Rules of Civil Procedure mandate that personal service of process occur only once, at the beginning of a case. Utah R. Civ. P. 4(d)(1). Once a defendant appears before the court, it is that defendant's responsibility to maintain contact with the court. Id. R. 76 ("An attorney and unrepresented party must promptly notify the court in writing of any change in that person's address, e-mail address, phone number or fax number."); Volostnykh v. Duncan, 2001 UT App 26, para. 4 (per curiam) (recognizing the parties' duties to inform the court of any address changes and to "keep themselves apprised of ongoing court proceedings"). We agree with the district court that Robbins's attempt to excuse his lack of diligence with his reliance on an adverse party for notice "plac[es] on Bodell and its counsel a duty not recognized in Utah law."

Heather Williams-Young

October 14, 2025 at 9:58 am

Proposed Rule 103

I appreciate that the proposed rule change reflects a thoughtful effort to address the real and lasting trauma that testifying in court can have on children. Prioritizing trauma-informed practices in civil proceedings, especially those involving child protective orders, is an important step forward. However, I have significant concerns regarding the potential unintended consequences of this rule, particularly for the Children's Justice Centers (CJCs) across the state and our multidisciplinary team (MDT) partners.

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One major concern involves the potential impact on forensic interview (FI) services provided by CJCs. If the rule change results in an increased demand for forensic interviews, or leads to more subpoenas for FI staff to testify, this could stretch our already limited resources. Forensic interviewers may be pulled away from their primary role of service provision at the CJC to attend civil court proceedings. In many cases, CJCs may need to hire additional interviewers to meet demand—without any corresponding increase in funding. Additionally, there is a risk that forensic interviews could be submitted as evidence in civil proceedings while parallel criminal investigations or prosecutions are still ongoing, potentially compromising those criminal cases.

An equally pressing concern lies in how the rule might be interpreted regarding who is permitted to conduct interviews with children. If the rule is read to allow individuals who are not trained forensic interviewers—such as attorneys, custody evaluators, or even parents—to conduct and record interviews with children for submission in court, this could have serious consequences. Interviews conducted without adherence to evidence-based, trauma-informed protocols risk re-traumatizing children, introducing suggestibility, and jeopardizing the integrity of ongoing criminal investigations. The proposed rule lacks clear guidance on the scope, qualifications, and standards for such interviews, which leaves room for practices that may ultimately harm the very children the rule aims to protect.

While I strongly support efforts to make civil court proceedings more trauma-informed for children, I respectfully urge that this proposed rule change be returned to the committee for further consideration. It is essential that all relevant stakeholders—including CJCs, MDT partners, prosecutors, victim advocates, and child welfare professionals—are included in these discussions to ensure a comprehensive understanding of the broader implications.

Thank you for your commitment to protecting children and for considering this feedback.

Julie Knaphus
October 20, 2025 at 3:10 pm

I also would like to see this proposed rule change be returned to the committee for further consideration.

Tracey Tabet, Utah CJC Program
October 15, 2025 at 12:22 pm

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At the State Advisory Board on Children's Justice meeting held on October 10, 2025, concerns were raised regarding the proposed Civil Procedure Rule 103 Child Protective Orders. Given these concerns, the Children's Justice Center/CJC Program requests that the proposed rule be returned to the Civil Rule Committee so that these concerns may be addressed.
The overarching concern is that the rule will have unintended negative consequences for children. First, the proposed civil rule does not require that the interviewer in subsection (1) Recorded Statements, or in subsection (2) Recorded Testimony be a trained forensic interviewer. In criminal investigations of sexual and physical abuse of children, trained forensic interviewers interview the child regarding the abuse. There are no such protections in the proposed rule for civil protective orders. The concern is even more acute under subsection (2) Recorded Testimony, where attorneys are permitted to question the child outside the protections of judicial watch or the neutral environment of a professional forensic interview. This could result in a deposition of the child by divorce attorneys that is not trauma-informed and would not provide reliable information.
In addition to the training or identity of the interviewer, there were concerns on the scope of the interview. There is nothing in either subsection Recorded Statements or Recorded Testimony that would limit the scope of the interview. Within the context of divorce actions, untrained interviewers with no limits provided by the civil rule could go far afield, resulting in interviews that are not trauma-informed and that provide unreliable information. Further, neither subsection would prevent an interviewer from asking questions drafted by one party's attorney, and could interfere with criminal and neglect investigations.
In addition to the above concerns regarding interviews conducted for the purpose of a child protective order, there are concerns about the use of existing Children Justice Center (CJC) or Department of Child and Family Services (DCFS) interviews conducted as part of criminal and neglect investigations. Under the proposed rule, targets of investigations could receive a copy of the child's CJC or DCFS interview as part of their divorce action discovery before police have completed their investigation. This could result in the target obstructing the investigation, destroying evidence, and increased danger of harm to the child.
Utah law acknowledges the importance of protecting the child and their recorded interviews in the Victim's Bill of Rights. Utah Code § 77-37-4 (5)(a) states
Child victims have the right, once an investigation has been initiated by law enforcement or the Division of Child and Family Services, to keep confidential their interviews that are conducted at a Children's Justice Center, including video and audio recordings, and transcripts of those recordings. Except as provided in Subsection (6), recordings and transcripts of interviews may not be distributed, released, or displayed to anyone without a court order.
This proposed rule could be used to obtain a court order to provide a CJC or DCFS recorded interview to the target parent as part of a protective order hearing.
Finally, a concern was raised was that the proposed rule adds

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another witness to the Court process not formerly required under criminal or juvenile court rules. The proposed rule requires an additional foundational showing that the recording equipment is "capable of making an accurate recording, the operator of the equipment is competent and the recording is accurate and has not been altered". Unlike Utah Rule of Criminal Procedure 15.5, which permits the interviewer to testify that the recording is accurate and not altered, the civil rule will require testimony or perhaps an affidavit from the person who pressed "play" on the recording device. If the interview is conducted at a Children's Justice Center, this requirement could increase the resource drain from the center because two employees would be waiting to testify in the civil child protection order process rather than one.
For the reasons discussed above, the Children's Justice Center/CJC Program respectfully requests that proposed Civil Rule 103 return to its committee so that these issues may be addressed.

Julie Knaphus
October 20, 2025 at 3:09 pm

I agree with this comment.

Karen Oldroyd, Director, Sevier County Children's Justice Center
October 15, 2025 at 3:00 pm

Formal Comment – Proposed Rule 103

I appreciate the thoughtful intent behind the proposed rule, particularly its aim to mitigate the
emotional trauma children experience when participating in court proceedings. The
commitment to trauma-informed practices in civil matters, especially those involving child
protective orders, represents meaningful progress toward more child-centered judicial
processes. However, I have significant concerns regarding the potential unintended
consequences this rule may have for Children's Justice Centers (CJCs) statewide and for the
multidisciplinary team (MDT) professionals who collaborate to ensure the safety and
well-being of children. Impact on Forensic Interview Services
If the proposed rule results in an increased demand for forensic interviews (FIs), or leads to
additional subpoenas requiring FI staff to testify in court, it could place an undue burden on
CJC resources. Forensic interviewers may be diverted from their primary duties at the CJC,

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- CJC Terminology
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- CJC02.3
- CJC03
- CJC03.7
- CJC04
- CJC04.1
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- CJCApplicability
- CR1008
- CR1101
- CR430
- CR432
- Fourth District Local Rule 10-1-407
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- LPP1.01
- LPP1.010
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limiting service availability and delaying response times for other children in need. To meet increased demands, centers may be forced to hire additional interviewers without a corresponding increase in funding. ***Moreover, there is substantial concern that forensic interviews could be introduced as evidence in civil proceedings while related criminal investigations or prosecutions are still ongoing. Doing so risks compromising active criminal cases and the integrity of the investigative process. In addition, if individuals involved in civil proceedings—such as a parent or party to the case—are permitted to view a forensic interview while a related criminal matter remains pending, this may have unintended procedural consequences. Specifically, such individuals could be classified as witnesses in the criminal case, thereby rendering them ineligible to be present in the courtroom as support persons for their child during trial. This outcome would not only diminish the child's access to emotional support but also run counter to the trauma-informed intent of the proposed rule.***

Concerns Regarding Interview Protocol and Qualifications– There is also ambiguity in the proposed rule regarding who may conduct interviews with children. If the rule is interpreted to allow individuals who are not trained forensic interviewers—such as attorneys, custody evaluators, or parents—to conduct or record interviews for court submission, this poses significant risks. Interviews conducted outside of established, evidence-based, trauma-informed protocols may inadvertently re-traumatize children, introduce suggestibility, and jeopardize ongoing investigations. Recommendation

While I support the overarching goal of making civil court processes more trauma-informed for children, I respectfully urge that this proposed rule be remanded to the committee for further consideration. It is critical that all relevant stakeholders—including CJCs, MDT partners, prosecutors, victim advocates, and child welfare professionals—be consulted to ensure a full understanding of the potential legal and practical implications. Thank you for your continued commitment to child protection and for your consideration of this feedback.

Kristy Pike, Director, Washington County CJC
October 20, 2025 at 2:17 pm

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Thank you for your work on including children's voices in child protective orders. This has long been an area of concern for caregivers and the professionals tasked with keeping children safe. There are no easy answers; while to a lay person Rule 103 as proposed may sound reasonable, there are numerous issues with it that are alarming to those who work in this realm. I respectfully suggest that a group of those professionals, including but not limited to a Children's Justice Center Forensic Interviewer, a criminal prosecutor, a GAL, a CJC MDT specialist, a mental health professional trained in treating childhood trauma, a representative from Child Protective Services, a representative from the Attorney General's office, an attorney specializing in family law, and, perhaps most importantly, an individual with lived experience be convened to work through standardized ways of including children's input in CPO and high-conflict custody situations. Guiding principles of any solutions should:
• Put the well-being of the child first
• Be trauma informed
• Minimize the number of times a child is interviewed
• Ensure the integrity of a child's interview/testimony
• Not overburden current systems
• Not undermine criminal investigations/prosecutions
While the solution will doubtless be nuanced and require considerable good-faith efforts on the part of numerous experts, I am confident that in a state that values children, we can come to a reasonable conclusion.

Nik Hulet, Director, Iron County CJC
October 20, 2025 at 3:39 pm

I echo the concerns of other CJC Directors in regard to URCP103. While I understand and appreciate the intent of the Rule to protect children from having to testify in another court proceeding by mirroring existing rules, the rule, as it is written, creates more, potentially damaging concerns. Should URCP103 move forward without further consideration, the timing of the hearings affected by this rule may have an adverse effect on ongoing investigations, create undue burden on Forensic Interviewers requiring more time away from interviews to testify in cases, place an undue burden on children who might be asked questions outside the scope of the testimony, open the possibility for untrained interviewers to interrogate children, and create an undue burden requiring other CJC staff to testify regarding their involvement in recordings. I believe my colleagues have articulated clearly, and specifically the concerns listed above in detail. I add this to their statements in requesting that this Rule be returned to committee to address these concerns.

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Robert Nieman San Juan CJC
October 20, 2025 at 3:56 pm

My comments pertain to the proposed rule change for the Civil Procedure Rule 103, and understand and appreciate the intent for its construction, However, this proposal is lacking critical information, which could create unintentional consequences and likely additional harm to a child when a case falls within this rule. There are three points to this proposal that are concerning The first point is the option to have a child interviewed by an untrained interviewer. Having a child interviewed by an untrained and uniformed of trauma-informed techniques could cause additional harm to a child. Having an interview conducted without appropriate forensic training leads to unreliability, and possibly one sided testimony. An untrained interviewer who is not trauma-informed, can easily lead to revictimization, victim blaming and coercion concerns. Untrained interviews typically guide a child to say what a child believes the interviewer would like to hear. As the courts require authentic, truthful, and reliable information, this proposal is lacking structure and clarification in how that may be accomplished.
The second point is the requirement is having the forensic interviewer (FI) testify but also have the person who oversaw, started or was in charge of the recording be present for the hearing. This creates a financial obligation that would burden the local CJC, not just by one person, but two. There must be better ways to verify this information without requiring the FI and the record button pusher to be present which would require taking those employees away from their assigned job duties.
The third concern surrounds the use of Children's Justice Center's (CJC) recorded forensic interviews. This could affect the overall purpose of the interview and the investigative process. As these interviews are protected information, the role of the investigative team is to complete the investigation prior to this information being shared. The use of these interviews prior to an investigation being complete, could jeopardize an investigation, allowing for evidence to become accessible to those being investigated. This process could allow the loss of evidence and jeopardizing a criminal case. This is one more way it could increase the possibility of harm and revictimization of the child.
These concerns highlight the issues as our CJC staff, forensic interviews, law enforcement, DCFS and others work to help protect and work to begin the healing process for children. Along with others who have commented, I also respectfully urge that the proposed rule be returned to the committee. Also, I respectfully recommend that all essential stakeholders be included in these discussions to help fully support the safety, healing and support the children of our state. I propose inviting those who would support further discussion, including the Children's Justice Center and MDT partners or investigative teams, prosecutors, victim advocates and DCFS. Please let me know if you have questions.

- LPP8.04
- LPP8.05
- LSI11.0701
- LSI11.0702
- LSI11.0703
- LSI11.0704
- LSI11.0705
- LSI11.0706
- Office of Professional Conduct
- Petition to Increase Bar Admission Fees
- Petition to Increase Licensing Fees.
- Regulatory Reform
- RGLPP15-0401
- RGLPP15-0402
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- RGLPP15-0703
- RGLPP15-0705
- RGLPP15-0707
- RGLPP15-0714
- RGLPP15-0908
- RPC Preamble
- RPC Terminology
- RPC01.00
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Thank you for the work you do and for taking the time to review my comments.

Eric K. Johnson
October 20, 2025 at 4:15 pm

This rule appears to be one of those solutions to a problem that does not exist.

One problems with the comments critical of child testimony in protective order matters is that they presume the child is abused and then assert that presumption as the reason to be so careful in questioning a trial that the child ends up never being questioned, out of an abundance of caution. This presumption of abuse is causing many innocent parents and children to be harmed unduly. The idea that we go soft on investigating and getting to the bottom of factual disputes for the sake of protecting children does far more harm than good.

The current draft of rule 103 is drafted in such a way that a court could site and construe it to justify or reject questioning a child witness.

One good thing about the discussion around this new proposed rule. 103, however, is that at least the courts are finally moving off. Off this idea that child testimony is anathema.

Family courts are far too differential to the mental health profession, which is already a highly subjective, soft, and frequently pseudoscientific field. New idea that competent judges and attorneys cannot question a child without a therapist standing by is embarrassing.

Making it harder to get reliable evidence from child witnesses, particularly when the children are the most recipient witnesses and have the greatest stake in the outcome of the action, is the antithesis of acting in the best interest of the child.

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- RPC08.01
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- RPP014.515
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- RPP11-0581
- RPP11-0582
- RPP11-0583
- RPP11-0584
- RPP11-0585
- RPP11-0586

Rule 5. Service and filing of pleadings and other documents.

(a) When service is required.

(1) Documents that must be served. Unless otherwise permitted by statute, rule, or court order, every document filed with the court after the original complaint must be served by the party filing it on every party to the case. Ex parte motions may be filed without serving if permitted under Rule 7.

(2) Serving parties in default. No service is required on a party against whom ~~is in~~ default judgment has been entered, except that a party in default must be served:

~~(A) a party in default must be served as ordered by the court;~~

~~(B) a party in default for any reason other than for failure to file and serve a responsive pleading or otherwise appear must be served as provided in paragraph (a)(1);~~

(A) ~~(C) a party in default for any reason must be served~~ with notice of any hearing to determine the amount of damages to be entered against the defaulting party;

(B) ~~(D) a party in default for any reason must be served~~ with notice of entry of judgment as provided in Rule 58A; ~~and~~

(C) ~~(E) a party in default for any reason must be served~~ as provided in Rule 4 with pleadings asserting new or additional claims for relief against the party or~~.~~ motions to modify or augment the default judgment; and~~.~~

(D) if represented by an attorney, with notice to the attorney, even if that attorney has not formally appeared in the action.

(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is named or needs to be named as defendant, any service required before the filing of an answer, claim, or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(1) Whom to serve. If a party is self-represented, service must be made upon the self-represented party. If a party is represented by an attorney, a document served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(A) an attorney has filed a Notice of Limited Appearance as provided in Rule 75 and the documents being served relate to a matter within the scope of the Notice; or

(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a document was last served on the attorney.

(2) When to serve. If a hearing is scheduled seven days or less from the date of service, a party must serve a document related to the hearing by the method most likely to be promptly received. Otherwise, a document that is filed with the court must be served before or on the same day that it is filed.

(3) Methods of service. A document is served under this rule by:

(A) **Electronic filing.** Except in the juvenile court, a document is served by submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account.~~;~~

(B) **Email.** If the party serving or being served a document does not have an electronic filing account, emailing it to:

(i) the most recent email address the person being served has provided to the court as provided in Rule 10 or Rule 76; or

(ii) if service is to an attorney licensed in Utah, to the email address on the attorney's most recent filing or on file with the Utah State Bar; or

(iii) if service is to an attorney not licensed in Utah, to the email address on the attorney's most recent filing or on file with the attorney licensing entity in the state where the attorney is licensed.

(C) **Mail and other methods.** If the party serving or being served with a document does not have an electronic filing account or email, a document may be served under this paragraph by:

(i) mailing it to the most recent address the person being served has provided to the court as provided in Rule 10 or Rule 76;~~,~~ or, if none, the person's last known address;

(ii) handing it to the person;

(iii) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(iv) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(v) any other method agreed to in writing by the parties.

(4) When service is effective. Service by mail or electronic means is complete upon sending.

(5) Who serves. Unless otherwise directed by the court or these rules:

(A) every document required to be served must be served by the party preparing it, including subsequently signed orders and judgments; and

(B) every document initially prepared by the court must be served by the court;

(C) every document signed by the court that was initially prepared and filed by a party or attorney must be served on the other parties by the party or attorney who prepared it; and

(D) service under this rule does not alter the effectiveness of the document.

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(1) a defendant's pleadings and replies to those pleadings do not need to be served on the other defendants;

(2) any cross-claim, counterclaim avoidance, or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(4) a copy of the order must be served upon the parties.

(d) Certificate of service. No certificate of service is required when a document is served through an electronic filing account under paragraph (b)(3)(A). When a document that is required to be served is served by email, mail, or other methods of service:

(1) if the document is filed with the court, a certificate of service showing the date and method of service, including the email or mailing address used, unless safeguarded, must be filed with it or within a reasonable time after service; and

(2) if the document is not filed with the court, a certificate of service need not be filed unless filing is required by rule or court order.

(e) Filing. Except as provided in Rule 7 and Rule 26, all documents after the complaint that are required to be served must be filed with the court. Attorneys with an electronic filing account must file a document electronically. A self-represented party who is not an attorney may file a document with the court using any of the following methods:

(1) email;

(2) mail;

(3) the court's MyCase interface, where applicable; or

(4) in person.

Filing is complete upon the earliest of acceptance by the electronic filing system or by the court.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code section ~~46-1-16~~ 46-1-16;

(2) electronically file a scanned image of the affidavit or declaration;

(3) electronically file the affidavit or declaration with a conformed signature; or

(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the court clerk, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

Effective ~~November 1, 2024~~

Advisory Committee Notes

Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the document on parties who have an e-filing account. (Attorneys representing parties in the district court are required to have an account and electronically file documents. Code of Judicial Administration Rule 4-503.) The 2015 amendment excepts from this provision documents electronically filed in juvenile court.

Although electronic filing in the juvenile court presents to the parties the documents that have been filed, the juvenile court e-filing application (CARE), unlike that in the district court, does not deliver an email alerting the party to that fact. The Board of Juvenile Court Judges and the Advisory Committee on the Rules of Juvenile Procedure believe this difference renders electronic filing alone insufficient notice of a document having been filed. So in the juvenile court, a party electronically filing a document must serve that document by one of the other permitted methods.

Note adopted 2015

Rule 103. Child protective orders.

Effective: mm/dd/yyyy

(a) **Scope.** This rule applies when a juvenile court transfers a petition for a child protective order to the district court pursuant to statute.

(b) **Definition.** As used in this rule, "child" means an individual who is under 18 years old.

(c) **Hearing.** If the juvenile court issued an ex parte child protective order before transferring the petition, the district court will hold a hearing within 21 days of that protective order's issuance.

(d) **Child's Testimony**. No party may compel a child to testify unless the court finds that extenuating circumstances exist that would necessitate the testimony of the child be heard and there is no other reasonable method to present the child's testimony. A child's testimony may be presented in one or more of the following ways:

(1) **Recorded Statements.** A child's oral statement may be recorded and, upon motion and for good cause shown, a child's recorded statement is admissible as evidence in any court proceeding regarding the child protective order if the following conditions are met:

(A) no attorney for any party is in the child's presence when the statement is recorded;

(B) the recording is visual and aural and is recorded on film or videotape or by other electronic means;

(C) the recording equipment is capable of making an accurate recording, the operator of the equipment is competent, and the recording is accurate and has not been altered;

(D) each voice in the recording is identified;

(E) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(F) the parties and the parties' attorneys are provided an opportunity to view the recording before it is shown to the court;

(G) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence; and

(H) the child is available to testify and to be cross-examined at trial, either in person or as provided in paragraph (d)(2) or (d)(3), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this paragraph, "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.

(2) **Recorded Testimony.** The court may order that a child's testimony be taken outside the courtroom and be recorded. That testimony is admissible as evidence, for viewing in any court proceeding regarding the allegations relating to the protective order, if the provisions of this paragraph and paragraph (d)(3) are observed:

(A) the recording is both visual and aural and recorded on film or videotape or by other electronic means;

(B) the recording equipment is capable of making an accurate recording, the operator is competent, and the recording is accurate and is not altered;

(C) each voice on the recording is identified; and

(D) each party is given an opportunity to view the recording before it is shown in the courtroom.

(3) **Live Testimony.** The court may order that a child's testimony may be taken in a room other than the courtroom if the following conditions are observed:

(A) Only the judge, domestic commissioner, attorneys for each party, persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the child's welfare and emotional well-being may be with the child during the testimony. The parties may also be present during the child's testimony unless a party consents to be hidden from the child's view, or the court determines that the child will suffer serious emotional or mental strain if required to testify in the party's presence, or that the child's testimony will be unreliable if required to testify in the party's presence. If the court makes that determination, or if the party consents:

(i) the party may not be present during the child's testimony;

(ii) the court will ensure that the child cannot hear or see the party;

(iii) the court will advise the child prior to testifying that the party is present at the trial and may listen to the child's testimony;

(iv) the party must be permitted to observe and hear the child's testimony, and the court will ensure that the party has a means of two-way telephonic communication with counsel during the child's testimony;

(v) normal court procedures must be approximated as nearly as possible;

(B) Only the judge, domestic commissioner, and attorneys may question the child unless the court otherwise orders; and

(C) As much as possible, persons operating equipment must be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(4) **Combining recorded and live testimony prohibited.** If the court orders that the testimony of a child be taken under paragraph (d)(2), the child may not be required to testify in court at any proceeding where the recorded testimony is used.

Tab 4

Rule 62. Stay of proceedings to enforce a judgment or order.

Effective:

(a) **Delay in execution.** No execution or other writ to enforce a judgment or an order to pay money under Rule 7(j)(8) may issue until the expiration of 28 days after entry of the judgment or order, unless the court in its discretion otherwise directs.

(b) **Stay by bond or other security; duration of stay.** At any time after judgment or an order to pay money is entered, a party may obtain a stay by providing a bond or other security. ~~A party may obtain a stay of the enforcement of a judgment or order to pay money by providing a bond or other security, unless a stay is otherwise prohibited by law or these rules.~~

(1) The stay takes ~~a~~effect when the court approves the bond or other security and remains in effect for the time specified in the order that approves the bond or other security.

(2) In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay:

(A) an order that is certified as final under Rule 54(b) until the entry of a final judgment under Rule 58A;

(B) an order to pay money under Rule 7(j)(8) until the entry of a judgment under Rule 58A;

(C) a judgment until resolution of any motion made pursuant to Rule 50(b), Rule 52(b), Rule 59, Rule 60, or Rule 73; and

(D) a judgment until resolution of a motion made under this rule.

(c) **Injunction pending appeal.** When a party seeks an appeal from an interlocutory order, or takes an appeal from a judgment, granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the

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pendency of appellate proceedings upon such conditions for the security of the rights of the adverse party as are just.

(d) **Stay in favor of the United States, the State of Utah, or political subdivision.** When an appeal is taken by the United States, the State of Utah, a political subdivision, or an officer of agency of any of those entities, or by direction of any department of any of those entities, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security is required from the appellant.

(e) **Stay in quo warranto proceedings.** Where the defendant is adjudged guilty of usurping, intruding into or unlawfully holding public office, civil or military, within this state, the execution of the judgment will~~shall~~ not be stayed on an appeal.

(f) **Power of appellate court not limited.** The provisions in this rule do not limit any power of an appellate court or of a judge or justice of an appellate court.

(g) **Form of bond; deposit in lieu of bond; stipulation on security; jurisdiction over sureties to be set forth in undertaking.**

(1) A bond given under ~~Subdivision~~ paragraph (b) may be either a commercial bond having a surety authorized to transact insurance business under Utah Code t~~T~~itle 31A, or a personal bond having one or more sureties who are residents of Utah having a collective net worth of at least twice the amount of the bond, exclusive of property exempt form execution. Sureties on personal bonds ~~shall~~ must make and file a declaration setting forth in reasonable detail the assets and liabilities of the surety.

(2) The court may permit a deposit of money in court or other security to be given in lieu of giving a bond.

(3) The parties may by written stipulation agree to the form and amount of security.

(4) A bond ~~shall~~ must provide that each surety submits to the jurisdiction of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served, and that the surety's

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liability may be enforced on motion and upon such notice as the court may require without the necessity of an independent action.

(h) **Amount of bond or other security.**

(1) Except as provided in ~~subsection~~ paragraph (h)(2), a court ~~shall~~ will set the bond or other security in an amount that adequately protects the adverse party against loss or damage occasioned by the stay and assures payment after the stay ends. In setting the amount, the court may consider any relevant factor including:

(A) the debtor's ability to pay the judgment or order to pay money;

(B) the existence and value of other security;

(C) the debtor's opportunity to dissipate assets;

(D) the debtor's likelihood of success on appeal; and

(E) the respective harm to the parties from setting a higher or lower amount.

(2) Notwithstanding paragraph~~subsection~~ (h)(1):

(A) the presumptive amount of a bond or other security for compensatory damages is the amount of the compensatory damages plus costs and attorney fees; as applicable, plus three~~3~~ years of interest at the applicable interest rate;

(B) the bond or other security for compensatory damages ~~shall must~~ may not exceed $25 million in an action by the plaintiffs certified as a class under Rule 23 or in an action by multiple plaintiffs in which compensatory damages are not proved for each plaintiff individually; and

(C) no bond or other security ~~shall~~ is ~~be~~ required for punitive damages.

(3) If the court permits a bond or other security that is less than the presumptive amount in ~~subsection~~ paragraph (h)(2)(A), the court may enter such orders as are necessary to protect the adverse party during the stay.

(4) If the court finds that the party seeking the stay has violated an order or has otherwise dissipated assets, the court may set the amount of the bond or other security without regard to the presumptive amount under ~~subsection~~ paragraph (h)(2~~1~~)(A) and limits in ~~subsection~~ paragraph (h)(2)(B).

(i) **Objecting to sufficiency or amount of security**. Any party whose judgment or order to pay money is stayed or sought to be stayed pursuant to paragraph~~Subdivision~~ (b) may object to the sufficiency of the sureties on a bond or the amount thereof, or to the sufficiency of amount of other security given to stay the judgment by filing and giving notice of such objection. Either party ~~shall~~ is ~~be~~ entitled to a hearing on the objection upon five days notice or such shorter time as the court may order. The burden is on the party seeking the stay to ~~of~~ justify~~ing~~ the sufficiency of the sureties or other security and the amount of the bond or~~f~~ other security, ~~shall be borne by the party seeking the stay,~~ unless the objecting party seeks a bond or other security in an amount greater than the presumptive~~ed~~ amount in ~~subsection~~ paragraph (h)(2)(A). The fact that a bond, its surety, or other security is generally permitted under this rule ~~shall~~ is not ~~be~~ conclusive as to its sufficiency or amount.

(j) **Domestic relations actions**. ~~Notwithstanding the above, nothing in this rule shall be construed to limit the equitable powers of the courts in domestic relations actions.~~ In domestic relations actions (divorce, temporary separation, separate maintenance, parentage, custody, child support, and modification), courts should apply equitable principles in establishing fair circumstances for all parties during any appeal, as follows:

(1) Child custody and parent-time orders ~~may~~will not be stayed during an appeal, but an order that a child relocate outside the state of Utah may be stayed if the court finds such a stay promotes the child's best interest.

(2) Ongoing alimony and child support obligations ~~may~~will not be stayed during an appeal, but collection of alimony and child support arrearages may be stayed if the appellant provides a bond or other security.

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Commented [2]: I struggled to understand how this broad instruction is intended to mesh with the specific instructions inserted in parts (1)-(4). Assuming we want to adopt the content of (1)-(4), I would suggest revising as follows (note: this revision is largely structural but also contains a few substantive and clarifying amendments):

(j) Domestic relations actions.
(1) Child custody, parent-time orders, child support orders.
(A) The court may not stay a child custody or parent-time order during an appeal, except that a court may stay an order that a child relocate outside the state of Utah if the court finds that such a stay is in the child's best interest;
(B) The court may not stay the collection of child support obligations during an appeal, except that the court may stay the collection of child support arrearages if the appellant provides a bond or other security as approved by the court;
(2) Divorce orders.
(A) The court may not stay the collection of alimony during an appeal, except that the court may stay the collection of alimony arrearages if the appellant provides a bond or other security as approved by the court;
(B) The court may stay an order distributing marital property during an appeal only to the extent necessary to protect marital property from dissipation.
(C) If the court enters a stay under paragraph (j)(2)(B), the court may:
(i) order an equitable transfer of property;
(ii) enjoin a party from selling, transferring, collateralizing, or otherwise encumbering property; and
(iii) require a party to provide a bond or other security.

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(3) Property distributions in a divorce will ~~may~~ only be stayed to the extent necessary to protect those marital assets and debts from dissipation during the appeal.

(4) If the court stays division of marital wealth, courts may:

(A) order the transfer of assets between the parties, provided both parties have fair use, possession, and enjoyment of an equitable share of the marital assets;

(B) enjoin the parties from selling, transferring, collateralizing, or otherwise encumbering any such assets; and

(C) require the appellant to provide a bond or other security.

~~*Effective: 11/1/2021*~~

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Tab 5

Rule 74. Withdrawal of counsel.

(a) ~~(a)~~ **Notice of withdrawal.** If no motion is pending and no hearing or trial has been set, ~~A~~an attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. Unless the previously represented party's contact information is safeguarded by Rule 76 or court order, ~~T~~the notice of withdrawal ~~shall~~ must ~~include~~ provide ~~the the last known contact information for the attorney's client including the physical~~ the party's last known mailing address, ~~, the~~ email address, ~~and and, the cell~~ phone number, and any other contact information. ~~if known and not safeguarded by Rule 76 or a court order, of the attorney's client and a~~The notice of withdrawal must include a statement that no motion is pending and no hearing or trial has been set.

(b) **Motion to withdraw.** Unless the party continues to be represented by counsel as described by paragraph ~~subsection~~ (f) ~~of this rule~~, when ~~If~~ a motion is pending or a hearing or trial has been set, an attorney may not withdraw except upon motion and order of the court. The motion to withdraw must describe ~~shall~~ the status of the case, describe the nature of any pending motion and the date and purpose of any scheduled hearing or trial, describe the requirements under any existing court orders or rules, and include the party's last known contact information ~~for the attorney's client party~~ if ~~known and~~ not safeguarded by Rule 76 or a court order. The motion to withdraw must ~~shall~~ include a certification that the motion was filed and served on all parties pursuant to Rule 5 or, if applicable, the reasons why a party cannot be notified about the motion. The motion must include a proposed order for the court's entry that notifies the party who will be without an attorney:

(1) that within 21 days of the entry of the order, the unrepresented party ~~r~~, must retain an attorney or proceed without an attorney and file a notice of personal appearance;

(2) that all ~~no~~ further proceedings will ~~shall~~ be continued ~~held,~~ and any pending deadlines ~~shall~~ will be stayed ~~, in the case~~ until 21 days after the court grants the

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Commented [1]: I'm not sure I understand what this inten...

Commented [MS2R1]: This is meant to provide the means f...

motion unless the unrepresented party waives the time requirement or unless otherwise ordered by the court;

(3) that if the party is a corporation, association, partnership, or other artificial entity, it must be represented by an attorney who is admitted to practice in Utah and files a notice of appearance; and

(4) that a party who does not timely ~~fails to~~ retain an attorney or file a notice of personal appearance may result in lack of notice that may ~~be subject~~cause the party to incur sanctions including entry of a default judgment or an order of dismissal.

(c~~b~~) **Withdrawal of limited appearance.** An attorney who has entered a limited appearance under Rule 75 must~~shall~~ withdraw from the case upon the conclusion of the purpose or proceeding identified in the Notice of Limited Appearance:

~~(b)~~(1) by filing and serving a notice of withdrawal; or

~~(b)~~(2) if permitted by the judge, by orally announcing the withdrawal on the record in a proceeding.

An attorney who seeks to withdraw before the conclusion of the purpose or proceeding ~~shall~~ must proceed under paragraph~~subdivision~~ (a).

(d~~e~~) **Notice to personally a~~A~~ppear, or a~~A~~ppoint c~~C~~ounsel.** If an attorney withdraws other than under paragraphs~~subdivision~~ (c~~b~~) or (f), dies, is suspended from the practice of law, is disbarred, or is removed from the case by the court, upon notice of such events the opposing party must~~shall~~ serve a ~~N~~notice to ~~Personally A~~appear or ~~A~~appoint ~~C~~counsel on the unrepresented party, informing the party of the responsibility to personally appear ~~personally~~ or appoint counsel. A copy of the ~~N~~notice to ~~Personally A~~appear or ~~A~~appoint ~~C~~counsel must be filed with the court and served on all parties pursuant to Rule 5. No further proceedings ~~shall~~ will be held, and any pending deadlines ~~shall~~will be stayed, in the case until 21 days after filing the ~~N~~notice to ~~Personally A~~appear or ~~A~~appoint ~~C~~counsel unless the unrepresented party waives the time requirement or unless otherwise ordered by the court.

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Commented [3]: Are these sanctions, i.e., penalties we anticipate the court will order for failing to provide notice? Or are we referring to natural consequences that may result because a party doesn't receive notice?

Commented [MS4R3]: Our intent is to refer to the natural consequences.

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Commented [5]: This used to refer to what is now (c). Do we intend for it to refer to the new (b)? That makes some sense to me -- otherwise this requirement is repetitive. But should it also refer to (c)?

Commented [MS6R5]: The reference should remain the same as the original rule—to the paragraph that pertains to a limited appearance. So it should be (c). To be clear, we should also refer to (f) as in that case only one attorney is withdrawing but the party remains represented by another attorney.

Commented [7]: I know this is currently in the rule, but I don't know how opposing counsel is necessarily supposed to know an of these events has occurred. Do we need to include something in here to only trigger this obligation if the opposing party has notice of these events?

Commented [MS8R7]: I've added one phrase to clarify.

(e~~d~~) **Substitution of counsel.** An attorney may replace the counsel of record by filing and serving a notice of substitution of counsel signed by former counsel, new counsel and the client. Court approval is not required if new counsel certifies in the notice of substitution that counsel will comply with the existing hearing schedule and deadlines.

(f) **Withdrawal when the party continues to be represented by counsel.** An attorney may withdraw from representing a party if the party continues to be represented by other counsel who ~~has~~ already entered an appearance. The attorney seeking to withdraw must file and serve on all parties pursuant to Rule 5 a notice of withdrawal of counsel stating that the party continues to be represented by counsel. ~~Upon filing the noticeAfter a notice is filed, the court clerk will remove the attorney from the case.~~

Effective date:

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Commented [9]: I suggest removing this last sentence only b/c we don't say anything about the clerk removing the attorney in paragraphs (a) or (c).

Commented [MS10R9]: I suggest that we accept the deletion.

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Rule 76. Notice of contact information change.

Effective: ~~***11/1/2022***~~

An attorney and self-~~un~~represented party must promptly notify the court in writing of any change in that person's address, e-mail address, and phone number for purposes of receiving service and communications from the court and other parties. The same notice must be provided to other parties, unless disclosure is prohibited by a protective order, a stalking injunction, ~~or~~ any other court order, or if the information is considered a safeguarded court record per Utah Code of Judicial Administration Rule 4-202.02.~~other court order provides otherwise~~.

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Tab 6

Subcommittee/Subject	Members	Rules	Subcommittee Chair	Progress
ACTIVE:				
Probate	Judge Scott, *Allison Barger, Brant Christiansen, David Parkinson, Judge Kelly, Kathie Brown Roberts*, Keri Sargent, *Russ Mitchell, Shonna Thomas, Sarah Box*	New rules	Judge Scott	Ongoing work on new set of probate procedural rules
Plain language/Terminology	Ash McMurray, Loni Page, Heather Lester	104 14, 18, 19, 20, 22, 23, 26.1, 38, 46, 49, 53, 67	Ash McMurray	Subcommittee continues to review rules as they come up.
Rule 3(a)(2)	Keri Sargeant, Tonya Wright; Heather Lester; Judge Cornish; Meagan Rudd	3	Judge Cornish	Rule went to SC in July 2024. Following up with SC.
Eviction Expungements	Tonya Wright, Heather Lester; Keri Sargent	?	Heather Lester	Subcommittee pulling history together to determine status of request.
MSJ Deadline	Michael Stahler, Tonya Wright, Keri Sargent, Rachel Sykes, Tyler Lindley, Michael Young	56, 26, 26.2	Michael Stahler	Subcommittee received feedback from the Court on Rule 26. Rules 56 and 26.2 are on hold.
Affidavit/Declaration	Ash McMurray, Joshua Jewkes	4, 5, 6, 7A, 7B, 11, 23A, 27, 26.1, 26.2, 43, 45, 47, 54, 55, 56, 58A, 58C, 59, 62, 63, 64, 64A, 64D, 64E, 65A, 65C, 69A, 69C, 73, 83, 101, 102, 104, 105, 108	Ash McMurray	Committee approved new rule 88 to be sent to Supreme Court.
Rule 62 (COA opinion)	Jim Hunnicutt, Judge Conklin, Laurel Hanks	62	Judge Conklin	Agenda item Nov 2025
Standard POs	*Judge Oliver,* Justin Toth, Rachel Sykes, Brett Chambers, Judge Cornish	26(g)	Justin Toth	Subcommittee continues to work on this issue.

Rule 5(a)(2) and (b)(3)	Judge Cornish, Judge Conklin, Judge Scott, Michael Stahler, Laurel Hanks	5	Laurel Hanks	Agenda item Nov 2025
Rule 74	Michael Stahler, Rachel Sykes, Keri Sargent, Heather Lester, Loni Page	74, 76	Michael Stahler	Agenda item Nov 2025
Rule 4	Rachel Sykes, Ash McMurray, Tonya Wright	4	Rachel Sykes	Subcommittee continues to work on this rule.
New rules 65D & E	Michael Stahler, Loni Page, Brett Chambers, Bret Randall	New	Michael Stahler	Subcommittee continues to work on this rule.
Rule 65C	Loni Page; Keri Sargent; Joshua Jewkes	65C	Keri Sargent	Subcommittee requesting an additional volunteer.
Rule 73	Tonya Wright, Heather Lester	73	Tonya Wright	Out for public comment.
Child Protective Order Procedures	Jim Hunnicutt, Laurel Hanks, Judge Conklin	URCP & URJP	Jim Hunnicutt / Judge Conklin	Substantial public comments received, back to subcommittee.
Rule 35	Rachel Sykes, Michael Stahler, Michael Young, Brett Chambers, Judge Scott	35	Rachel Sykes	Subcommittee continues to work on this issue.
Rule 102	Justin Toth, Meagan Rudd, Commissioner Ito	102	Justin Toth	Rule approved for public comment by Committee Oct 2025
AI	Meagan Rudd, Joshua Jewkes, Jonas Anderson, Ash McMurray, Judge Conklin	TBD	Jonas Anderson	Subcommittee reviewing materials
Business and Chancery Court	Judge Cornish; Meagan Rudd; Keri Sargent	TBD	Judge Cornish	Subcommittee working on a rule.