

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

Location: WebEx Webinar: [Link](#)

Date: April 22, 2026

Time: 4:00 – 6:00 p.m.

Welcome and approval of minutes	Tab 1	Rod Andreason
H.B. 280 Third Party Litigation Funding Amendments <i>(Discussion)</i>	Tab 2	Nick Styles
Rules 64 and 64E – Changes recommended based on the passage of SB0156 <i>(Discussion)</i>	Tab 3	Tonya Wright & Chip Shaner
Rule 5 – amendments regarding serving parties in default <i>(Discussion; Motion to request approval for public comment)</i>	Tab 4	Judge Scott
New Rule 110 – Judicial interview of a minor child <i>(Discussion; Motion to request approval for public comment)</i>	Tab 5	Judge Conklin
Rule 26 – General provisions governing disclosure and discovery <i>(Discussion; Motion to request approval for public comment)</i>	Tab 6	Michael Stahler
Rule 29 – Stipulations regarding disclosure and discovery procedure <i>(Discussion; Motion to request approval for public comment)</i>	Tab 7	Rod Andreason
SJR06 – Amendments to Rule 42 finalized by constitutional two-thirds vote <i>(Informational)</i>	Tab 8	Rod Andreason
New Rule 88 - Affidavits vs Declarations <i>(Discussion; Motion to request approval for public comment)</i>	Tab 9	Ash McMurray & Joshua Jewkes
May meeting – location, in-person RSVP, and parking		Rod Andreason

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

Upcoming Items:

- Subcommittees!

URCP Committee Website: [Link](#)

2026 Meeting Schedule:

Jan 28 • Feb 25 • Mar 18 • April 22 • May 27 • June 24 • Sep 23 • Oct 28 • Nov 18 • Dec 16

Tab 1

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE**

**Summary Minutes – March 18, 2026
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		Sonia Sweeney, Staff
Ash McMurray		X	Paige Nelson, OLRGC
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, <i>Emeritus</i>	X		
James Hunnicutt, <i>Emeritus</i>	X		

(1) INTRODUCTIONS

The meeting began at 4:03 p.m. after forming a quorum. Mr. Rod Andreason welcomed the Committee Members.

(2) APPROVAL OF MINUTES

Mr. Andreason called for approval of the February 25, 2026 meeting minutes that had been circulated via email. Judge Rita Cornish moved to approve the minutes. Mr. Justin Toth seconded the motion. The motion to approve the minutes passed unanimously with all members voting in favor.

(3) NEW COMMITTEE STAFF

Ms. Stacy Haacke announced her departure from staffing the committee, a role she has filled for nearly five years. She reflected on the complex work accomplished by the group and officially introduced Ms. Sonia Sweeney, Associate General Counsel, as the new staff member assigned from the Administrative Office of the Courts. Mr. Andreason expressed deep gratitude on behalf of the committee for Ms. Haacke’s exceptional dedication. Ms. Sweeney subsequently introduced herself to the members, outlined her professional background, and expressed her eagerness to assist the committee in navigating its detailed and vital work.

(4) NEW RULE 110 – JUDICIAL INTERVIEWS OF CHILDREN

Judge Catherine Conklin presented the draft Rule 110, which governs judicial interviews of children. The draft was adapted from a uniform act previously presented by former Justice Michael Wilkins, heavily modified by the subcommittee to align with the Utah Rules of Civil Procedure. Prior to the meeting, Mr. Andreason circulated proposed edits to the draft rule via email. Judge Conklin supported Mr. Andreason’s edits. Ms. Laurel Hanks sought clarification on whether the rule's scope sufficiently encompassed all relevant proceedings, such as protective orders; the committee agreed the broad phrase “district court proceeding” was appropriate and purposefully excluded juvenile court matters. Mr. Brett Chambers questioned the record-keeping requirement under subsection (c)(2). The committee agreed that maintaining an actual audio record, rather than a mere minute entry, was vital for appellate purposes, and amended the text to explicitly require the court to “record the interview.” Ms. Meagan Rudd and Judge Cornish led a discussion to ensure the draft adhered to the plain language style guide, confirming the use of “will” for court obligations and “must” for party obligations. Ms. Sweeney will make those changes.

Judge Blaine Rawson raised concerns regarding the mandate in subsection (b)(4) that judges receive training before conducting such interviews, questioning what constitutes

sufficient training given the current lack of offerings for district court judges. Ms. Loni Page and Mr. Andreason proposed modifying the language to state judges must have “any training required by the Judicial Council,” ensuring the rule does not inadvertently halt proceedings while training programs are developed. Finally, Judge Rawson highlighted subsection (d)(6), which required the court to inform the Division of Child and Family Services if abuse was suspected, noting the severe conflicts and recusal issues this would trigger for the presiding judge. Judge Patrick Corum, Judge Cornish, and Mr. James Hunnicutt argued that judicial officers are already bound by statutory mandatory reporting requirements. Consequently, the committee agreed to strike subsection (d)(6) in its entirety. Furthermore, the committee agreed to strike the word “minor” throughout the rule's body, retaining it only in the title and scope, to reduce redundancy.

Judge Cornish moved to pass the amended Rule 110 up to the Supreme Court for review. Ms. Rachel Sykes seconded the motion. The motion passed unanimously.

(5) RULES BACK FROM PUBLIC COMMENT - RULES 62, 74, 76, AND 102

Mr. Andreason facilitated review of the public comments received regarding Rules 74 and 102, both submitted by former committee member, Leslie Slaugh. Regarding Rule 74, Mr. Slaugh suggested that the strict cautionary language warning clients of the consequences of proceeding unrepresented, which is required when an attorney files a motion to withdraw in Rule 74(b), should also be required when an attorney simply files a notice of withdrawal as outlined in Rule 74(a). Mr. Michael Stahler and Ms. Rudd evaluated this proposal, noting that a notice of withdrawal under Rule 74(a) is strictly utilized when there are no pending motions or trial dates, drastically reducing the imminent prejudice to the client. Commissioner Marian Ito pointed out that deadlines could technically still loom without a formal pending motion. The committee ultimately concluded, however, that the circumstances surrounding a motion to withdraw uniquely necessitate the strict cautionary warning and that the updated contact information required in Rule 74(a) offers sufficient protection. As a result, the committee did not find a change was needed.

Regarding Rule 102, Mr. Slaugh submitted a comment arguing that the word “will” should be changed to “must.” Judge Cornish confirmed that under the committee's plain language style guide, “will” is the correct terminology when referring to actions taken by the court. Consequently, the committee did not make the suggested change. During the discussion, Ms. Hanks briefly noted a separate, systemic issue regarding unrepresented parties struggling to formally remove non-responsive attorneys, but acknowledged this substantive issue requires future, separate rulemaking.

Mr. Joshua Jewkes moved to submit Rules 62, 74, 76, and 102 to the Supreme Court to be made final with an effective date. Mr. Stahler seconded the motion. The motion passed unanimously.

(6) DISCUSSION AND SCHEDULING OF AN IN-PERSON MEETING

Mr. Andreason initiated a brief discussion regarding the scheduling of the committee's in-person gathering. Ms. Sweeney reported the results of a previously circulated Doodle poll, confirming that the proposed May meeting date garnered the highest number of positive responses from the membership. The committee agreed to proceed with scheduling the May 27, 2026 meeting as an in-person meeting, with a hybrid option for those who require remote access.

(7) ADJOURNMENT

The meeting was adjourned at 5:21 p.m. The next meeting will be April 22, 2026, at 4:00 p.m.

Tab 2

HB0280S03 compared with HB0280S01

~~{Omitted text}~~ shows text that was in HB0280S01 but was omitted in HB0280S03
inserted text shows text that was not in HB0280S01 but was inserted into HB0280S03

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

1 **Third Party Litigation Funding Amendments**
2026 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: James A. Dunnigan
Senate Sponsor:



2
3 **LONG TITLE**

4 **General Description:**

5 This bill modifies provisions related to maintenance funding agreements.

6 **Highlighted Provisions:**

7 This bill:

- 8 ▶ defines terms;
- 9 ▶ distinguishes between consumer maintenance funding agreements and commercial maintenance
10 funding agreements;
- 11 ▶ requires maintenance funding providers to register with the Division of Consumer Protection;
- 13 ▶ extends the right of rescission for a consumer maintenance funding agreement;
- 14 ▶ imposes disclosure requirements in connection with consumer and commercial maintenance
15 funding agreements;
- 16 ▶ restricts certain relationships between attorneys and maintenance funding providers;
- 17 ▶ prohibits maintenance funding arrangements involving foreign entities or persons of concern;
- 19 ▶ establishes priority and assignability provisions relating to maintenance funding interests;
- 20 ▶

HB0280S01 compared with HB0280S03

restricts a commercial maintenance funding provider from directing or controlling litigation decisions;

- 22 ▶ ~~{ requires disclosure of certain maintenance funding agreements in civil actions; }~~
- 23 ▶ provides for enforcement, penalties, and rulemaking;
- 24 ▶ ~~{ requires disclosure in civil proceedings; and }~~
- 23 ▶ provides a coordination clause to substantively and technically coordinate changes between
25 ▶ this bill and S.B. 38, Consumer Protection Modifications, and
26 ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

27 None

Other Special Clauses:

29 This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

32 **13-57-102** , as enacted by Laws of Utah 2020, Chapter 118

33 **13-57-201** , as enacted by Laws of Utah 2020, Chapter 118

34 **13-57-202** , as enacted by Laws of Utah 2020, Chapter 118

35 **13-57-203** , as enacted by Laws of Utah 2020, Chapter 118

36 **13-57-301** , as enacted by Laws of Utah 2020, Chapter 118

37 **13-57-302** , as enacted by Laws of Utah 2020, Chapter 118

38 **13-57-501** , as enacted by Laws of Utah 2020, Chapter 118

ENACTS:

40 **13-57-504** , Utah Code Annotated 1953

41 ~~{13-57-505, Utah Code Annotated 1953}~~

41 **13-57-601** , Utah Code Annotated 1953

43 ~~{78B-3-1301, Utah Code Annotated 1953}~~

44 ~~{78B-3-1302, Utah Code Annotated 1953}~~

REPEALS:

43 **13-57-101** , as enacted by Laws of Utah 2020, Chapter 118

Utah Code Sections affected by Coordination Clause:

44 **13-57-201** , as enacted by Laws of Utah 2020, Chapter 118

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46 **13-57-202 (05/06/26)** , as enacted by Laws of Utah 2020, Chapter 118

47 **13-57-203** , as enacted by Laws of Utah 2020, Chapter 118

48

49 *Be it enacted by the Legislature of the state of Utah:*

50 Section 1. Section **13-57-102** is amended to read:

51 **13-57-102. Definitions.**

As used in this chapter:

52 (1) "Business entity" means a sole proprietorship, partnership, limited partnership, limited liability
company, corporation, or other entity or association used to carry on a business for profit.

55 (2)

(a) "Commercial maintenance funding agreement" means a written agreement:

56 (i) whereby a third party agrees to provide funds to a named party affiliated with a legal claim; and

58 (ii) that creates a direct or collateralized interest in the proceeds of a legal claim by settlement,
verdict, judgment, or otherwise, which interest is based in whole or in part on a funding-based
obligation to a legal claim.

61 (b) "Commercial maintenance funding agreement" does not include:

62 (i) a consumer maintenance funding agreement;

63 (ii) an agreement between an attorney and a client for the attorney to provide legal services on a
contingency-fee basis or to advance the clients legal costs;

65 (iii) a health insurance plan or agreement;

66 (iv) a repayment agreement with a financial institution if the repayment is not contingent upon the
outcome of the legal claim;

68 (v) a funding agreement to a nonprofit organization that represents a client on a pro bono basis;

70 (vi) an agreement of an assigned claim to prosecute an environmental contamination matter seeking
remediation of, or to recover the cost of remediating, a site that has been on the U.S. Environmental
Protection Agency's Superfund National Priorities List;

74 (vii) an agreement between a health care provider and a patient to provide medical treatment on a lien if
the repayment is not contingent on the outcome of the legal claim; or

77 (viii) an agreement between a third party and a party to a legal claim to provide funding for medical
treatment related to a legal claim on a lien if the repayment is not contingent upon the outcome of
the legal claim.

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80 (3)

(a) "Commercial maintenance funding provider" means a person that enters into a commercial maintenance funding agreement with a party to a legal claim.

82 (b) "Commercial maintenance funding provider" does not include a nonprofit organization exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code.

85 (4) "Consumer" means:

86 (a) an individual who resides or is domiciled in the state;

87 (b) an individual who is a plaintiff with a legal claim in the state; or

88 (c) an estate for a decedent in a wrongful death claim in the state.

89 (5)

(a) "Consumer maintenance funding agreement" means a non-recourse transaction in which a consumer maintenance funding provider purchases contingent rights to receive an amount of the potential proceeds of a settlement, judgment, award, or verdict obtained in the consumer's legal claim, with funds paid directly to the consumer.

94 (b) "Consumer maintenance funding agreement" does not include:

95 (i) an agreement between a health care provider and a patient for providing medical treatment on a lien basis if repayment is not contingent on the outcome of the legal claim; or

98 (ii) an agreement between a third party and a party to a legal claim for providing funds for medical treatment related to the legal claim on a lien basis if repayment is not contingent on the outcome of the legal claim.

101 (6)

(a) "Consumer maintenance funding provider" means a person that enters into a consumer maintenance funding agreement with a consumer.

103 (b) "Consumer maintenance funding provider" does not include:

104 (i) an immediate family member of a consumer;

105 (ii) an accountant providing accounting services to a consumer;

106 (iii) an attorney providing legal services to a consumer; or

107 (iv) a bank, lender, financing entity, or other special purpose entity;

108 (A) that provides financing to a consumer litigation funding company; or

109 (B) to which a consumer litigation funding company grants a security interest or transfers a right or interest in a consumer litigation funding agreement.

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- 111 [(2)] (7) "Director" means the director of the Division of Consumer Protection.
- 112 [(3)] (8) "Division" means the Division of Consumer Protection of the Department of Commerce
established in Section 13-2-1.
- 114 [(4)] (9) "Foreign country or person of concern" means:
- 115 (a) a foreign government or person listed in 15 C.F.R. Sec. 791.4; or
- 116 (b) an entity designated as a restricted foreign entity in accordance with Section 63L-13-101.
- 118 (10)
- (a) "Foreign entity of concern" means a partnership, association, corporation, organization, or other
legal entity that:
- 120 (i) is organized or incorporated in a foreign country of concern;
- 121 (ii) is owned or operated by a government, a political subdivision, or a political party of a foreign
country of concern;
- 123 (iii) has a principal place of business in a foreign country of concern; or
- 124 (iv) a foreign organization owns, organizes, or controls that:
- 125 (A) is on the federal Office of Foreign Assets Control specially designated nationals and blocked
persons list; or
- 127 (B) the United States Secretary of State designates as a foreign terrorist organization.
- 129 (b) "Foreign entity of concern" includes an individual that owns, has a controlling interest in, or is a
director or senior officer of any entity that falls within Subsection (10)(a).
- 132 (11) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- 133 [(5) "Individual" means a person who:]
- 134 [(a) resides in this state; and]
- 135 [(b) has or may have a pending legal action in this state.]
- 136 [(6) "Legal funding" means a payment of \$500,000 or less to an individual in exchange for the right
to receive an amount out of the potential proceeds of any realized settlement, judgment, award, or
verdict the individual may receive in a civil legal action.]
- 139 [(7) "Maintenance funding agreement" means an agreement between an individual and a maintenance
funding provider under which the maintenance funding provider provides legal funding to the
individual.]
- 142 [(8)

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(a) "~~Maintenance funding provider~~" means a business entity that engages in the business of legal funding.]

144 [(b) "~~Maintenance funding provider~~" does not include:]

145 [(i) an immediate family member of an individual;]

146 [(ii) an accountant providing accounting services to an individual; or]

147 [(iii) an attorney providing legal services to an individual.]

148 (12) "Maintenance funding provider" means a consumer maintenance funding provider or a commercial maintenance funding provider.

152 Section 2. Section **13-57-201** is amended to read:

153 **13-57-201. Maintenance funding provider registration and registration renewal.**

152 [(1) Except as provided in Subsection (4), a business entity may not act as a maintenance funding provider in this state without registering with the division.]

154 (1)

(a) A person may not act as a consumer maintenance funding provider in this state without registering with the division.

156 (b) A person who regularly engages as a commercial maintenance funding provider may not act as a commercial maintenance funding provider in this state without registering with the division.

159 (2) To register as a maintenance funding provider, a [~~business entity~~] person shall submit to the division an application for registration:

161 (a) in the manner the division determines; and

162 (b) that includes:

163 (i) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and

165 (ii) anything else the division requires as established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

167 (3) Each year a maintenance funding provider shall renew the maintenance funding provider's registration by submitting to the division an application for registration renewal:

170 (a) in the manner the division determines; and

171 (b) that includes:

172 (i) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and

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- 174 (ii) anything else the division requires as established in rule made in accordance with Title 63G,
Chapter 3, Utah Administrative Rulemaking Act.
- 176 [~~(4) A business entity who acts as a maintenance funding provider in the state between May 12, 2019,
and May 12, 2020, is permitted to continue to act as a maintenance funding provider:~~]
- 179 [~~(a) if the person:~~]
- 180 [~~(i) applies for registration in accordance with this section; and]~~
- 181 [~~(ii) complies with the requirements of this chapter; and]~~
- 182 [~~(b) until the division makes a determination regarding the person's application for registration under
this section.]~~]
- 187 Section 3. Section **13-57-202** is amended to read:
- 188 **13-57-202. Consumer maintenance funding provider operations.**
- 186 (1) A consumer maintenance funding provider may only provide legal funding to [~~an individual~~] a
consumer if the [~~maintenance funding~~] consumer maintenance funding provider and the
[~~individual~~] consumer enter into a consumer maintenance funding agreement that meets the
requirements of Section 13-57-301.
- 190 (2) Before executing a consumer maintenance funding agreement, a consumer maintenance funding
provider shall file with the division a template of the consumer maintenance funding agreement.
- 193 (3) A consumer maintenance funding provider may not:
- 194 (a) pay or offer to pay a commission, referral fee, or any other form of consideration to the following
for referring [~~an individual~~] a consumer to the consumer maintenance funding provider:
- 197 (i) an attorney authorized to practice law;
- 198 (ii) a health care provider; or
- 199 (iii) an employee, independent contractor, or other person affiliated with a person described in
Subsection (3)(a)(i) or (ii);
- 201 (b) accept a commission, referral fee, or any other form of consideration from a person described in
Subsection (3)(a) for referring [~~an individual~~] a consumer to the person;
- 203 (c) refer [~~an individual~~] a consumer or potential [~~individual~~] consumer to a person described in
Subsection (3)(a), unless the referral is to a local or state bar association referral service;
- 206 (d) intentionally advertise materially false or misleading information about the consumer maintenance
funding provider's services;
- 208

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- (e) make or attempt to influence a decision relating to the conduct, settlement, or resolution of a legal action for which the maintenance funding provider provides legal funding; [øø]
- 211 (f) knowingly pay or offer to pay court costs, filing fees, or attorney fees using legal funding[-] ; or
- 213 (g) attempt to obtain a waiver of a remedy or right from the consumer, including the right to trial by jury.
- 215 (4) A consumer maintenance funding provider shall provide [an individual] a consumer who enters a consumer maintenance funding agreement a copy of the executed consumer maintenance funding agreement.
- 218 {~~(5)~~ }
- {~~(a)~~ {~~An attorney or law firm that the consumer retains may not have a financial interest in the consumer maintenance funding provider offering maintenance funding to the consumer.~~}}
- 221 (b){~~(5)~~ } {~~An attorney who refers the~~ } A consumer {~~to~~ } maintenance funding provider may not offer maintenance funding to a consumer who has retained, or been referred by, an attorney or law firm that {~~the consumer retains may not have~~ } has a financial interest {~~a~~ } in the consumer maintenance funding provider {~~that offers a consumer maintenance funding agreement to the consumer~~ } .
- 224 {~~(6)~~ } {~~The attorney or law firm that the consumer retains may only disclose privileged information to the consumer maintenance funding provider with the written consent of the consumer.~~ }
- 227 (7){~~(6)~~ } A consumer maintenance funding provider may not enter into a consumer maintenance funding agreement directly or indirectly with a foreign entity of concern or a foreign country or person of concern.
- 228 Section 4. Section **13-57-203** is amended to read:
- 229 **13-57-203. Annual reports.**
- 232 (1) On or before April 1 of each year, a maintenance funding provider registered in accordance with Section 13-57-201 shall file a report:
- 234 (a) under oath;
- 235 (b) with the director; and
- 236 (c) in a form the director prescribes.
- 237 (2) The report described in Subsection (1) shall include, for the preceding calendar year:
- 238 (a) the number of consumer maintenance funding agreements and commercial maintenance funding agreements entered into by the maintenance funding provider;
- 240 (b) the total dollar amount of [legal]funding the maintenance funding provider provided;

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- 241 (c) the total dollar amount of charges under each consumer maintenance funding agreement and each
commercial maintenance funding agreement, itemized and including the annual rate of return;
- 244 (d) the total dollar amount and number of [~~maintenance~~]funding transactions in which the realized
profit to the [~~company~~] maintenance funding provider was as contracted[~~in the maintenance~~
funding agreement];
- 247 (e) the total dollar amount and number of [~~maintenance~~]funding transactions in which the realized
profit to the [~~company~~] maintenance funding provider was less than contracted; and
- 250 (f) any other information the director requires concerning the maintenance funding provider's business
or operations in the state.

250 Section 5. Section **13-57-301** is amended to read:

251 **13-57-301. Consumer maintenance funding agreements.**

254 (1) A consumer maintenance funding agreement shall:

255 (a) be in writing;

256 (b) be written in a clear and coherent manner using words with common, everyday meanings so that
the average consumer, who makes a reasonable effort under ordinary circumstances, can read
and understand the terms of the consumer maintenance funding agreement without requiring the
assistance of a professional;

260 (c) be complete before the consumer signs the consumer maintenance funding agreement;

262 [~~(b)~~] (d) contain a right of rescission permitting the [~~individual~~] consumer to cancel the
[~~agreement~~] consumer maintenance funding agreement without penalty or further obligation, if the
[~~individual~~] consumer returns to the consumer maintenance funding provider the full amount of the
disbursed funds:

266 (i) within [~~five~~] 10 business days after the day on which the [~~individual~~] consumer and consumer
maintenance funding provider enter the agreement; and

268 (ii)

(A) in person by delivering the consumer maintenance funding provider's uncashed check to the
consumer maintenance funding provider's office; or

270 (B) by insured, certified, or registered United States mail to the address specified in the consumer
maintenance funding agreement in the form of the consumer maintenance funding provider's
uncashed check or a registered or certified check or money order;

274 [~~(e)~~] (e) contain the disclosures described in Section 13-57-302;

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- 275 [~~(d)~~] (f) include the amount of money the consumer maintenance funding provider provides to the
[~~individual~~] consumer;
- 277 [~~(e)~~] (g) include an itemization of one-time charges;
- 278 [~~(f)~~] (h) include a payment schedule that:
- 279 (i) includes the funded amount and all charges; and
- 280 (ii) lists the total amount of any realized settlement, judgment, award, or verdict to be paid
to the consumer maintenance funding provider at the end of each six-month period, if the
[~~contract~~] consumer maintenance funding agreement is satisfied during that period; [~~and~~]
- 284 [~~(g)~~] (i) include a provision that the consumer maintenance funding agreement includes no charge or fee
other than the charges and fees disclosed in the [~~maintenance funding~~] agreement; [~~and~~]
- 287 [~~(h)~~] (j) include a provision that:
- 288 (i) if there are no available proceeds from the legal action, the [~~individual~~] consumer will owe the
consumer maintenance funding provider nothing; and
- 290 (ii) the consumer maintenance funding provider's total charges will be paid only to the extent there are
available proceeds from the legal action after the settlement of all liens, fees, and other costs[-] ; and
- 293 (k) if the consumer seeks more than one consumer maintenance funding agreement from the same
company, a disclosure providing the cumulative amount due from the consumer for all transactions,
including charges under all consumer maintenance funding agreements, if repayment is made any
time after the consumer maintenance funding agreements are executed.
- 298 (2) A consumer maintenance funding agreement may not require [~~an individual~~] a consumer to make a
payment to the consumer maintenance funding provider in an amount determined as a percentage of
the recovery from the legal action.
- 301 {~~(3)~~ }
- (a){(3)} A consumer maintenance funding agreement is not valid unless the agreement includes a
written certification signed by the {consumer's attorney} consumer stating that:
- 303 (i){(a)} the consumer, with the consumer's attorney {has} , reviewed the mandatory disclosures in
Section 13-57-302 {with the consumer};
- 305 (ii){(b)} the {consumer's attorney represents the consumer} consumer is represented by an attorney
in the legal claim on a contingency fee basis in accordance with a written fee agreement;
- 307

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- (iii){(c)} the consumer will direct the consumer's attorney {will} to receive and disburse all proceeds of the legal claim through the attorney's trust account or a settlement fund established for the benefit of the consumer;and
- 310 (iv){(d)} the consumer will direct the consumer's attorney {will} to disburse funds in accordance
312 with the terms of the consumer maintenance funding agreement{:};
- {(v) {~~the consumer's attorney has not received and will not receive a referral fee or other consideration from the consumer maintenance funding provider in connection with the agreement; and~~}
- 315 {(vi) {~~the consumer's attorney has not provided tax advice, public or private benefit planning advice, or financial advice to the consumer regarding the agreement.~~}
- 317 {(b) {~~Subsection (3)(a) applies to a new attorney or law firm that the consumer retains.~~}
- 318 (4)
- (a) The consumer maintenance funding agreement is null and void if the {~~attorney or law firm that the consumer retains~~} consumer does not provide the acknowledgment Subsection (3) requires.
- 321 (b) The consumer maintenance funding agreement remains valid and enforceable if the consumer terminates an attorney or law firm that the consumer retains.
- 323 (5) A consumer maintenance funding provider may not charge or collect a prepayment penalty or fee.
- 316 Section 6. Section **13-57-302** is amended to read:
- 317 **13-57-302. Required disclosures.**
- A consumer maintenance funding provider shall disclose in a consumer maintenance funding agreement:
- 329 (1) that the consumer maintenance funding provider may not participate in deciding whether, when, or the amount for which a legal action is settled;
- 331 (2) that the maintenance funding provider may not interfere with the independent professional judgment of the attorney handling the legal action or any settlement of the legal action;
- 334 (3) the following statement in substantially the following form, in all capital letters and at least a 12-point type: "THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE CONSUMER MAINTENANCE FUNDING PROVIDER HERE) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL

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CLAIM, UNLESS YOU HAVE VIOLATED A MATERIAL TERM OF THIS AGREEMENT OR YOU HAVE COMMITTED FRAUD AGAINST THE CONSUMER MAINTENANCE FUNDING PROVIDER.";

- 344 (4) in accordance with Section 13-57-301, the following statement in substantially the following form and at least a 12-point type: "CONSUMER'S RIGHT TO CANCELLATION: You may cancel this agreement without penalty or further obligation within [~~five~~] 10 business days after the day on which you enter into this agreement with the consumer maintenance funding provider if you either: 1. return to the consumer maintenance funding provider the full amount of the disbursed funds by delivering the consumer maintenance funding provider's uncashed check to the consumer maintenance funding provider's office in person; or 2. send, by insured, certified, or registered United States mail, to the consumer maintenance funding provider at the address specified in this agreement, a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the consumer maintenance funding provider's uncashed check or a registered or certified check or money order"; and
- 357 (5) immediately above the line for the [~~individual's~~] consumer's signature, the following statement in at least a 12-point type: "Do not sign this agreement before you read it completely or if it contains any blank spaces. You are entitled to a completed copy of the agreement. Before you sign this agreement, you should obtain the advice of an attorney. Depending on your circumstances, you may want to consult a tax, benefits planning, or financial professional."

354 Section 7. Section **13-57-501** is amended to read:

355 **13-57-501. Enforceability.**

If a maintenance funding provider willfully violates a provision of this chapter, a maintenance funding agreement associated with the violation is unenforceable by the maintenance funding provider or any successor-in-interest to the maintenance funding agreement.

360 Section 8. Section **8** is enacted to read:

361 **13-57-504. Assignability -- Liens.**

- 371 (1) The contingent right to receive an amount of the potential proceeds of a legal claim is assignable by a party to a maintenance funding provider.

373

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- (2) Only attorney's liens related to the legal claim that is the subject of the maintenance funding or Medicare or other statutory liens related to the legal claim take priority over a lien of the maintenance funding provider.

376 Section 9. Section **9** is enacted to read:

377 **13-57-505. Effect of communication on privileges.**

Communications between an attorney and a maintenance funding provider to allow the maintenance funding provider to ascertain the status of a legal claim or a legal claim's expected value are not discoverable by a person against whom the party asserts or files the claim.

367 Section 9. Section **9** is enacted to read:

368 **13-57-601. Commercial maintenance funding prohibitions.**

- 384 (1) A commercial maintenance funding provider may not enter into a commercial maintenance funding agreement directly or indirectly with a foreign entity of concern or a foreign country or person of concern.
- 387 (2) A { ~~party~~ ~~commercial maintenance funding provider may not receive~~, { ~~an attorney~~ } ~~access~~, or { a law firm for a party shall not disclose or share } ~~use~~ any documents or information subject to a court order to seal or protect that the court issues in the course of the civil proceeding { ~~with a commercial maintenance funding provider~~ } unless a court order specifically allows a commercial maintenance funding provider to have access to such documents or information.
- 392 (3)
- (a) A commercial maintenance funding provider may not direct, or have a contractual right to control, the party or the party's attorney with respect to the conduct of the underlying legal claim or a settlement or resolution of the legal claim.
- 395 (b) The right to make the decisions Subsection (3)(a) describes remains solely with the party and the party's attorney in the civil proceeding.

382 Section 10. **Repealer.**

This Bill Repeals:

383 This bill repeals:

384 Section **13-57-101, Title.**

397 Section 11. Section **11** is enacted to read:

398

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Part 13. Consumer Maintenance Funding Agreements and Commercial Maintenance Funding Agreements

400 **78B-3-1301. Definitions.**

- 401 (1) "Commercial maintenance funding agreement" means the same as that term is defined in Section
13-57-102.
- 403 (2) "Commercial maintenance funding provider" means the same as that term is defined in Section
13-57-102.
- 405 (3) "Consumer" means the same as that term is defined in Section 13-57-102.
- 406 (4) "Consumer maintenance funding agreement" means the same as that term is defined in Section
13-57-102.
- 408 (5) "Consumer maintenance funding provider" means the same as that term is defined in Section
13-57-102.
- 410 (6) "Foreign country or person of concern" means the same as that term is defined in Section
13-57-102.
- 412 (7) "Foreign entity of concern" means the same as that term is defined in Section 13-57-102.
- 413 (8) "Funding agreement" means a consumer maintenance funding agreement or a commercial
maintenance funding agreement.
- 415 (9) "Funding provider" means a consumer maintenance funding provider or a commercial maintenance
funding provider.

417 Section 12. Section 12 is enacted to read:

418 **78B-3-1302. Disclosure of a consumer maintenance funding agreement and commercial** maintenance funding agreement.

420 (1)

- (a) In a legal claim in which a party enters into a funding agreement, the party shall provide a certificate
along with the party's initial disclosures to each of the other parties with the following information:
- 423 (i) the identity of all contracting parties to the funding agreement, including the name, address, and,
if a party is a legal entity, the place of formation of such entity;
- 426 (ii) whether the funding agreement grants a funding provider control or approval rights with respect
to a legal claim or otherwise has the potential to create conflicts of interest between the funder

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and the party, and if the agreement does grant such control or approval rights, the nature of the terms and conditions relating to such control or approval rights;

- 431 (iii) whether the funding agreement grants a funding provider the right to receive materials
designated as confidential pursuant to a protective or confidentiality agreement or order in the
legal claim;
- 434 (iv) the existence of any known relationship between a funding provider and the adverse party, the
adverse party's counsel, or the court;
- 436 (v) a description of the nature of the financial interest; and
- 437 (vi) whether any foreign country or person of concern or foreign entity of concern is providing
funding, directly or indirectly, for the funding agreement and, if so, the name, address, and
country of incorporation or registration of that foreign country or person of concern or foreign
entity of concern.
- 441 (b) If a party was not subject to a funding agreement at the time of filing the party's initial disclosures
but becomes subject to a funding agreement during litigation, the party shall serve a certificate, as
provided for in Subsection (1)(a), to the other parties within fourteen days after entering the funding
agreement.
- 445 (2) For good cause shown, a party shall provide to the court, for in camera review, any funding
agreement within 30 days after commencement of a legal action or 30 days after execution of the
funding agreement, whichever is later.
- 448 (3) The certificate that Subsection (1)(a) requires is not admissible as evidence in a court proceeding.

Section 11. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

387 Section 12. **Coordinating H.B. 280 with S.B. 38.**

If H.B. 280, Third Party Litigation Funding Amendments, and S.B. 38, Consumer
Protection Modifications, both pass and become law, the Legislature intends that, on May 6,
2026, the term "maintenance funding provider" in S.B. 38 be changed to the term "consumer
maintenance funding provider" in the following subsections:

(1) Subsections 13-57-201(3), (5), and (6);

(2) Subsection 13-57-202(3); and

(3) Subsection 13-57-203(1)(a).

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Tab 3

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Constable Amendments
2026 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Todd Weiler
House Sponsor: Andrew Stoddard

LONG TITLE

General Description:

This bill allows a constable to establish a payment schedule with an individual instead of seizing the individual's property, under certain circumstances.

Highlighted Provisions:

This bill:

- ▶ allows a constable to establish a payment schedule with an individual instead of seizing the individual's property, under certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-78-603, as renumbered and amended by Laws of Utah 2025, First Special Session, Chapter 14

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **17-78-603** is amended to read:

17-78-603 . Term -- Authority -- Deputies.

- (1)(a) Constables appointed by a county are appointed for terms of six years and may serve more than one term if reappointed by the appointing body.
- (b) Notwithstanding the law in place at the time a constable was appointed, the term of a constable appointed on or after July 1, 2018, expires six years after the day on which the term began.

- 29 (2)(a) Appointed constables serving process outside the county in which they are
 30 appointed shall contact the sheriff's office or police department of the jurisdiction
 31 before serving executions or seizing any property.
- 32 (b) An appointed constable or a deputy of an appointed constable shall notify the agency
 33 of jurisdiction by contacting the sheriff's office or police department of jurisdiction
 34 before serving a warrant of arrest.
- 35 (3) The appointed constable may, upon approval of the appointing county, employ and
 36 deputize persons who are certified as special function peace officers to function as
 37 deputy constables.
- 38 (4) If the county legislative body withdraws the authority of an appointed constable, the
 39 authority of all deputy constables employed or deputized by the appointed constable is
 40 also withdrawn.
- 41 (5) If the authority of a constable or deputy constable is withdrawn under Subsection (4),
 42 the county shall notify the Peace Officer Standards and Training Division of the
 43 Department of Public Safety in accordance with Section 53-6-209.
- 44 (6) A constable, contracted or appointed, shall:
- 45 (a) attend the justice courts within the constable's county when required by contract or
 46 court order; and
- 47 (b) execute, serve, and return all process directed or delivered to the constable by a judge
 48 of the justice court serving the county, or by any competent authority within the
 49 limits of this section.
- 50 (7) A constable, contracted or appointed, may:
- 51 (a) serve any process throughout the state; [~~and~~]
- 52 (b) with the approval of a party directing the constable to seize an individual's property,
 53 establish a payment schedule with the individual in lieu of seizing the individual's
 54 property; and
- 55 [~~(b)~~] (c) carry out all other functions associated with a constable.
- 56 (8) A constable shall serve exclusively as an agent for:
- 57 (a) the government entity that has a contract with the constable;
- 58 (b) the county that appointed the constable; or
- 59 (c) the court authorizing or directing the constable.
- 60 (9) Except as otherwise provided in this part, a constable may not serve as an agent, or be
 61 considered to be serving as an agent, for a person that is not described in Subsection (8).

62 Section 2. **Effective Date.**

63 This bill takes effect on May 6, 2026.

26 property, the right to property whether due or to become due, and an obligation of a third
27 person to perform for the defendant.

28 (10) "Serve" with respect to parties means any method of service authorized by Rule 5 and
29 with respect to non-parties means any manner of service authorized by Rule 4.

30 **(b) Security.**

31 **(1) Amount.** When security is required of a party, the party ~~must~~ shall provide security in
32 the sum and form the court deems adequate. For security by the plaintiff the amount
33 should be sufficient to reimburse other parties for damages, costs, and attorney fees
34 incurred as a result of a writ wrongfully obtained. For security by the defendant, the
35 amount should be equivalent to the amount of the claim or judgment or the value of the
36 defendant's interest in the property. In fixing the amount, the court may consider any
37 relevant factor. The court may relieve a party from the necessity of providing security if
38 it appears that none of the parties will incur damages, costs, or attorney fees as a result
39 of a writ wrongfully obtained or if there exists some other substantial reason for
40 dispensing with security. The amount of security does not establish or limit the amount
41 of damages, costs, or attorney fees recoverable if the writ is wrongfully obtained.

42 **(2) Jurisdiction over surety.** A surety submits to the jurisdiction of the court and
43 irrevocably appoints the court clerk as agent upon whom papers affecting the surety's
44 liability may be served. The surety must file with the court clerk the address to which the
45 clerk may mail papers. The surety's liability may be enforced on motion without the
46 necessity of an independent action. If the opposing party recovers judgment or if the writ
47 is wrongfully obtained, the surety must pay the judgment, damages, costs, and attorney
48 fees not to exceed the sum specified in the contract. The surety is responsible for return
49 of property ordered returned.

50 **(3) Objection.** The court may issue additional writs upon the original security subject to
51 the objection of the opposing party. The opposing party may object to the sufficiency of
52 the security or the sufficiency of the sureties within five days after service of the writ. The

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53 burden to show the sufficiency of the security and the sufficiency of the sureties is on the
 54 proponent of the security.

55 **(4) Security of governmental entity.** No security is required of the United States, the State
 56 of Utah, or an officer, agency, or subdivision of either, nor when prohibited by law.

57 **(c) Procedures in aid of writs.**

58 **(1) Referee.** The court may appoint a referee to monitor hearings under this subsection.

59 **(2) Hearing; witnesses; discovery.** The court may conduct hearings as necessary to
 60 identify property and to apply the property toward the satisfaction of the judgment or
 61 order. Witnesses may be subpoenaed to appear, testify, and produce records. The court
 62 may permit discovery.

63 **(3) Restraint.** The court may forbid any person from transferring, disposing, or
 64 interfering with the property.

65 **(d) Issuance of writ; service**

66 **(1) Clerk to issue writs.** The court clerk will issue writs. A court in which a transcript or
 67 abstract of a judgment or order has been filed has the same authority to issue a writ as
 68 the court that entered the judgment or order. If the writ directs the seizure of real
 69 property, the court clerk will issue the writ to the sheriff of the county in which the real
 70 property is located. If the writ directs the seizure of personal property, the court clerk
 71 may issue the writ to an officer of any county.

72 **(2) Content.** The writ may direct the officer to seize the property, to keep the property
 73 safe, to deliver the property to the plaintiff, to sell the property, to establish periodic
 74 payments with the ~~D~~defendants in lieu of seizing and selling the ~~D~~defendant's property,
 75 to communicate with the ~~D~~defendants regarding the payment of the writ, or to take other
 76 specified actions. If the writ is to enforce a judgment or order for the payment of money,
 77 the writ will specify the amount ordered to be paid and the amount due.

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78 (A) If the writ is issued ex parte before judgment, the clerk will attach to the writ plaintiff's
79 affidavit, detailed description of the property, notice of hearing, order authorizing the
80 writ, notice of exemptions, and reply form.

81 (B) If the writ is issued before judgment but after a hearing, the clerk ~~will~~shall attach to
82 the writ plaintiff's affidavit and detailed description of the property.

83 (C) If the writ is issued after judgment, the clerk will attach to the writ plaintiff's
84 application, detailed description of the property, the judgment, notice of exemptions, and
85 reply form.

86 **(3) Service.**

87 **(A) Upon whom; effective date.** The officer must serve the writ and accompanying
88 papers on the defendant, and, as applicable, the garnishee and any person named by the
89 plaintiff as claiming an interest in the property. The officer may simultaneously serve
90 notice of the date, time, and place of sale. A writ is effective upon service.

91 **(B) Limits on writs of garnishment.**

92 (i) A writ of garnishment served while a previous writ of garnishment is in effect is
93 effective upon expiration of the previous writ; otherwise, a writ of garnishment is
94 effective upon service.

95 (ii) Only one writ of garnishment of earnings may be in effect at one time. One additional
96 writ of garnishment of earnings for a subsequent pay period may be served on the
97 garnishee while an earlier writ of continuing garnishment is in effect.

98 **(C) Return; inventory.** Within 14 days after service, the officer must return the writ to the
99 court with proof of service. If property has been seized, the officer ~~must~~shall include an
100 inventory of the property and whether the property is held by the officer or the officer's
101 designee. If a person refuses to give the officer an affidavit describing the property, the
102 officer must indicate the fact of refusal on the return, and the court may require that
103 person to pay the costs of any proceeding taken for the purpose of obtaining such
104 information.

105 **(D) Service of writ by publication.** The court may order service of a writ by publication
106 upon a person entitled to notice in circumstances in which service by publication of a
107 summons and complaint would be appropriate under Rule 4.

108 (i) If service of a writ is by publication, substantially the following must be published
109 under the caption of the case:

110 To _____, [Defendant/Garnishee/Claimant]:

111 A writ of _____ has been issued in the above-captioned case commanding the
112 officer of _____ County as follows:

113 [Quoting body of writ]

114 Your rights may be adversely affected by these proceedings. Property in which you have
115 an interest may be seized to pay a judgment or order. You have the right to claim property
116 exempt from seizure under statutes of the United States or this state, including Utah
117 Code, [Title 78B, Chapter 5, Part 5](#).

118 (ii) The notice must be published in a newspaper of general circulation in each county in
119 which the property is located at least 14 days prior to the due date for the reply or at least
120 14 days prior to the date of any sale, or as the court orders. The date of publication is the
121 date of service.

122 **(e) Claim to property by third person.**

123 **(1) Claimant's rights.** Any person claiming an interest in the property has the same rights
124 and obligations as the defendant with respect to the writ and with respect to providing
125 and objecting to security. Any claimant named by the plaintiff and served with the writ
126 and accompanying papers must exercise those rights and obligations within the same
127 time allowed the defendant. Any claimant not named by the plaintiff and not served with
128 the writ and accompanying papers may exercise those rights and obligations at any time
129 before the property is sold or delivered to the plaintiff.

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130 **(2) Join claimant as defendant.** The court may order any named claimant joined as a
131 defendant in interpleader. The plaintiff must serve the order on the claimant. The
132 claimant is thereafter a defendant to the action and must answer within 14 days, setting
133 forth any claim or defense. The court may enter judgment for or against the claimant to
134 the limit of the claimant's interest in the property.

135 **(3) Plaintiff's security.** If the plaintiff requests that an officer seize or sell property
136 claimed by a person other than the defendant, the officer may request that the court
137 require the plaintiff to file security.

138 **(f) Discharge of writ; release of property.**

139 **(1) By defendant.** At any time before notice of sale of the property or before the property
140 is delivered to the plaintiff, the defendant may file security and a motion to discharge the
141 writ. The plaintiff may object to the sufficiency of the security or the sufficiency of the
142 sureties within seven days after service of the motion. At any time before notice of sale of
143 the property or before the property is delivered to the plaintiff, the defendant may file a
144 motion to discharge the writ on the ground that the writ was wrongfully obtained. The
145 court will give the plaintiff reasonable opportunity to correct a defect. The defendant
146 must serve the order to discharge the writ upon the officer, plaintiff, garnishee, and any
147 third person claiming an interest in the property.

148 **(2) By plaintiff.** The plaintiff may discharge the writ by filing a release and serving it
149 upon the officer, defendant, garnishee, and any third person claiming an interest in the
150 property.

151 **(3) Disposition of property.** If the writ is discharged, the court will order any remaining
152 property and proceeds of sales delivered to the defendant.

153 **(4) Copy recorded with county recorder.** If an order discharges a writ upon property
154 seized by recording with the county recorder, the officer or a party must record a certified
155 copy of the order with the county recorder.

156 **(5) Service on officer; disposition of property.** If the order discharging the writ is served
157 on the officer:

158 (A) before the writ is served, the officer must return the writ to the court;

159 (B) while the property is in the officer's custody, the officer must return the property to
160 the defendant; or

161 (C) after the property is sold, the officer must deliver any remaining sale proceeds to the
162 defendant.

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1 **Rule 64E. Writ of execution.**

2 *Effective: 5/1/2014*

3 **(a) Availability.** A writ of execution is available to seize property in the possession or
4 under the control of the defendant following entry of a final judgment or order requiring
5 the delivery of property, or the payment of money, whether such payment of money is
6 in an amount sufficient to satisfy the final judgment, or subject to a periodic payment
7 schedule.

8 **(b) Application.** To obtain a writ of execution, the plaintiff shall file an application
9 stating:

10 (b)(1) the amount of the judgment or order and the amount due on the judgment or order;

11 (b)(2) the nature, location, and estimated value of the property; and

12 (b)(3) the name and address of any person known to the plaintiff to claim an interest in
13 the property.

14 **(c) Death of plaintiff.** If the plaintiff dies, a writ of execution may be issued upon the
15 affidavit of an authorized executor or administrator or successor in interest.

16 **(d) Reply to writ; request for hearing.**

17 (d)(1) The defendant may reply to the writ and request a hearing. The reply ~~must~~ ~~shall~~ be
18 filed and served within 14 days after service of the writ and accompanying papers upon
19 the defendant.

20 (d)(2) The court ~~will~~ ~~shall~~ set the matter for an evidentiary hearing as soon as possible and
21 not to exceed 14 days. If the court determines that the writ was wrongfully obtained, or
22 that property is exempt from seizure, the court ~~will~~ ~~shall~~ enter an order directing the
23 officer to release the property. If the court determines that the writ was properly issued
24 and the property is not exempt, the court ~~will~~ ~~shall~~ enter an order directing the officer to
25 sell or deliver the property. If the date of sale has passed, notice of the rescheduled sale

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26 ~~will~~ be given. No sale may be held until the court has decided upon the issues
27 presented at the hearing.

28 (d)(3) If a reply is not filed, the officer ~~must~~ proceed to sell or deliver the property.

29 **(e) Mortgage foreclosure governed by statute.** Utah Code [Title 78B, Chapter 6, Part 9](#),
30 Mortgage Foreclosure, governs mortgage foreclosure proceedings notwithstanding
31 contrary provisions of these rules.

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Tab 4

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

2 **(a) When service is required.**

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

7 **(2) Serving parties in default.**

8 ~~(A) Unless a default judgment has been entered against the party, No~~
 9 ~~service is required on a party against whom a default judgment has been entered,~~
 10 ~~except that a party in default defaulting party must be served with:~~

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

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

15 ~~(A)(C) a party in default for any reason must be served the proposed default~~
 16 ~~judgment and any motion, affidavit or declaration, and memorandum supporting~~
 17 ~~the proposed default judgment; and~~

18 ~~with (Bii) the notice of any hearing to determine the amount of damages to be~~
 19 ~~entered against the defaulting party;~~

20 ~~(B) If a default judgment has been entered against the party, the defaulting party~~
 21 ~~must be served with:~~

22 ~~(C)(D) a party in default for any reason must be served the with notice of entry~~
 23 ~~of judgment as provided in [Rule 58A](#); and~~

24 ~~(D)(E) a party in default for any reason must be served as provided in [Rule 4](#),~~
 25 ~~any with pleadings asserting new or additional claims for relief against the party~~
 26 ~~or motions to modify or augment the a previously entered default judgment; and;~~

27 ~~(CED)~~ if represented by an attorney known to the party seeking default judgment,
 28 with notice to the attorney, even if that attorney has not formally appeared in the
 29 action.

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

34 **(b) How service is made.**

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

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

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

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

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

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

Commented [JP1]: I suggest the following restructuring to maintain the distinction between parties in default and parties against whom default judgment has been entered.

I also thought it might be better to have what was (D) set off on its own – rather than as part of the list – to avoid confusion about whether service on the party *and* the attorney is necessary. I think the intent is to have the attorney rather than the party served if the party is represented. But then I wasn't entirely sure why this rule mentions Rule 4 in two specific circumstances. I was wondering if, in those instances, the party should be served personally and so what was (D) might not apply? But I may be misunderstanding the invocation of Rule 4 here.

Here is my proposed revision, but I'm not sure what I've suggested in my new paragraph (C) is exactly right.

(2) Serving parties in or after default.

A) No service is required on a party who is in default except that such a party must be served:

(i) with notice of any hearing to determine the amount of damages to be entered against the defaulting party; and
 (ii) as provided in Rule 4 with pleadings asserting new or additional claims for relief against the defaulting party.

B) No service is required on a party against whom default judgment has been entered except that such a party must be served:

(i) with notice of entry of judgment as provided in Rule 58A; and

(ii) as provided in Rule 4 with motions to modify or augment the default judgment

C) If service is required under paragraph (A)(i) or (B)(i), the party seeking or having obtained default judgment must serve the attorney representing the defaulting party if the attorney and the attorney's contact information is known to the serving party. This rule applies even if the attorney has not formally appeared in the action.

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

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

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

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

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

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

67 (ii) handing it to the person;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

101 **(e) Filing.** Except as provided in [Rule 7](#) and [Rule 26](#), all documents after the complaint
102 that are required to be served must be filed with the court. Attorneys with an electronic

103 filing account must file a document electronically. A self-represented party who is not an
104 attorney may file a document with the court using any of the following methods:

- 105 (1) email;
- 106 (2) mail;
- 107 (3) the court's MyCase interface, where applicable; or
- 108 (4) in person.

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

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

- 113 (1) electronically file the original affidavit with a notary acknowledgment as provided
114 by Utah Code section ~~46-1-16~~ 46-1-16;
- 115 (2) electronically file a scanned image of the affidavit or declaration;
- 116 (3) electronically file the affidavit or declaration with a conformed signature; or
- 117 (4) if the filer does not have an electronic filing account, present the original affidavit
118 or declaration to the court clerk, and the clerk will electronically file a scanned image
119 and return the original to the filer.

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

123 *Effective November 1, 2024*

124 **Advisory Committee Notes**

125 Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the
126 document on parties who have an e-filing account. (Attorneys representing parties in the
127 district court are required to have an account and electronically file documents. Code of

128 Judicial Administration [Rule 4-503](#).) The 2015 amendment excepts from this provision
129 documents electronically filed in juvenile court.

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

137 *Note adopted 2015*

Tab 5



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

April 15, 2026

Ronald B. Gordon, Jr.
State Court Administrator
Neira Siaperas
Deputy State Court Administrator

MEMORANDUM

TO: Advisory Committee on the Utah Rules of Civil Procedure

FROM: Sonia Sweeney, Associate General Counsel

RE: New Rule 110

The draft of new Rule 110 was submitted to the Supreme Court for a pre-conference review. The draft rule is being returned to the Committee with some redline suggestions. In addition, Justice Pohlman provided the following additional comments to Judge Conklin for the Committee's consideration:

If you still want to prohibit a party or a party's counsel from ever attending a judicial interview... We could revise (c)(4) to say either: "Neither a party nor a party's attorney will be permitted to attend the judicial interview." OR "The court will not permit a party or a party's attorney to attend the judicial interview." Either option will avoid someone...misreading the intent of the word "may."

On the other hand, if you'd now prefer to allow the court to permit the attendance of a party or counsel in some circumstances, we could revise it more along the lines you suggested in your email today.

As you think about that, I'd appreciate it if you'd consider whether "extenuating circumstances" is the best term to use in (c)(4) (if you want to retain the option) and also whether it's the best term for (b)(2)(A). It's not a common standard and I'm wondering if it's intended to require something more than "good cause." Maybe it's something we could discuss during court conference.

Finally, ...but as I looked back at the rule, I had two additional but relatively minor suggestions I'd like to make:

- In (b)(1), could we add the word "made" in the second sentence. As revised, it would read: "Subject to paragraph (b)(2), the decision to conduct the interview is within the court's discretion and may be made at the court's own initiative"?*

The mission of the Utah judiciary is to provide an open, fair, efficient, and independent system for the advancement of justice under the law.

- *In (b)(4), could we re-order the words from my previous suggestion. As revised, it would read: "A judge or commission who conducts a judicial interview first will have completed any training required by the Judicial Council in interviewing a child"?*

1 **Rule 110. Judicial interviews of a minor child~~ren~~.**

2 (a) **Scope.**

3 (1) This rule applies to district court proceedings in which the court is permitted to
4 interview a minor child who is the subject of the proceeding.

5 (2) This rule does not apply to:

6 (A) testimony by a child; or

7 (B) an interview conducted by a person other than a judge or commissioner.

8 (b) **Decision to conduct judicial interview.**

9 (1) Unless prohibited by law, a child, the child's attorney guardian ad litem, or a party
10 may request that the court interview the child. ~~Subject to paragraph (b)(2), the~~
11 decision to conduct the interview is within the court's discretion and may be at the
12 court's own initiative.

Commented [JP1]: Should we add this since it's not entirely within the court's discretion?

13 (2) The court may conduct the interview if it determines:

14 (A) ~~i.~~ extenuating circumstances necessitate the interview;

15 (B) ~~ii.~~ there is no other reasonable method to obtain information from the child;

16 (C) ~~iii.~~ the interview is in the child's best interest; and

17 (D) ~~iv.~~ any other legal requirements are satisfied.

Commented [JP2]: This suggests that there will be legal requirements. I'm guessing there are times where there won't be.

18 (3) Except as provided by other law, in deciding whether an interview is in the child's
19 best interest, the court will consider the child's expressed desire to communicate or
20 not communicate with the court and, to the extent applicable and readily
21 ascertainable:

22 (A) the likelihood that the interview will assist the court in adjudicating the
23 proceeding;

24 (B) the child's age, maturity, and capacity to formulate and communicate the
25 child's~~their~~ views to the court;

- 26 (C) the likely benefit to the child from the interview;
- 27 (D) the potential harm to the child from the interview, including embarrassment,
28 harassment, retaliation, and breach of a relationship, as well as the court's ability
29 to mitigate harm while eliciting the child's views;
- 30 (E) the availability and suitability of other processes to elicit the child's views;
- 31 (F) the likelihood that conducting the interview will facilitate recognition or
32 enforcement in another state or foreign court of the decision in the covered
33 proceeding; and
- 34 (G) any other relevant factor.

Commented [JP3]: Is this already covered in (b)(2)(B)?

35 (4) A judge or commissioner who conducts a judicial interview ~~will must~~ have first
36 completed any training required by the Judicial Council in interviewing a child.

37 (c) **Judicial interview procedure.**

38 (1) The court ~~will must~~ permit a party and attorney guardian ad litem to propose
39 questions for the judicial interview. The court ~~will shall~~ determine ~~which the~~ questions
40 ~~to ask asked of the child.~~

41 (2) The court will record the interview.

42 (3) The court will permit the attorney guardian ad litem to attend the judicial
43 interview in person.

44 (4) The court may ~~exclude not permit~~ a party or the party's attorney ~~from to attend~~ the
45 judicial interview.

46 (5) The parties may stipulate that they waive access to the interview record. A
47 stipulation is not valid unless approved by the ~~court judicial officer.~~ The ~~court judicial~~
48 ~~officer~~ may not approve a stipulation unless each party stipulates that the party
49 waives any right to access the interview record, be informed of communication by the
50 child during the interview, and respond to the child's communication. Unless
51 otherwise stated in the stipulation, a stipulation under this section precludes access to

52 the interview record by the parties in any proceeding relating to the child, including
53 on appeal.

54 (6) Before starting the interview, the court will explain to the child in an age-
55 appropriate manner information about the judicial interview, including:

56 (A) that the child is not required to answer the court's questions;

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

58 (C) that the court will record the interview;

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

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

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

64 (d) **Post-interview procedure.**

65 (1) Unless prohibited by a stipulation approved under ~~subsection-paragraph (c)(5)~~
66 and except as provided under ~~subparagraph (2) of this subsection-paragraph~~, if a party
67 appeals the final decision in the proceeding, on request of a party and after payment
68 of required costs, the court will grant access to the interview record.

69 (2) Unless prohibited by a stipulation approved under ~~subsection-paragraph (c)(5)~~, if
70 the child makes a factual allegation in the judicial interview, other than
71 communication of the child's views, that is or may be contested and is potentially
72 dispositive in the covered proceeding, the court ~~will disclose the allegation to the~~
73 ~~parties and provide the parties an opportunity to submit evidence and legal argument~~
74 ~~in response before making a final decision-in the proceeding.~~

75 (4) The court will ~~place restrictions on~~ the disclosure of the contents of the interview
76 and the interview record to nonparties during the covered proceeding and after its
77 conclusion.

Commented [MF4]: The court also has these two suggestions.

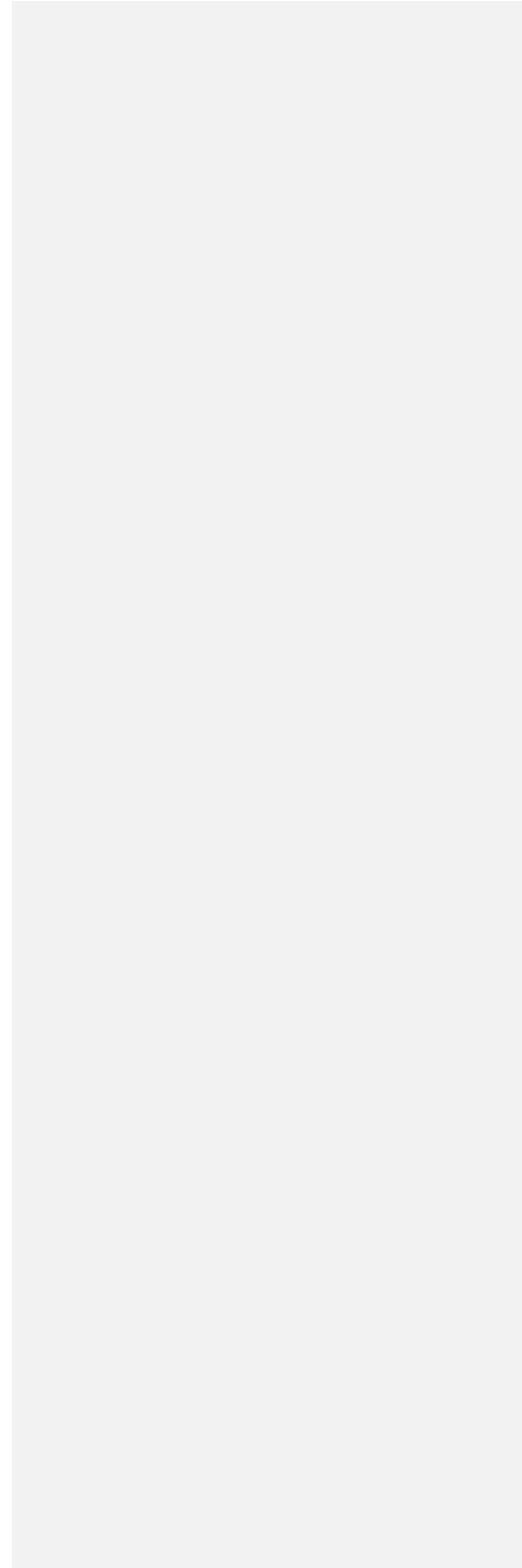
1. Add an advisory committee note explaining that this came from the uniform act but is modified and how.
2. Related to that, or perhaps for including in the note or addressing in the memo when the rule comes back to the court, since this rule comes from a uniform act, does the committee want this to be applied consistent with how the uniform law is applied elsewhere? Or is it just modeled after the act and doesn't need to be treated uniformly? The court will be interested in the committee's thoughts.

URCP 110

NEW

Draft: 03.18.2026

78 Effective Date:



Tab 6

1 **Rule 26. General provisions governing disclosure and discovery.**

2 *Effective: 5/4/2022*

3 **(a) Disclosure.** This rule applies unless changed or supplemented by a rule governing
4 disclosure and discovery in a practice area.

5 **(1) Initial disclosures.** Except in cases exempt under paragraph (a)(3), a party must,
6 without waiting for a discovery request, serve on the other parties:

7 (A) the name and, if known, the address and telephone number of:

8 (i) each individual likely to have discoverable information supporting its
9 claims or defenses, unless solely for impeachment, identifying the subjects of
10 the information; and

11 (ii) each fact witness the party may call in its case-in-chief and, except for an
12 adverse party, a summary of the expected testimony;

13 (B) a copy of all documents, data compilations, electronically stored information,
14 and tangible things in the possession or control of the party that the party may
15 offer in its case-in-chief, except charts, summaries, and demonstrative exhibits that
16 have not yet been prepared and must be disclosed in accordance with paragraph
17 (a)(5);

18 (C) a computation of any damages claimed and a copy of all discoverable
19 documents or evidentiary material on which such computation is based, including
20 materials about the nature and extent of injuries suffered;

21 (D) a copy of any agreement under which any person may be liable to satisfy part
22 or all of a judgment or to indemnify or reimburse for payments made to satisfy the
23 judgment; and

24 (E) a copy of all documents to which a party refers in its pleadings.

25 **(2) Timing of initial disclosures.** The disclosures required by paragraph (a)(1) must
26 be served on the other parties:

27 (A) by a plaintiff within 14 days after the filing of the first answer to that plaintiff's
28 complaint; and

29 (B) by a defendant within 42 days after the filing of that defendant's first answer
30 to the complaint.

31 **(3) Exemptions.**

32 (A) Unless otherwise ordered by the court or agreed to by the parties, the
33 requirements of paragraph (a)(1) do not apply to actions:

34 (i) for judicial review of adjudicative proceedings or rule making proceedings
35 of an administrative agency;

36 (ii) governed by [Rule 65B](#) or [Rule 65C](#);

37 (iii) to enforce an arbitration award;

38 (iv) for water rights general adjudication under ~~Title 73, Chapter 4~~[Title 73,](#)
39 [Chapter 4](#), Determination of Water Rights.

40 (B) In an exempt action, the matters subject to disclosure under paragraph (a)(1)
41 are subject to discovery under paragraph (b).

42 **(4) Expert testimony.**

43 **(A) Disclosure of retained expert testimony.** A party must, without waiting for a
44 discovery request, serve on the other parties the following information regarding
45 any person who may be used at trial to present evidence under [Rule 702](#) of the
46 Utah Rules of Evidence and who is retained or is specially employed to provide
47 expert testimony in the case or whose duties as an employee of the party regularly
48 involve giving expert testimony, ~~the party must disclose~~:

49 (i) the expert's name and qualifications, including a list of all publications
50 authored within the preceding ~~ten~~[10](#) years, and a list of any other cases in
51 which the expert has testified as an expert at trial or by deposition within the
52 preceding four years,

53 (ii) a brief summary of the opinions to which the expertwitness is expected to
54 testify,

55 (iii) the facts, data, and other information specific to the case that will be relied
56 upon by the expertwitness in forming those opinions, and

57 (iv) the compensation to be paid for the expertwitness's study and testimony.

58 **(B) ~~RLimits on retained~~ expert discovery.** Further discovery may be obtained
59 from a retained expert witness either by deposition or by written report. A
60 deposition must not exceed four hours and the party taking the deposition must
61 pay the expert's reasonable hourly fees for attendance at the deposition. A report
62 must be signed by the expert and must contain a complete statement of all
63 opinions the expert will offer at trial and the basis and reasons for them. Such an
64 expert may not testify in a party's case-in-chief concerning any matter not fairly
65 disclosed in the report. The party offering the expert must pay the costs for the
66 report.

67 **(C) Timing for retained expert discovery.**

68 (i) The party who bears the burden of proof on the issue for which retained
69 expert testimony is offered must serve on the other parties the information
70 required by paragraph (a)(4)(A) within 14 days after the close of fact discovery.
71 Within 14 days thereafter, the party opposing the expert may serve notice
72 electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and
73 Rule 30, or a written report pursuant to paragraph (a)(4)(B). ~~The notice must~~
74 ~~also identify any disclosed non-retained experts, as defined in paragraph~~
75 ~~(a)(4)(E), who are to be deposed.~~ The deposition must occur, or the report must
76 be served on the other parties, within 42 days after the election is served on the
77 other parties. If no election is served on the other parties, then no further
78 discovery of the expert ~~will~~must be permitted.

79 (ii) The party who does not bear the burden of proof on the issue for which
80 retained expert testimony is offered must serve on the other parties the
81 information required by paragraph (a)(4)(A) within 14 days after the later of
82 (A) the date on which the disclosure under paragraph (a)(4)(C)(i) is due, or (B)
83 service of the written report or the taking of the expert's deposition pursuant
84 to paragraph (a)(4)(C)(i). Within 14 days thereafter, the party opposing the
85 expert may serve notice electing either a deposition of the expert pursuant to
86 paragraph (a)(4)(B) and [Rule 30](#), or a written report pursuant to paragraph
87 (a)(4)(B). ~~The notice must also identify any disclosed non-retained experts, as~~
88 ~~defined in paragraph (a)(4)(E), who are to be deposed.~~ The deposition must
89 occur, or the report must be served on the other parties, within 42 days after
90 the election is served on the other parties. If no election is served on the other
91 parties, then no further discovery of the expert ~~will~~must be permitted.

92 (iii) If the party who bears the burden of proof on an issue wants to designate
93 retained rebuttal expert witnesses, it must serve on the other parties the
94 information required by paragraph (a)(4)(A) within 14 days after the later of
95 (A) the date on which the election under paragraph (a)(4)(C)(ii) is due or (B)
96 service of the written report or the taking of the expert's deposition pursuant
97 to paragraph (a)(4)(C)(ii). Within 14 days thereafter, the party opposing the
98 expert may serve notice electing either a deposition of the expert pursuant to
99 paragraph (a)(4)(B) and [Rule 30](#), or a written report pursuant to paragraph
100 (a)(4)(B). ~~The notice must also identify any disclosed non-retained experts, as~~
101 ~~defined in paragraph (a)(4)(E), who are to be deposed.~~ The deposition must
102 occur, or the report must be served on the other parties, within 42 days after
103 the election is served on the other parties. If no election is served on the other
104 parties, then no further discovery of the expert ~~will~~must be permitted. The
105 court may preclude an expert disclosed only as a rebuttal expert from testifying
106 in the case in chief.

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~~timely paragraph does not paragraph must Rule 16~~

(D) Multiparty actions. In multiparty actions, all parties ~~The~~ opposing the retained expert must agree on either a report or a deposition. If all parties opposing the expert do not agree, then further discovery of the expert may be obtained only by deposition pursuant to paragraph (a)(4)(B) and Rule 30.

(E) ~~N~~Summary of non-retained expert testimony. If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person ~~other than an expert witness~~ who is not retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party do not regularly involve giving expert testimony, that party must serve on the other parties a written summary of the facts and opinions to which the expert witness is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). Such an expert witness cannot be required to provide a report pursuant to paragraph (a)(4)(B). A deposition of such an expert witness may not exceed four hours and, unless manifest injustice would result, the party taking the deposition must pay the expert's reasonable hourly fees for attendance at the deposition.

(F) Determining the Close of all Discovery. For purposes of this rule, unless otherwise stipulated by the parties or ordered by the court, the close of all discovery is the point at which the parties have completed both fact and expert discovery. Unless otherwise stipulated by the parties or ordered by the court, to calculate any remaining deadlines in the case that are based on the close of all discovery, expert discovery is complete on the first date that either (1) the last rebuttal expert report is served or rebuttal expert deposition is taken; (2) any party fails to timely designate an expert pursuant to paragraph (a)(4)(C)(ii) or (a)(4)(C)(iii); or (3) if a party does not elect discovery on a rebuttal expert disclosed pursuant to paragraph (a)(4)(C)(iii). Any party may, and the plaintiff must, file a certificate for trial readiness pursuant to Rule 16 at the close of all discovery.

(5) Pretrial disclosures.

Commented [1]: I don't see anywhere in the rule other than here where we use the term "close of all discovery." Or is it just being used in this new addition? If it's just in this new addition, we may want to re-word the first part of the addition.

For example, we could start with the last sentence of the new addition, and then say, "for purposes of this rule, unless otherwise stipulated by the parties or ordered by the court, expert discovery is complete on"

Also, I think we should set this out somewhere else in the rule. I'm afraid it will get lost here under "Timing for Retained Expert Reports." At the very least, I think it should be (a)(4)(E).

Commented [2]: I think it's a great idea to be a bit more clear about the deadlines applicable to non-retained experts, but because of the differences relating to the election of the report or deposition, I'd recommend we not incorporate requirements about non-retained experts in the provisions above and simply add here any specifics regarding when this summary information must be disclosed and when a deposition must be concluded. There is already so much going on in those other provision, I think separating them out makes a lot of sense and should not be too cumbersome.

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135 (A) A party must, without waiting for a discovery request, serve on the other
136 parties:

137 (i) the name and, if not previously provided, the address and telephone
138 number of each witness, unless solely for impeachment, separately identifying
139 witnesses the party will call and witnesses the party may call;

140 (ii) the name of witnesses whose testimony is expected to be presented by
141 transcript of a deposition;

142 (iii) designations of the proposed deposition testimony; and

143 (iv) a copy of each exhibit, including charts, summaries, and demonstrative
144 exhibits, unless solely for impeachment, separately identifying those which the
145 party will offer and those which the party may offer.

146 (B) Disclosure required by paragraph (a)(5)(A) must be served on the other parties
147 at least 28 days before trial. Disclosures required by paragraph (a)(5)(A)(i) and
148 (a)(5)(A)(ii) must also be filed on the date that they are served. At least 14 days
149 before trial, a party must serve any counter designations of deposition testimony
150 and any objections and grounds for the objections to the use of any deposition,
151 witness, or exhibit if the grounds for the objection are apparent before trial. Other
152 than objections under Rules [402](#) and [403](#) of the Utah Rules of Evidence, other
153 objections not listed are waived unless excused by the court for good cause.

154 **(6) Form of disclosure and discovery production.** [Rule 34](#) governs the form in which
155 all documents, data compilations, electronically stored information, tangible things,
156 and evidentiary material should be produced under this ~~r~~Rule.

157 **(b) Discovery scope.**

158 **(1) In general.** Parties may discover any matter, not privileged, which is relevant to
159 the claim or defense of any party if the discovery satisfies the standards of
160 proportionality set forth below.

161 **(2) Privileged matters.**

162 (A) Privileged matters that are not discoverable or admissible in any proceeding
163 of any kind or character include:

164 (i) all information in any form provided during and created specifically as part
165 of a request for an investigation, the investigation, findings, or conclusions of
166 peer review, care review, or quality assurance processes of any organization of
167 health care providers as defined in Utah Code Title 78B, Chapter 3, Part 4, ~~Utah~~
168 ~~Health Care Malpractice Act~~ Utah Health Care Malpractice Act, for the purpose
169 of evaluating care provided to reduce morbidity and mortality or to improve
170 the quality of medical care, or for the purpose of peer review of the ethics,
171 competence, or professional conduct of any health care provider; and

172 (ii) except as provided in paragraph (b)(2)(C), (D), or (E), all communications,
173 materials, and information in any form specifically created for or during a
174 medical candor process under Utah Code Title 78B, Chapter 3, Part 4a, Utah
175 Medical Candor Act, including any findings or conclusions from the
176 investigation and any offer of compensation.

177 (B) Disclosure or use in a medical candor process of any communication, material,
178 or information in any form that contains any information described in paragraph
179 (b)(2)(A)(i) does not waive any privilege or protection against admissibility or
180 discovery of the information under paragraph (b)(2)(A)(i).

181 (C) Any communication, material, or information in any form that is made or
182 provided in the ordinary course of business, including a medical record or a
183 business record, that is otherwise discoverable or admissible and is not created for
184 or during a medical candor process is not privileged by the use or disclosure of the
185 communication, material or information during a medical candor process.

186 (D) ~~(i)~~ Any information that is required to be documented in a patient's medical
187 record under state or federal law is not privileged by the use or disclosure of the
188 information during a medical candor process.

189 (i) Information described in paragraph (b)(2)(D) ~~(i)~~ does not include an
190 individual's mental impressions, conclusions, or opinions that are formed
191 outside the course and scope of the patient's care and treatment and are used
192 or disclosed in a medical candor process.

193 (E) ~~(i)~~ Any communication, material or information in any form that is provided
194 to an affected party before the affected party's written agreement to participate in
195 a medical candor process is not privileged by the use or disclosure of the
196 communication, material, or information during a medical candor process.

197 (i) Any communication, material, or information described in paragraph
198 (b)(2)(E) ~~(i)~~ does not include a written notice described in Utah Code section
199 78B-3-452.

200 (F) The terms defined in Utah Code section 78B-3-450 apply to paragraphs
201 (b)(2)(A)(ii), (B), (C), (D), and (E).

202 (G) Nothing in this paragraph (b)(2) ~~shall~~ prevents a party from raising any other
203 privileges provided by law or rule as to the admissibility or discovery of any
204 communication, information, or material described in paragraph (b)(2)(A), (B),
205 (C), (D), or (E).

206 **(3) Proportionality.** Discovery and discovery requests are proportional if:

207 (A) the discovery is reasonable, considering the needs of the case, the amount in
208 controversy, the complexity of the case, the parties' resources, the importance of
209 the issues, and the importance of the discovery in resolving the issues;

210 (B) the likely benefits of the proposed discovery outweigh the burden or expense;

211 (C) the discovery is consistent with the overall case management and will further
212 the just, speedy, and inexpensive determination of the case;

213 (D) the discovery is not unreasonably cumulative or duplicative;

214 (E) the information cannot be obtained from another source that is more
215 convenient, less burdensome, or less expensive; and

216 (F) the party seeking discovery has not had sufficient opportunity to obtain the
217 information by discovery or otherwise, taking into account the parties' relative
218 access to the information.

219 **(4) Burden.** The party seeking discovery always has the burden of showing
220 proportionality and relevance. To ensure proportionality, the court may enter orders
221 under [Rule 37](#).

222 **(5) Electronically stored information.** A party claiming that electronically stored
223 information is not reasonably accessible because of undue burden or cost must
224 describe the source of the electronically stored information, the nature and extent of
225 the burden, the nature of the information not provided, and any other information
226 that will enable other parties to evaluate the claim.

227 **(6) Trial preparation materials.** A party may obtain otherwise discoverable
228 documents and tangible things prepared in anticipation of litigation or for trial by or
229 for another party or by or for that other party's representative (including the party's
230 attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that
231 the party seeking discovery has substantial need of the materials and that the party is
232 unable without undue hardship to obtain substantially equivalent materials by other
233 means. In ordering discovery of such materials, the court must protect against
234 disclosure of the mental impressions, conclusions, opinions, or legal theories of an
235 attorney or other representative of a party.

236 **(7) Statement previously made about the action.** A party may obtain without the
237 showing required in paragraph (b)(6) a statement concerning the action or its subject

238 matter previously made by that party. Upon request, a person not a party may obtain
239 without the required showing a statement about the action or its subject matter
240 previously made by that person. If the request is refused, the person may move for a
241 court order under [Rule 37](#). A statement previously made is (A) a written statement
242 signed or approved by the person making it, or (B) a stenographic, mechanical,
243 electronic, or other recording, or a transcription thereof, which is a substantially
244 verbatim recital of an oral statement by the person making it and contemporaneously
245 recorded.

246 **(8) Trial preparation; experts.**

247 **(A) Trial-preparation protection for draft reports or disclosures.** Paragraph (b)(6)
248 protects drafts of any report or disclosure required under paragraph (a)(4),
249 regardless of the form in which the draft is recorded.

250 **(B) Trial-preparation protection for communications between a party's attorney
251 and expert witnesses.** Paragraph (b)(6) protects communications between the
252 party's attorney and any witness required to provide disclosures under paragraph
253 (a)(4), regardless of the form of the communications, except to the extent that the
254 communications:

- 255 (i) relate to compensation for the expert's study or testimony;
- 256 (ii) identify facts or data that the party's attorney provided and that the expert
257 considered in forming the opinions to be expressed; or
- 258 (iii) identify assumptions that the party's attorney provided and that the expert
259 relied on in forming the opinions to be expressed.

260 **(C) Expert employed only for trial preparation.** Ordinarily, a party may not, by
261 interrogatories or otherwise, discover facts known or opinions held by an expert
262 who has been retained or specially employed by another party in anticipation of
263 litigation or to prepare for trial and who is not expected to be called as a witness
264 at trial. A party may do so only:

265 (i) as provided in [Rule 35\(b\)](#); or

266 (ii) on showing exceptional circumstances under which it is impracticable for
267 the party to obtain facts or opinions on the same subject by other means.

268 **(9) Claims of privilege or protection of trial preparation materials.**

269 **(A) Information withheld.** If a party withholds discoverable information by
270 claiming that it is privileged or prepared in anticipation of litigation or for trial,
271 the party must make the claim expressly and must describe the nature of the
272 documents, communications, or things not produced in a manner that, without
273 revealing the information itself, will enable other parties to evaluate the claim.

274 **(B) Information produced.** If a party produces information that the party claims
275 is privileged or prepared in anticipation of litigation or for trial, the producing
276 party may notify any receiving party of the claim and the basis for it. After being
277 notified, a receiving party must promptly return, sequester, or destroy the
278 specified information and any copies it has and may not use or disclose the
279 information until the claim is resolved. A receiving party may promptly present
280 the information to the court under seal for a determination of the claim. If the
281 receiving party disclosed the information before being notified, it must take
282 reasonable steps to retrieve it. The producing party must preserve the information
283 until the claim is resolved.

284 **(c) Methods, sequence, and timing of discovery; tiers; limits on standard discovery;
285 extraordinary discovery.**

286 **(1) Methods of discovery.** Parties may obtain discovery by one or more of the
287 following methods: depositions upon oral examination or written questions; written
288 interrogatories; production of documents or things or permission to enter upon land
289 or other property, for inspection and other purposes; physical and mental
290 examinations; requests for admission; and subpoenas other than for a court hearing
291 or trial.

292 **(2) Sequence and timing of discovery.** Methods of discovery may be used in any
 293 sequence, and the fact that a party is conducting discovery must not delay any other
 294 party's discovery. Except for cases exempt under paragraph (a)(3), a party may not
 295 seek discovery from any source before that party's initial disclosure obligations are
 296 satisfied.

297 **(3) Definition of tiers for standard discovery.** Actions claiming \$50,000 or less in
 298 damages are permitted standard discovery as described for Tier 1. Actions claiming
 299 more than \$50,000 and less than \$300,000 in damages are permitted standard
 300 discovery as described for Tier 2. Actions claiming \$300,000 or more in damages are
 301 permitted standard discovery as described for Tier 3. Absent an accompanying
 302 damage claim for more than \$300,000, actions claiming non-monetary relief are
 303 permitted standard discovery as described for Tier 2. Domestic relations actions are
 304 permitted standard discovery as described for Tier 4.

305 **(4) Definition of damages.** For purposes of determining standard discovery, the
 306 amount of damages includes the total of all monetary damages sought (without
 307 duplication for alternative theories) by all parties in all claims for relief in the original
 308 pleadings.

309 **(5) Limits on standard fact discovery.** Standard fact discovery per side (plaintiffs
 310 collectively, defendants collectively, and third-party defendants collectively) in each
 311 tier is as follows. The days to complete standard fact discovery are calculated from
 312 the date the first defendant's first disclosure is due and do not include expert
 313 discovery under paragraphs (a)(4)(C) and (D).

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery

1	\$50,000 or less	3	0	5	5	120
2	More than \$50,000 and less than \$300,000 or non-monetary relief	15	10	10	10	180
3	\$300,00 or more	30	20	20	20	210
4	Domestic relations actions	4	10	10	10	90

314

315

316 **(6) Extraordinary discovery.** To obtain discovery beyond the limits established in
 317 paragraph (c)(5), a party must:

318 (A) before the close of standard discovery and after reaching the limits of standard
 319 discovery imposed by these rules, file a stipulated statement that extraordinary
 320 discovery is necessary and proportional under paragraph (b)(2) and, for each party
 321 represented by an attorney, a statement that the attorney consulted with the client
 322 about the request for extraordinary discovery;

323 (B) before the close of standard discovery and after reaching the limits of standard
 324 discovery imposed by these rules, file a request for extraordinary discovery under
 325 [Rule 37\(a\)](#) or

326 (C) obtain an expanded discovery schedule under [Rule 100A](#).

327 **(d) Requirements for disclosure or response; disclosure or response by an**
328 **organization; failure to disclose; initial and supplemental disclosures and responses.**

329 (1) A party must make disclosures and responses to discovery based on the
330 information then known or reasonably available to the party.

331 (2) If the party providing disclosure or responding to discovery is a corporation,
332 partnership, association, or governmental agency, the party must act through one or
333 more officers, directors, managing agents, or other persons, who must make
334 disclosures and responses to discovery based on the information then known or
335 reasonably available to the party.

336 (3) A party is not excused from making disclosures or responses because the party has
337 not completed investigating the case, the party challenges the sufficiency of another
338 party's disclosures or responses, or another party has not made disclosures or
339 responses.

340 (4) If a party fails to disclose or ~~to timely~~ supplement ~~timely~~ a disclosure or response
341 to discovery, that party may not use the undisclosed witness, document, or material
342 at any hearing or trial unless the failure is harmless or the party shows good cause for
343 the failure.

344 (5) If a party learns that a disclosure or response is incomplete or incorrect in some
345 important way, the party must timely serve on the other parties the additional or
346 correct information if it has not been made known to the other parties. The
347 supplemental disclosure or response must state why the additional or correct
348 information was not previously provided.

349 **(e) Signing discovery requests, responses, and objections.** Every disclosure, request for
350 discovery, response to a request for discovery, and objection to a request for discovery
351 must be in writing and signed by at least one attorney of record or by the party if the
352 party is not represented. The signature of the attorney or party is a certification under
353 Rule [11](#). If a request or response is not signed, the receiving party does not need to take

354 any action with respect to it. If a certification is made in violation of the rule, the court,
355 upon motion or upon its own initiative, may take any action authorized by [Rule 11](#) or
356 [Rule 37\(b\)](#).

357 **(f) Filing.** Except as required by these rules or ordered by the court, a party must not file
358 with the court a disclosure, a request for discovery, or a response to a request for
359 discovery, but must file only the certificate of service stating that the disclosure, request
360 for discovery, or response has been served on the other parties and the date of service.

361
362 **Advisory Committee Notes**

363 *Note Adopted 2011*

364 **Disclosure requirements and timing. Rule 26(a)(1).**

365 Not all information will be known at the outset of a case. If discovery is serving its proper
366 purpose, additional witnesses, documents, and other information will be identified. The
367 scope and the level of detail required in the initial Rule 26(a)(1) disclosures should be
368 viewed in light of this reality. A party is not required to interview every witness it
369 ultimately may call at trial in order to provide a summary of the witness's expected
370 testimony. As the information becomes known, it should be disclosed. No summaries are
371 required for adverse parties, including management level employees of business entities,
372 because opposing lawyers are unable to interview them and their testimony is available
373 to their own counsel. For uncooperative or hostile witnesses any summary of expected
374 testimony would necessarily be limited to the subject areas the witness is reasonably
375 expected to testify about. For example, defense counsel may be unable to interview a
376 treating physician, so the initial summary may only disclose that the witness will be
377 questioned concerning the plaintiff's diagnosis, treatment and prognosis. After medical
378 records have been obtained, the summary may be expanded or refined.

379 Subject to the foregoing qualifications, the summary of the witness's expected testimony
380 should be just that—a summary. The rule does not require prefiled testimony or detailed

381 descriptions of everything a witness might say at trial. On the other hand, it requires more
382 than the broad, conclusory statements that often were made under the prior version of
383 Rule 26(a)(1) (e.g., “The witness will testify about the events in question” or “The witness
384 will testify on causation.”). The intent of this requirement is to give the other side basic
385 information concerning the subjects about which the witness is expected to testify at trial,
386 so that the other side may determine the witness’s relative importance in the case,
387 whether the witness should be interviewed or deposed, and whether additional
388 documents or information concerning the witness should be sought. *See RJW Media Inc.*
389 *v. Heath*, 2017 UT App 34, ¶¶ 23–25, 392 P.3d 956. This information is important because
390 of the other discovery limits contained in Rule 26.

391 Likewise, the documents that should be provided as part of the Rule 26(a)(1) disclosures
392 are those that a party reasonably believes it may use at trial, understanding that not all
393 documents will be available at the outset of a case. In this regard, it is important to
394 remember that the duty to provide documents and witness information is a continuing
395 one, and disclosures must be promptly supplemented as new evidence and witnesses
396 become known as the case progresses.

397 Early disclosure of damages information is important. Among other things, it is a critical
398 factor in determining proportionality. The committee recognizes that damages often
399 require additional discovery, and typically are the subject of expert testimony. The Rule
400 is not intended to require expert disclosures at the outset of a case. At the same time, the
401 subject of damages should not simply be deferred until expert discovery. Parties should
402 make a good faith attempt to compute damages to the extent it is possible to do so and
403 must in any event provide all discoverable information on the subject, including
404 materials related to the nature and extent of the damages.

405 The penalty for failing to make timely disclosures is that the evidence may not be used in
406 the party’s case-in-chief. To make the disclosure requirement meaningful, and to
407 discourage sandbagging, parties must know that if they fail to disclose important
408 information that is helpful to their case, they will not be able to use that information at

409 trial. The courts will be expected to enforce them unless the failure is harmless or the
410 party shows good cause for the failure.

411 The purpose of early disclosure is to have all parties present the evidence they expect to
412 use to prove their claims or defenses, thereby giving the opposing party the ability to
413 better evaluate the case and determine what additional discovery is necessary and
414 proportional.

415 **Expert disclosures and timing. Rule 26(a)(3).** Disclosure of the identity and subjects of
416 expert opinions and testimony is automatic under Rule 26(a)(3) and parties are not
417 required to serve interrogatories or use other discovery devices to obtain this
418 information.

419 Experts frequently will prepare demonstrative exhibits or other aids to illustrate the
420 expert's testimony at trial, and the costs for preparing these materials can be substantial.
421 For that reason, these types of demonstrative aids may be prepared and disclosed later,
422 as part of the Rule 26(a)(4) pretrial disclosures when trial is imminent.

423 If a party elects a written report, the expert must provide a signed report containing a
424 complete statement of all opinions the expert will express and the basis and reasons for
425 them. The intent is not to require a verbatim transcript of exactly what the expert will say
426 at trial; instead the expert must fairly disclose the substance of and basis for each opinion
427 the expert will offer. The expert may not testify in a party's case in chief concerning any
428 matter that is not fairly disclosed in the report. To achieve the goal of making reports a
429 reliable substitute for depositions, courts are expected to enforce this requirement. If a
430 party elects a deposition, rather than a report, it is up to the party to ask the necessary
431 questions to "lock in" the expert's testimony. But the expert is expected to be fully
432 prepared on all aspects of his/her trial testimony at the time of the deposition and may
433 not leave the door open for additional testimony by qualifying answers to deposition
434 questions.

435 There are a number of difficulties inherent in disclosing expert testimony that may be
436 offered from fact witnesses. First, there is often not a clear line between fact and expert
437 testimony. Many fact witnesses have scientific, technical or other specialized knowledge,
438 and their testimony about the events in question often will cross into the area of expert
439 testimony. The rules are not intended to erect artificial barriers to the admissibility of
440 such testimony. Second, many of these fact witnesses will not be within the control of the
441 party who plans to call them at trial. These witnesses may not be cooperative, and may
442 not be willing to discuss opinions they have with counsel. Where this is the case,
443 disclosures will necessarily be more limited. On the other hand, consistent with the
444 overall purpose of the 2011 amendments, a party should receive advance notice if their
445 opponent will solicit expert opinions from a particular witness so they can plan their case
446 accordingly. In an effort to strike an appropriate balance, the rules require that such
447 witnesses be identified and the information about their anticipated testimony should
448 include that which is required under Rule 26(a)(1)(A)(ii), which should include any
449 opinion testimony that a party expects to elicit from them at trial. If a party has disclosed
450 possible opinion testimony in its Rule 26(a)(1)(A)(ii) disclosures, that party is not required
451 to prepare a separate Rule 26 (a)(4)(E) disclosure for the witness. And if that disclosure is
452 made in advance of the witness's deposition, those opinions should be explored in the
453 deposition and not in a separate expert deposition. Otherwise, the timing for disclosure
454 of non-retained expert opinions is the same as that for retained experts under Rule
455 26(a)(4)(C) and depends on whether the party has the burden of proof or is responding
456 to another expert.

457 **Scope of discovery—Proportionality. Rule 26(b).** Proportionality is the principle
458 governing the scope of discovery. Simply stated, it means that the cost of discovery
459 should be proportional to what is at stake in the litigation.

460 In the past, the scope of discovery was governed by “relevance” or the “likelihood to lead
461 to discovery of admissible evidence.” These broad standards may have secured just
462 results by allowing a party to discover all facts relevant to the litigation. However, they

463 did little to advance two equally important objectives of the rules of civil procedure – the
464 speedy and inexpensive resolution of every action. Accordingly, the former standards
465 governing the scope of discovery have been replaced with the proportionality standards
466 in subpart (b)(1).

467 The concept of proportionality is not new. The prior rule permitted the court to limit
468 discovery methods if it determined that “the discovery was unduly burdensome or
469 expensive, taking into account the needs of the case, the amount in controversy,
470 limitations on the parties’ resources, and the importance of the issues at stake in the
471 litigation.” The Federal Rules of Civil Procedure contains a similar provision. See Fed. R.
472 Civ. P. 26(b)(2)-(C).

473 Any system of rules which permits the facts and circumstances of each case to inform
474 procedure cannot eliminate uncertainty. Ultimately, the trial court has broad discretion
475 in deciding whether a discovery request is proportional. The proportionality standards
476 in subpart (b)(2) and the discovery tiers in subpart (c) mitigate uncertainty by guiding
477 that discretion. The proper application of the proportionality standards will be defined
478 over time by trial and appellate courts.

479 **Standard and extraordinary discovery. Rule 26(c).** As a counterpart to requiring more
480 detailed disclosures under Rule 26(a), the 2011 amendments place new limitations on
481 additional discovery the parties may conduct. Because the committee expects the
482 enhanced disclosure requirements will automatically permit each party to learn the
483 witnesses and evidence the opposing side will offer in its case-in-chief, additional
484 discovery should serve the more limited function of permitting parties to find witnesses,
485 documents, and other evidentiary materials that are harmful, rather than helpful, to the
486 opponent’s case.

487 Parties are expected to be reasonable and accomplish as much as they can during
488 standard discovery. A statement of discovery issues may result in additional discovery
489 and sanctions at the expense of a party who unreasonably fails to respond or otherwise
490 frustrates discovery. After the expiration of the applicable time limitation, a case is

491 presumed to be ready for trial. Actions for nonmonetary relief, such as injunctive relief,
492 are subject to the standard discovery limitations of Tier 2, absent an accompanying
493 monetary claim of \$300,000 or more, in which case Tier 3 applies.

494 **Consequences of failure to disclose. Rule 26(d).** If a party fails to disclose or to
495 supplement timely its discovery responses, that party cannot use the undisclosed
496 witness, document, or material at any hearing or trial, absent proof that non-disclosure
497 was harmless or justified by good cause. More complete disclosures increase the
498 likelihood that the case will be resolved justly, speedily, and inexpensively. Not being
499 able to use evidence that a party fails properly to disclose provides a powerful incentive
500 to make complete disclosures. This is true only if trial courts hold parties to this standard.
501 Accordingly, although a trial court retains discretion to determine how properly to
502 address this issue in a given case, the usual and expected result should be exclusion of
503 the evidence.

504 **Legislative Note**

505 *Note adopted 2012*

506 [S.J.R. 15](#)

507 (1) The amended language in paragraph (b)(1) is intended to incorporate long-standing
508 protections against discovery and admission into evidence of privileged matters
509 connected to medical care review and peer review into the Utah Rules of Civil Procedure.
510 These privileges, found in both Utah common law and statute, include ~~s~~Sections 26-25-3,
511 58-13-4, and 58-13-5, UCA, 1953. The language is intended to ensure the confidentiality
512 of peer review, care review, and quality assurance processes and to ensure that the
513 privilege is limited only to documents and information created specifically as part of the
514 processes. It does not extend to knowledge gained or documents created outside or
515 independent of the processes. The language is not intended to limit the court's existing
516 ability, if it chooses, to review contested documents in camera in order to determine
517 whether the documents fall within the privilege. The language is not intended to alter
518 any existing law, rule, or regulation relating to the confidentiality, admissibility, or

519 disclosure of proceedings before the Utah Division of Occupational and Professional
520 Licensing. The Legislature intends that these privileges apply to all pending and future
521 proceedings governed by court rules, including administrative proceedings regarding
522 licensing and reimbursement.

523 (2) The Legislature does not intend that the amendments to this rule be construed to
524 change or alter a final order concerning discovery matters entered on or before the
525 effective date of this amendment.

526 (3) The Legislature intends to give the greatest effect to its amendment, as legally
527 permissible, in matters that are pending on or may arise after the effective date of this
528 amendment, without regard to when the case was filed.

529 Effective date. Upon approval by a constitutional two-thirds vote of all members elected
530 to each house. [March 6, 2012]

531

Tab 7

1 **Rule 29. Stipulations regarding disclosure and discovery procedure.**

2 *Effective: ~~11/1/2011~~*

3 The parties may modify the limits and procedures for disclosure and discovery by filing,
4 before the close of standard discovery and after reaching the limits of standard discovery
5 imposed by these rules, a stipulated statement that the extraordinary discovery is
6 necessary and proportional under Rule 26(b)(23) and that each party has reviewed and
7 approved a discovery budget. Stipulations extending the time for disclosure or discovery
8 do not require a statement regarding proportionality or discovery budgets. Stipulations
9 extending the time for or limits of disclosure or discovery require court approval only if
10 the extension would interfere with a court order for completion of discovery or with the
11 date of a hearing or trial.

12

Tab 8

1 **Joint Resolution Amending Court Rules**
 2026 GENERAL SESSION
 STATE OF UTAH
Chief Sponsor: Scott D. Sandall
 House Sponsor: Katy Hall

3 **LONG TITLE**

4 **General Description:**

5 This resolution amends the Utah Rules of Civil Procedure.

6 **Highlighted Provisions:**

7 This resolution:

- 8 ▶ amends Utah Rules of Civil Procedure, Rule 42, to address separate trials in a medical
- 9 malpractice action and transfer to a district court panel;
- 10 ▶ makes technical and conforming changes; and
- 11 ▶ includes a coordination clause with S.J.R. 5, Joint Resolution Amending the Utah Rules
- 12 of Civil Procedure, to address the coordination clause in S.J.R. 5.

13 **Money Appropriated in this Bill:**

14 None

15 **Other Special Clauses:**

16 This resolution provides a special effective date.

17 This resolution provides a coordination clause.

18 **Utah Rules of Civil Procedure Affected:**

19 AMENDS:

20 **Rule 42**, Utah Rules of Civil Procedure

21 **Utah Code Sections affected by Coordination Clause:**

22 **Rule 42**, as Utah Rules of Civil Procedure

24 *Be it resolved by the Legislature of the state of Utah, two-thirds of all members elected to each*
 25 *of the two houses voting in favor thereof:*

26 As provided in Utah Constitution Article VIII, Section 4, the Legislature may amend rules of
 27 procedure and evidence adopted by the Utah Supreme Court upon a two-thirds vote of all
 28 members of both houses of the Legislature:

29 *The following section is affected by a coordination clause at the end of this bill.*

30 Section 1. **Rule 42**, Utah Rules of Civil Procedure is amended to read:

31 **Rule 42 . Consolidation; separate trials; venue transfer.**

32 **(a) Consolidation.**

33 (1) When actions involving a common question of law or fact or arising from the same
34 transaction or occurrence are pending before the court in one or more judicial districts, the
35 court may, on motion of any party or on the court's own initiative:

36 (A) order that the actions are consolidated in whole or in part for any purpose,
37 including for discovery, other pretrial matters, or a joint hearing or trial;

38 (B) stay any or all of the proceedings in any action subject to the order;

39 (C) transfer any or all further proceedings in the actions to a location in which any of
40 the actions is pending after consulting with the presiding judge of the receiving court; and

41 (D) make other such orders concerning proceedings therein as may tend to avoid
42 unnecessary costs or delay.

43 (2) In determining whether to order consolidation and the appropriate location for the
44 consolidated proceedings, the court may consider, among other factors:

45 (A) the complexity of the actions;

46 (B) the importance of any common question of fact or law to the determination of the
47 actions;

48 (C) the risk of duplicative or inconsistent rulings, orders, or judgments;

49 (D) the case and records classification of each case as described in Rule 4-202.02 of
50 the Utah Code of Judicial Administration;

51 (E) the relative procedural postures of the actions;

52 (F) the risk that consolidation may unreasonably delay the progress, increase the
53 expense, or complicate the processing of any action;

54 (G) prejudice to any party that far outweighs the overall benefits of consolidation;

55 (H) the convenience of the parties, witnesses, and counsel; and

56 (I) the efficient utilization of judicial resources and the facilities and personnel of the
57 court.

58 (3) A motion to consolidate may be filed or opposed by any party to either action to
59 be consolidated, without seeking permission to intervene. The motion must be filed in and
60 heard by the judge assigned to the first action filed and must be served on all parties in each
61 action pursuant to Rule 5. The movant must file in each action notice of the motion and notice
62 of the order denying or granting the motion.

63 (4) If the court orders consolidation, the consolidated case will be heard by the judge
64 assigned to the first action filed, unless otherwise ordered by the presiding judge or agreed
65 upon by the originally assigned judges. The court will order that a single case number be used
66 for all subsequent filings in the consolidated case.

67 **(b) Consolidation or severance in whole or in part.** For convenience or to avoid prejudice,
68 the court may:

69 (1) order that the consolidated matters be tried together or that a separate trial be held on
70 any one or more claims, crossclaims, counterclaims, third-party claims, or separate issues; or

71 (2) order that the consolidated matters be severed at any point and provide that the
72 matters be treated as separate actions going forward, including that the severed matters be tried
73 by either the judge in the consolidated matter or the originally assigned judge.

74 **(c) Separate trials in a medical malpractice action.** For a malpractice action against a health
75 care provider, the factfinder may not prejudice a defendant by knowing or considering
76 evidence of the claimant's alleged losses for past medical expenses or the past cost of medical
77 equipment before:

78 (1) liability for the alleged losses has been established; and

79 (2) any claim or award of noneconomic damages, if any, for the alleged losses has been
80 fully adjudicated or entered.

81 **[(e)] (d) Reassignment.** If the consolidation of actions would be otherwise appropriate but is
82 not administratively possible, the judge assigned to the first action may order the court clerk to
83 reassign the other actions to the judge assigned to the first action. Such actions will be treated
84 for all purposes as if they were consolidated except that the actions will retain their separate
85 case numbers, which must be included on all filings.

86 **[(d)] (e) Transfer of action to proper venue or the business and chancery court.**

87 **(1) Transfer to proper venue.**

88 (A) On timely motion of any party, where transfer to a proper venue is available, the
89 court must transfer any action filed in an improper venue.

90 (B) The court must give substantial deference to a plaintiff's choice of a proper
91 venue.

92 (C) On timely motion of any party, a court may:

93 (i) transfer venue of any action, in whole or in part, to any other venue for any
94 purpose, including for discovery, other pretrial matters, or a joint hearing or trial;

95 (ii) stay any or all of the proceedings in the action; and

96 (iii) make other such orders concerning proceedings therein to pursue the interests

97 of justice and avoid unnecessary costs or delay.

98 **(2) Transfer to business and chancery court.**

99 (A) If a plaintiff filed the complaint in the district court and the action meets the
100 jurisdictional requirements of the business and chancery court, a party may file a separate
101 notice requesting transfer of the action to the business and chancery court.

102 (B) If a party makes a request to transfer an action to the business and chancery court
103 within 21 days after the appearance of the party:

104 (i) the district court must transfer the action to the business and chancery court
105 unless the district court determines that the transfer will prejudice the interests of justice; and

106 (ii) the district court may not give any deference to the plaintiff's choice to file the
107 complaint in the district court.

108 (C) If a party makes a request to transfer an action to the business and chancery court
109 more than 21 days after the appearance of the party, the district court may:

110 (i) give deference to the plaintiff's choice to file the complaint in the district court;

111 or

112 (ii) transfer the action to the business and chancery court if the factors described in
113 paragraph ~~[(d)(3)]~~ (e)(3) weigh in favor of transfer.

114 (D) A district court may not transfer the action to the business and chancery court
115 under this rule if the action does not meet the jurisdictional requirements of the business and
116 chancery court.

117 **(3) Factors in determining whether to transfer an action.** On a motion under paragraph [
- 118 ~~(d)(1)]~~ (e)(1) or (2), a court may consider, among other factors, whether the transfer will:

119 (A) increase the likelihood of a fair and impartial determination in the action;

120 (B) minimize expense or inconvenience to parties, witnesses, or the court;

121 (C) decrease delay;

122 (D) avoid hardship or injustice otherwise caused by:

123 (i) the venue requirements if the court is determining whether to transfer the
124 action to the appropriate venue under paragraph ~~[(d)(1)]~~ (e)(1); or

125 (ii) keeping the action in the district court if the court is determining whether to
126 transfer the action to the business and chancery court under paragraph ~~[(d)(2)]~~ (e)(2); and

127 (E) advance the interests of justice.

128 **(4) Expenses.** The court may direct that specified parties pay the expenses, if any, of a
129 transfer of an action to the appropriate venue or to the business and chancery court.

130 ~~[(e)]~~ **(f) Transfer of an action to district court panel.**

131 (1) [~~The Attorney General, the Governor, or the Legislature~~] A party may file a notice to
 132 convene a district court panel, as described in Utah Code section 78A-5-102.7, in an action in
 133 the district court if the notice to convene is filed within 45 days after:

134 (A) the day on which the action is commenced;

135 (B) the day on which the amended complaint is filed if the complaint is amended in
 136 the action; or

137 (C) February 13, 2026, if the action is pending in the district court on February 13,
 138 2026.

139 (2) If [~~the Attorney General, the Governor, or the Legislature~~] a party files a notice to
 140 convene a district court panel, the district court judge assigned to the action at the time the
 141 notice is filed must:

142 (A) notify the presiding officer of the Judicial Council that the action must be
 143 transferred to a district court panel; and

144 (B) transfer the action to the district court panel convened to hear and decide the
 145 action.

146 (3) Upon the filing of a notice to convene a district court panel, the district court judge
 147 assigned to the action at the time the notice is filed may not sever any matter from the action or
 148 take any further action.

149 (4) A district court panel may transfer an action back to the district court judge assigned
 150 to the action at the time the notice was filed if:

151 (A) the party that filed the notice fails to pay the filing fee if a filing fee is required
 152 for the party; or

153 (B) the panel determines that the notice did not comply with paragraph (f)(1) or with
 154 the requirements in Utah Code section 78A-5-102.7.

155 **Section 2. Effective Date.**

156 As provided in Utah Constitution, Article VIII, Section 4, this resolution takes effect
 157 upon a two-thirds vote of all members elected to each house.

158 **Section 3. Coordinating S.J.R. 6 with S.J.R. 5.**

159 If S.J.R. 6, Joint Resolution Amending Court Rules, and S.J.R. 5, Joint Resolution
 160 Amending the Utah Rules of Civil Procedure, both pass and become law, the Legislature
 161 intends that, on the date when both resolutions have passed and taken effect, the coordination
 162 clause in S.J.R. 5 that coordinates with S.J.R. 6 not take effect.



Enacted Legislation Amended by [2026 UTAH COURT ORDER 0027 \(C.O. 0027\)](#),

West's Utah Code Annotated
State Court Rules
Rules of Civil Procedure (Refs & Annos)
Part VI. Trials

UT Rules Civ. Proc., Rule 42

Rule 42. Consolidation; Separate Trials; Venue Transfer

Effective: March 6, 2026

[Currentness](#)

(a) Consolidation.

(1) When actions involving a common question of law or fact or arising from the same transaction or occurrence are pending before the court in one or more judicial districts, the court may, on motion of any party or on the court's own initiative:

(A) order that the actions are consolidated in whole or in part for any purpose, including for discovery, other pretrial matters, or a joint hearing or trial;

(B) stay any or all of the proceedings in any action subject to the order;

(C) transfer any or all further proceedings in the actions to a location in which any of the actions is pending after consulting with the presiding judge of the receiving court; and

(D) make other such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

(2) In determining whether to order consolidation and the appropriate location for the consolidated proceedings, the court may consider, among other factors:

(A) the complexity of the actions;

(B) the importance of any common question of fact or law to the determination of the actions;

(C) the risk of duplicative or inconsistent rulings, orders, or judgments;

(D) the case and records classification of each case as described in [Rule 4-202.02 of the Utah Code of Judicial Administration](#);

(E) the relative procedural postures of the actions;

(F) the risk that consolidation may unreasonably delay the progress, increase the expense, or complicate the processing of any action;

(G) prejudice to any party that far outweighs the overall benefits of consolidation;

(H) the convenience of the parties, witnesses, and counsel; and

(I) the efficient utilization of judicial resources and the facilities and personnel of the court.

(3) A motion to consolidate may be filed or opposed by any party to either action to be consolidated, without seeking permission to intervene. The motion must be filed in and heard by the judge assigned to the first action filed and must be served on all parties in each action pursuant to [Rule 5](#). The movant must file in each action notice of the motion and notice of the order denying or granting the motion.

(4) If the court orders consolidation, the consolidated case will be heard by the judge assigned to the first action filed, unless otherwise ordered by the presiding judge or agreed upon by the originally assigned judges. The court will order that a single case number be used for all subsequent filings in the consolidated case.

(b) Consolidation or Severance in Whole or in Part. For convenience or to avoid prejudice, the court may:

(1) order that the consolidated matters be tried together or that a separate trial be held on any one or more claims, crossclaims, counterclaims, third-party claims, or separate issues; or

(2) order that the consolidated matters be severed at any point and provide that the matters be treated as separate actions going forward, including that the severed matters be tried by either the judge in the consolidated matter or the originally assigned judge.

(c) Separate Trials in A Medical Malpractice Action. For a malpractice action against a health care provider, the factfinder may not prejudice a defendant by knowing or considering evidence of the claimant's alleged losses for past medical expenses or the past cost of medical equipment before:

(1) liability for the alleged losses has been established; and

(2) any claim or award of noneconomic damages, if any, for the alleged losses has been fully adjudicated or entered.

(d) Reassignment. If the consolidation of actions would be otherwise appropriate but is not administratively possible, the judge assigned to the first action may order the court clerk to reassign the other actions to the judge assigned to the first action. Such

actions will be treated for all purposes as if they were consolidated except that the actions will retain their separate case numbers, which must be included on all filings.

(e) Transfer of Action to Proper Venue or the Business and Chancery Court.

(1) *Transfer to Proper Venue.*

(A) On timely motion of any party, where transfer to a proper venue is available, the court must transfer any action filed in an improper venue.

(B) The court must give substantial deference to a plaintiff's choice of a proper venue.

(C) On timely motion of any party, a court may:

(i) transfer venue of any action, in whole or in part, to any other venue for any purpose, including for discovery, other pretrial matters, or a joint hearing or trial;

(ii) stay any or all of the proceedings in the action; and

(iii) make other such orders concerning proceedings therein to pursue the interests of justice and avoid unnecessary costs or delay.

(2) *Transfer to Business and Chancery Court.*

(A) If a plaintiff filed the complaint in the district court and the action meets the jurisdictional requirements of the business and chancery court, a party may file a separate notice requesting transfer of the action to the business and chancery court.

(B) If a party makes a request to transfer an action to the business and chancery court within 21 days after the appearance of the party:

(i) the district court must transfer the action to the business and chancery court unless the district court determines that the transfer will prejudice the interests of justice; and

(ii) the district court may not give any deference to the plaintiff's choice to file the complaint in the district court.

(C) If a party makes a request to transfer an action to the business and chancery court more than 21 days after the appearance of the party, the district court may:

(i) give deference to the plaintiff's choice to file the complaint in the district court; or

(ii) transfer the action to the business and chancery court if the factors described in paragraph (e)(3) weigh in favor of transfer.

(D) A district court may not transfer the action to the business and chancery court under this rule if the action does not meet the jurisdictional requirements of the business and chancery court.

(3) *Factors in Determining Whether to Transfer an Action.* On a motion under paragraph (e)(1) or (2), a court may consider, among other factors, whether the transfer will:

(A) increase the likelihood of a fair and impartial determination in the action;

(B) minimize expense or inconvenience to parties, witnesses, or the court;

(C) decrease delay;

(D) avoid hardship or injustice otherwise caused by:

(i) the venue requirements if the court is determining whether to transfer the action to the appropriate venue under paragraph (e)(1); or

(ii) keeping the action in the district court if the court is determining whether to transfer the action to the business and chancery court under paragraph (e)(2); and

(E) advance the interests of justice.

(4) *Expenses.* The court may direct that specified parties pay the expenses, if any, of a transfer of an action to the appropriate venue or to the business and chancery court.

(f) Transfer of an Action to District Court Panel.

(1) A party may file a notice to convene a district court panel, as described in Utah Code section 78A-5-102.7, in an action in the district court if the notice to convene is filed within 45 days after:

(A) the day on which the action is commenced;

(B) the day on which the amended complaint is filed if the complaint is amended in the action; or

- (C) February 13, 2026, if the action is pending in the district court on February 13, 2026.
- (2) If a party files a notice to convene a district court panel, the district court judge assigned to the action at the time the notice is filed must:
- (A) notify the presiding officer of the Judicial Council that the action must be transferred to a district court panel; and
 - (B) transfer the action to the district court panel convened to hear and decide the action.
- (3) Upon the filing of a notice to convene a district court panel, the district court judge assigned to the action at the time the notice is filed may not sever any matter from the action or take any further action.
- (4) A district court panel may transfer an action back to the district court judge assigned to the action at the time the notice was filed if:
- (A) the party that filed the notice fails to pay the filing fee if a filing fee is required for the party; or
 - (B) the panel determines that the notice did not comply with paragraph (f)(1) or with the requirements in Utah Code section 78A-5-102.7.

Credits

[Amended effective November 1, 2003. Amended December 11, 2020, effective January 1, 2021. Amended effective January 28, 2026; February 13, 2026; March 6, 2026.]

Editors' Notes

ADVISORY COMMITTEE NOTES

2021 Amendment Note [Amended 2026]

The addition of paragraph (d) arose in part from the Supreme Court's decision in [Davis County v. Purdue Pharma, L.P., 2020 UT 17](#).

[Notes of Decisions \(51\)](#)

Utah Rules of Civil Procedure, Rule 42, UT R RCP Rule 42

Current with amendments received through March 1, 2026. Some rules may be more current, see credits for details.

Tab 9

1 **[PROPOSED] Rule 88. Form and validity of signed declarations; verification and**
2 **acknowledgement of documents.**

3 (a) **Definitions.** ~~Throughout these rules:~~ As used in these rules:

4 (1) ~~The term “Acknowledged”~~ means verified before a notary public or other
5 individual authorized to take acknowledgements.

6 (2) ~~The term “declarant/Declarant”~~ means the person who gives a signed declaration.

7 (3) ~~The term “Signed declaration”~~ means a sworn declaration or unsworn
8 declaration.

9 (4) (A) ~~The term “sworn Sworn declaration”~~ means a declaration in a written and
10 signed document given under oath before ~~any~~ judge, ~~any court clerk~~ the clerk of
11 ~~any court, any~~ justice court judge, or ~~any~~ notary public.

12 (B) ~~The term~~ A “sworn declaration” includes a written sworn statement, certificate,
13 affidavit, or other document with ~~an notarized or~~ acknowledged signature.

14 (5) ~~The term “unsworn Unsworn declaration”~~ means a declaration in a written and
15 signed document not given under oath but given under penalty of Title 76, Chapter
16 8, Part 5 Falsification in Official Matters.

17 (6) ~~The term “verification Verification”~~ means the act of causing a document or facts
18 to be verified.

19 (7) ~~The term “verified Verified”~~ means including or accompanied by a signed
20 declaration in accordance with paragraph (d) of this rule.

21 (b) **Validity of unsworn declaration.** Except as otherwise ~~specifically~~ provided by statute
22 or rule, if a rule requires or permits the use of a sworn declaration, an unsworn
23 declaration meeting the requirements of this rule has the same effect as a sworn
24 declaration.

25 (c) **Form of unsworn declaration.** An unsworn declaration must include language in
26 substantially the following form:

Commented [AM1]: Derived and adapted from, and intended to be consistent with, the Uniform Unsworn Declarations Act, Utah Code 78B-18a-101, et seq.

Commented [JMP2]: I suggested this revision and others in this definitional section to match the presentation we use in other URCP rules where we provide definitions (e.g., URCP 64 and 87).

Commented [AM3]: Language derived and adapted from Utah Code § 75A-2-119

Commented [JMP4]: Do we need to define acknowledgement?

Commented [AM5]: Language derived and adapted from Utah Code 78B-18a-102(4).

Commented [JMP6]: I see that the statute sets out a justice court judge separately, but I'm not sure we want to do the same. I think judge for our purposes includes justice court judge and I'd rather not suggest otherwise.

Commented [AM7]: Language derived and adapted from Utah Code 78B-5-701

Commented [AM8]: Language derived and adapted from Utah Code 78B-18a-102(4).

Commented [AM9]: Language derived and adapted from current Rule 11.

Commented [JMP10]: Three thoughts:
1. Does a sworn declaration need to be acknowledged? The definition in (A) doesn't require it, but the examples in (B) suggests that it does. If so, we should incorporate that into the definition. Maybe: "Sworn declaration" means a declaration in a written and signed document, given under oath before and acknowledged by a judge, a court clerk, a justice court judge, or notary public.

1. I think we should revise (B) as: "A 'sworn declaration' includes a certificate or affidavit." Saying that it includes a "written sworn statement" doesn't seem to add much given that the term is defined as a *declaration in a written and signed document*. Also, if the acknowledgment is required to be a sworn declaration, then we don't need the "other document with a notarized or acknowledged signature."

1. I removed "notarized or" because I don't think it's necessary given the way "acknowledged" is defined above.

Commented [AM11]: Language derived and adapted from Utah Code 78B-18a-201(5).

Commented [AM12]: Language derived and adapted from Utah Code 78B-18a-104.

Commented [AM13]: Language derived and adapted from Utah Code 78B-18a-106.

27 I declare under criminal penalty under the law of Utah that the foregoing is true
28 and correct.

29 Signed on the ___ day of _____, _____, at _____.

30 Date Month Year City or other location, and state or

31 country

32 _____

33 Printed name

34 _____

35 Signature

36 (d) **Verified documents.** If a rule requires or permits a document or any portion thereof
37 to be verified, the document must be verified by a signed declaration, in the same
38 document or in one or more separate supporting documents, that is based on the
39 declarant’s personal knowledge and shows that the declarant is competent to testify on
40 the matters set forth **in the declaration or document.**

41 (e) **Filing.** If a **person files a signed declaration or verified document is filed, then filer the**
42 **filing party** must comply with Rule 5(f).

43

44 *Effective:*

Commented [AM14]: Language derived and adapted from current Rules 7A(b), 7B(b), and 56(c)(4)

Commented [JJMP15]: I don’t think we need “declaration” as the declaration is attesting to what it is in the document.

Commented [AM16]: Language derived and adapted from current Rule 11.

Commented [JJMP17]: I suggested these revisions b/c someone other than a party might file. Also, although we try to avoid identifying the subparts, I do wonder if it’s helpful here to direct there reader to (f) in particular. I started to read through Rule 5 trying to figure out how someone would comply before finally seeing (f).