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 (*Discussion)*	Tab 2	Nick Styles
Rule 5 – amendments regarding serving parties in default *(Discussion; Motion to request approval for public comment*)	Tab 3	Judge Scott
New Rule 110 – Judicial interview of a minor child (*Discussion; Motion to request approval for public comment*)	Tab 4	Judge Conklin
Rule 26 – General provisions governing disclosure and discovery *(Discussion; Motion to request approval for public comment*)	Tab 5	Michael Stahler
Rule 29 – Stipulations regarding disclosure and discovery procedure *(Discussion; Motion to request approval for public comment*)	Tab 6	Rod Andreason
SJR06 – Amendments to Rule 42 finalized by constitutional two-thirds vote (*Informational)*	Tab 7	Rod Andreason
Rules 64 and 64E – Changes recommended based on the passage of SB0156 (*Discussion)*	Tab 8	Tonya Wright
New Rule 88 - Affidavits vs Declarations (*Discussion; Motion to request approval for public comment*)	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, *Emeritus*	X		
James Hunnicutt, *Emeritus*	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 HB0280

~~{Omitted text}~~ shows text that was in HB0280 but was omitted in HB0280S03
inserted text shows text that was not in HB0280 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.

Third Party Litigation Funding Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor:

LONG TITLE

General Description:

This bill modifies {~~the Maintenance Funding Practices Act~~} provisions related to maintenance funding agreements.

Highlighted Provisions:

This bill:

- defines terms;
- distinguishes between consumer maintenance funding agreements and commercial maintenance fundingagreements;
- **requires maintenance funding providers to register with the Division of Consumer Protection;**
- extends the {~~consumer's~~ } right of rescissionfor a consumer maintenance funding agreement;
- {~~**restricts foreign investment;**~~}
- **imposes disclosure requirements in connection with consumer and commercial maintenance funding agreements;**
-

HB0280

restricts {~~specified~~ } certain relationships between {~~an attorney~~ } attorneys and {~~a~~ } maintenance funding {~~provider~~} providers;

- {**~~provides that a funding provider is jointly and severally liable for an award or order imposing costs or monetary sanctions against a consumer related to the legal claim for which funding was provided;~~**}
- {**~~protects communications between a consumer's attorney and the consumer maintenance funding provider that ascertain a claim's status or an expected value from discovery;~~**}
- {**~~requires that a party disclose, without a discovery request, any commercial maintenance funding agreement where the commercial maintenance funding provider's compensation is contingent on the outcome of the legal claim;~~**}
- {~~provides that a commercial~~ } prohibits maintenance funding {~~agreement is admissible at trial~~} arrangements involving foreign entities or persons of concern;
- **establishes priority and assignability provisions relating to maintenance funding interests;**
- restricts a commercial maintenance funding provider from {~~making decisions, having influence, or~~ } directing {~~the conduct, settlement, or resolution of a legal claim for which funding was provided; and~~} or controlling litigation decisions;
- **provides for enforcement, penalties, and rulemaking;**
- **provides a coordination clause to substantively and technically coordinate changes between this bill and S.B. 38, Consumer Protection Modifications, and**
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

~~{13-57-401 , as enacted by Laws of Utah 2020, Chapter 118}~~

~~{13-57-402 , as enacted by Laws of Utah 2020, Chapter 118}~~

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

~~{13-57-502 , as enacted by Laws of Utah 2020, Chapter 118}~~

~~{13-57-503 , as enacted by Laws of Utah 2020, Chapter 118}~~

ENACTS:

13-57-504 , Utah Code Annotated 1953

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

~~{13-57-506 , Utah Code Annotated 1953}~~

13-57-601 , Utah Code Annotated 1953

~~{13-57-602 , Utah Code Annotated 1953}~~

REPEALS:

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

Utah Code Sections affected by Coordination Clause:

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

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

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

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

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

13-57-102. Definitions.

As used in this chapter:

(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.

(2)

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

(i) whereby a third party agrees to provide funds to a named party {~~or a law firm~~ } affiliated with a legal claim; and

(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 {~~an action or group of actions or the appearing counsel or~~ } a {~~contractual co-counsel or the law firm of the counsel or co-counsel executed with:~~} legal claim.

{~~(A) {an attorney representing a party;}~~ }

{~~(B) {a co-counsel in the litigation with a contingent fee interest in the representation of that party; or}~~ }

{~~(C) {a third party that has a collateral-based interest in the contingency fees of the counsel or co-counsel firm related in whole or in part to the fees derived from representing that party.}~~ }

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

(i) a consumer maintenance funding agreement;

(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;

(iii) a health insurance plan or agreement;

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

(v) a funding agreement to a nonprofit organization that represents a client on a pro bono basis; {~~or~~}

(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{~~.~~} ;

(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

(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.

(3)

(a) "Commercial maintenance funding provider" means a person that enters into {~~or offers to enter into~~ } a commercial maintenance funding agreement with a {~~plaintiff, a lawyer, or a law firm asserting~~ } party to a legal claim {~~on behalf of a plaintiff~~} .

(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.

(4) "Consumer" means:

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

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

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

(5)

(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.

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

(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

(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.

(6)

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

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

(i) an immediate family member of a consumer;

(ii) an accountant providing accounting services to a consumer; {~~or~~}

(iii) an attorney providing legal services to a consumer{~~.~~} ; or

{~~[(2)] (7)~~} a bank, lender, financing entity, or other special purpose entity:

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

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

[~~(2)~~] (7) "Director" means the director of the Division of Consumer Protection.

[~~(3)~~] (8) "Division" means the Division of Consumer Protection of the Department of Commerce established in Section 13-2-1.

[~~(4)~~] (9) "Foreign country or person of concern" means:

(a) a foreign government or person listed in 15 C.F.R. Sec. 791.4; or

(b) an entity designated as a restricted foreign entity in accordance with Section 63L-13-101.

(10)

(a) "Foreign entity of concern" means a partnership, association , corporation, organization, or other legal entity that:

(i) is organized or incorporated in a foreign country of concern;

(ii) is owned or operated by a government, a political subdivision, or a political party of a foreign country of concern;

(iii) has a principal place of business in a foreign country of concern; or

(iv) a foreign organization owns, organizes, or controls that:

(A) is on the federal Office of Foreign Assets Control specially designated nationals and blocked persons list; or

(B) the United States Secretary of State designates as a foreign terrorist organization.

(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).

(11) "Health care provider" means the same as that term is defined in Section 78B-3-403.

[~~(5) "Individual" means a person who:~~]

[~~(a) resides in this state; and~~]

[~~(b) has or may have a pending legal action in this state.~~]

[~~(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.~~]

[~~(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.~~]

[~~(8)~~

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

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

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

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

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

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

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

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

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

(1)

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

(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.

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

(a) in the manner the division determines; and

(b) that includes:

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

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

(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:

(a) in the manner the division determines; and

(b) that includes:

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

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

[~~(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:~~]

[~~(a) if the person:~~]

[~~(i) applies for registration in accordance with this section; and~~]

[~~(ii) complies with the requirements of this chapter; and~~]

[~~(b) until the division makes a determination regarding the person's application for registration under this section.~~]

Section 3. Section **13-57-202** is amended to read:

13-57-202. Consumer maintenance funding provider operations.

(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.

(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.

(3) A consumer maintenance funding provider may not:

(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:

(i) an attorney authorized to practice law;

(ii) a health care provider; or

(iii) an employee, independent contractor, or other person affiliated with a person described in Subsection (3)(a)(i) or (ii);

(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;

(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;

(d) intentionally advertise materially false or misleading information about the consumer maintenance funding provider's services;

(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; [~~or~~]

(f) knowingly pay or offer to pay court costs, filing fees, or attorney fees using legal funding[~~.~~] ; or

(g) attempt to obtain a waiver of a remedy or right from the consumer, including the right to trial by jury.

(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.

{~~(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.}~~ }

(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~~} .

{~~(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.}~~ }

(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.

Section 4. Section **13-57-203** is amended to read:

13-57-203. Annual reports.

(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:

(a) under oath;

(b) with the director; and

(c) in a form the director prescribes.

(2) The report described in Subsection (1) shall include, for the preceding calendar year:

(a) the number of consumer maintenance funding agreements and commercial maintenance funding agreements entered into by the maintenance funding provider;

(b) the total dollar amount of [~~legal~~]funding the maintenance funding provider provided;

(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;

(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~~];

(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

(f) any other information the director requires concerning the maintenance funding provider's business or operations in the state.

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

13-57-301. Consumer maintenance funding agreements.

(1) A consumer maintenance funding agreement shall:

(a) be in writing;

(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 {~~to~~} , can read and understand the terms of the consumer maintenance funding agreement without requiring the assistance of a professional;

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

[~~(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:

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

(ii)

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

(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;

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

[~~(d)~~] (f) include the amount of money the consumer maintenance funding provider provides to the [~~individual~~] consumer;

[~~(e)~~] (g) include an itemization of one-time charges;

[~~(f)~~] (h) include a payment schedule that:

(i) includes the funded amount and all charges; and

(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{~~]~~} ~~period~~};

[~~and~~]

[~~(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~~]

[~~(h)~~] (j) include a provision that:

(i) if there are no available proceeds from the legal action, the [~~individual~~] consumer will owe the consumer maintenance funding provider nothing; and

(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

(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.

(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.

{~~(3)~~ }

(a){(3)} {~~The~~ } A consumer maintenance funding agreement {~~shall contain~~ } is not valid unless the agreement includes a written {~~acknowledgment~~ } certification signed by the consumer stating that {~~attests~~} :

(i){(a)} the consumer, with the consumer's attorney {~~has~~ } , reviewed the mandatory disclosures in Section 13-57-302 {~~with the consumer~~} ;

(ii){(b)} the {~~attorney is being paid~~ } consumer is represented by an attorney in the legal claim on a contingency fee basis in accordance with a written fee agreement;

(iii){(c)} the consumer will direct the consumer's attorney to receive and disburse all proceeds of the legal claim {~~will be disbursed~~ } through {~~either~~ } the attorney's trust account {~~of the attorney~~ } or a settlement fund established {~~to receive~~ } for the {~~proceeds~~ } benefit of the {~~legal claim on the consumer's behalf;~~} consumer; and

(iv){(d)} the consumer will direct the consumer's attorney {~~is obligated~~ } to disburse funds {~~from~~ } in accordance with the {~~legal claim and ensure that the~~ } terms of the consumer maintenance funding agreement {~~are fulfilled;~~} .

{~~(v) {the attorney has not received a referral fee or other consideration from the consumer maintenance funding provider in connection with the maintenance funding, nor will the attorney receive a referral fee or other consideration for the referral in the future; and}~~ }

{~~(vi) {the attorney in the legal claim has provided no tax, public or private benefit planning, or financial advice regarding this transaction.}~~ }

{~~(b) {Subsection (3)(a) applies to a new attorney or law firm that the consumer retains.}~~ }

(4)

(a) {~~the~~ } 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.

(b) The consumer maintenance funding agreement remains valid and enforceable if the consumer terminates an attorney or law firm that the consumer retains.

(5) A consumer maintenance funding provider may not charge or collect a prepayment penalty or fee.

Section 6. Section **13-57-302** is amended to read:

13-57-302. Required disclosures.

{~~(1) In a legal claim in which a plaintiff enters into a consumer maintenance funding agreement, the plaintiff or the plaintiff's attorney shall provide to each of the other parties, and each insurer that has a duty to defend another party, written notice that the plaintiff has entered into a consumer maintenance funding agreement.~~}

{~~(2) In a legal claim in which a plaintiff enters into a consumer maintenance funding agreement, the contents of the consumer maintenance funding agreement are subject to discovery under the Utah Rules of Civil Procedure and Evidence.~~}

{~~(3)~~}

{~~(a) A plaintiff or a plaintiff's attorney shall provide the written notice Subsection (1) requires within 20 days after the day on which the consumer maintenance funding agreement is fully executed.~~}

{~~(b) The disclosure obligation Subsection (1) requires is a continuing obligation.~~}

{~~(4) {The written notice Subsection (1) requires is not admissible as evidence in a court proceeding.~~}

{~~(5)~~}

A consumer maintenance funding provider shall disclose in a consumer maintenance funding agreement:

(1)

{[~~(1)~~] ~~(a)~~} that the consumer maintenance funding provider may not participate in deciding whether, when, or the amount for which a legal action is settled;

{[~~(2)~~] ~~(b)~~} 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;

{[~~(3)~~] ~~(c)~~} 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 CLAIM, UNLESS YOU HAVE VIOLATED A MATERIAL TERM OF THIS AGREEMENT OR YOU HAVE COMMITTED FRAUD AGAINST THE CONSUMER MAINTENANCE FUNDING PROVIDER.";

{[~~(4)~~] ~~(d)~~} 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

{[~~(5)~~] ~~(e)~~} 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."

~~{Section 7. Section **13-57-401** is amended to read: }~~

13-57-401. Rulemaking.

The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(1) establish an application process for a business entity to register with the division as a consumer maintenance funding provider, in accordance with Section 13-57-201;

(2) establish a filing process for a consumer maintenance funding provider to file a consumer maintenance funding agreement with the division;

(3) establish a filing process for annual reports required under Section 13-57-203; and

(4) carry out the provisions of this chapter.

~~{Section 8. Section **13-57-402** is amended to read: }~~

13-57-402. Public education regarding legal funding -- Reporting to Legislature.

[~~(1)~~] The director shall help educate the general public regarding legal funding in the state by:

[~~(a)~~] (1) analyzing and summarizing data consumer maintenance funding providers submit under Section 13-57-203; and

[~~(b)~~] (2) publishing the analysis and summary described in Subsection (1)(a) on the division's web page.

[~~(2) Before October 1, 2022, the director shall report to the Business and Labor Interim Committee on the status of legal funding in the state and make any recommendation the director decides is necessary to improve the regulatory framework of legal funding, including a recommendation on whether to limit charges a maintenance funding provider may impose under a maintenance funding agreement.~~]

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

13-57-501. Enforceability.

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

~~{Section 10. Section **13-57-502** is amended to read: }~~

13-57-502. Penalties -- Enforcement.

(1) After notice and an opportunity for an administrative hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division may, in addition to exercising the division's enforcement powers under Section 13-2-6, enforce the provisions of this chapter by:

(a) revoking or suspending a consumer maintenance funding provider's registration;

(b) ordering a consumer maintenance funding provider to cease and desist from further legal funding;

(c) imposing a penalty of up to:

(i) $1,000 per violation; or

(ii) $10,000 per violation that the division finds willful; or

(d) ordering the consumer maintenance funding provider to make restitution to [~~an individual~~] a consumer.

(2) The division's enforcement powers under this section and Section 13-2-6 do not affect [~~an individual's~~] a consumer's legal claim against a consumer maintenance funding provider.

~~{Section 11. Section **13-57-503** is amended to read: }~~

13-57-503. Applicability.

The requirements of this chapter for a consumer maintenance funding provider do not apply to:

(1) a bank while in the course of conducting a banking business as described in Section 7-3-1;

(2) a deferred deposit lender, as defined in Section 7-23-102, while engaged in the business of deferred deposit lending;

(3) a title lender, as defined in Section 7-24-102, while engaged in the business of extending a title loan; or

(4) a creditor, as defined in Section 70C-1-302, subject to the provisions of Title 70C, Utah Consumer Credit Code.

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

13-57-504. Assignability -- Liens.

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

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

Section 13. Section **13** is enacted to read:

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

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

Section 14. Section **14** is enacted to read:

13-57-506. Joint and several liability for costs.

A maintenance funding provider is jointly and severally liable for any award or order imposing or assessing costs or monetary sanctions against a consumer or a party's legal representative arising from or relating to any civil proceeding, administrative proceeding, claim, or cause of action for which the maintenance funding provider is providing funding.

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

13-57-601. Commercial maintenance funding prohibitions.

{~~6. Commercial Maintenance Funding~~}

(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.

(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 {~~is issued~~} that the court issues in the course of the civil proceeding {~~with~~ } unless a court order specifically allows a commercial maintenance funding providerto have access to such documents or information.

(3)

(a) A commercial maintenance funding provider may not {~~make a decision,~~ } direct, or have {~~influence~~} a contractual right to control, {~~or direct~~ } the {~~plaintiff~~ } party or the {~~plaintiff's~~ } party's attorney {~~with respect to the conduct of the underlying legal claim or a settlement or resolution of the legal claim, or make a decision~~ } with respect to the conduct of the underlying legal claim or a settlement or resolution of the legal claim.

(b) The right to make the decisions Subsection (3)(a) describes {~~remains~~} remains solely with the {~~plaintiff~~ } party and the {~~plaintiff's~~ } party's attorney in the civil proceeding.

Section 10. **Repealer.**

This Bill Repeals:

This bill repeals:

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

Section 16. Section **16** is enacted to read:

13-57-602. Disclosure of a commercial maintenance funding agreement.

(1)

(a) Except as otherwise stipulated or ordered by the court, without awaiting a discovery request, a party or a party's counsel shall provide to the other parties any agreement in which a commercial maintenance funding provider has a right to receive compensation that is contingent on the outcome of the legal claim.

(b) The disclosure obligation Subsection (1)(a) requires is a continuing obligation.

(2) A commercial maintenance funding agreement is admissible as evidence in a court proceeding.

(3) A plaintiff or the plaintiff's attorney shall provide the agreement Subsection (1) requires within 20 days after the day on which the parties execute the commercial maintenance funding agreement.

Section 11. **Effective date.**

Effective Date.

This bill takes effect on May 6, 2026.

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).

2-23-26 9:50 AM

Tab 3

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

(a) When service is required.

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

(2) Serving parties in default.

(A) If no default judgment has been entered against the party, a defaulting party must be served with:

(i) the proposed default judgment and any motion, affidavit or declaration, and memorandum supporting the proposed default judgment; and

(ii) the notice of any hearing to determine the amount of damages to be entered against the defaulting party.

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

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

(ii) as provided in Rule 4, any pleadings asserting new or additional claims for relief against the party or motions to modify or augment a previously entered default judgment; and

(C) if represented by an attorney known to the party seeking default judgment, notice to the attorney, even if that attorney has not formally appeared in the action.

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

(b) How service is made.

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

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

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

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

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

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

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

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

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

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

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

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

(ii) handing it to the person;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) email;

(2) mail;

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

(4) in person.

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

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

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

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

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

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

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

Effective

Advisory Committee Notes

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

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

Note adopted 2015

Tab 4

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

M E M O R A N D U M

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 <u>made</u> at the court's own initiative"?*

- *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"?*

Rule 110. Judicial interview of a minor child.

(a) **Scope.**

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

(2) This rule does not apply to:

(A) testimony by a child; or

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

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

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

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

(A) extenuating circumstances necessitate the interview;

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

(C) the interview is in the child's best interest; and

(D) any other legal requirements are satisfied.

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

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

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

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

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

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

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

(G) any other relevant factor.

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

(c) **Judicial interview procedure.**

(1) The court will permit a party and attorney guardian ad litem to propose questions for the judicial interview. The court will determine which questions to ask.

(2) The court will record the interview.

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

(4) The court may exclude a party or the party's attorney from the judicial interview.

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

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

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

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

(C) that the court will record the interview;

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

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

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

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

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

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

(4) The court will restrict the disclosure of the contents of the interview and the interview record to nonparties during the covered proceeding and after its conclusion.

Effective Date:

Tab 5

Rule 26. General provisions governing disclosure and discovery.

Effective:

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

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

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

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

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

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

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

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

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

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

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

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

(3) Exemptions.

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

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

(ii) governed by Rule 65B or Rule 65C;

(iii) to enforce an arbitration award;

(iv) for water rights general adjudication under Title 73, Chapter 4, Determination of Water Rights.

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

(4) Expert testimony.

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

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

(ii) a brief summary of the opinions to which the expert is expected to testify,

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

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

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

(C) Timing for retained expert discovery.

(i) The party who bears the burden of proof on the issue for which retained expert testimony is offered must serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the close of fact discovery. Within 14 days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert will be permitted.

(ii) The party who does not bear the burden of proof on the issue for which retained expert testimony is offered must serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the later of (A) the date on which the disclosure under paragraph (a)(4)(C)(i) is due, or (B) service of the written report or the taking of the expert's deposition pursuant

to paragraph (a)(4)(C)(i). Within 14 days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert will be permitted.

(iii) If the party who bears the burden of proof on an issue wants to designate retained rebuttal expert witnesses, it must serve on the other parties the information required by paragraph (a)(4)(A) within 14 days after the later of (A) the date on which the election under paragraph (a)(4)(C)(ii) is due or (B) service of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(ii). Within 14 days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert will be permitted. The court may preclude an expert disclosed only as a rebuttal expert from testifying in the case in chief.

(D) Multiparty actions. In multiparty actions, all parties 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) 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 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 is expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). Such an expert cannot be required to provide a report pursuant to paragraph (a)(4)(B). A deposition of such an expert 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.

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

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

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

(iii) designations of the proposed deposition testimony; and

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

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

(6) Form of disclosure and discovery production. Rule 34 governs the form in which all documents, data compilations, electronically stored information, tangible things, and evidentiary material should be produced under this rule.

(b) Discovery scope.

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

(2) Privileged matters.

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

(i) all information in any form provided during and created specifically as part of a request for an investigation, the investigation, findings, or conclusions of peer review, care review, or quality assurance processes of any organization of health care providers as defined in Utah Code Title 78B, Chapter 3, Part 4, Utah Health Care Malpractice Act, for the purpose of evaluating care provided to reduce morbidity and mortality or to improve the quality of medical care, or

for the purpose of peer review of the ethics, competence, or professional conduct of any health care provider; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Statement previously made about the action. A party may obtain without the showing required in paragraph (b)(6) a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement about the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order under Rule 37. A statement previously made is (A) a written statement signed or approved by the person making it, or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(8) Trial preparation; experts.

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

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

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

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

(i) as provided in Rule 35(b); or

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

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

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

(B) Information produced. If a party produces information that the party claims is privileged or prepared in anticipation of litigation or for trial, the producing

party may notify any receiving party of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

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

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

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

(3) Definition of tiers for standard discovery. Actions claiming $50,000 or less in damages are permitted standard discovery as described for Tier 1. Actions claiming more than $50,000 and less than $300,000 in damages are permitted standard discovery as described for Tier 2. Actions claiming $300,000 or more in damages are permitted standard discovery as described for Tier 3. Absent an accompanying damage claim for more than $300,000, actions claiming non-monetary relief are

permitted standard discovery as described for Tier 2. Domestic relations actions are permitted standard discovery as described for Tier 4.

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

(5) Limits on standard fact discovery. Standard fact discovery per side (plaintiffs collectively, defendants collectively, and third-party defendants collectively) in each tier is as follows. The days to complete standard fact discovery are calculated from the date the first defendant's first disclosure is due and do not include expert 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

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

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

(B) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, file a request for extraordinary discovery under Rule 37(a) or

(C) obtain an expanded discovery schedule under Rule 100A.

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

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

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

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

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

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

(e) Signing discovery requests, responses, and objections. Every disclosure, request for discovery, response to a request for discovery, and objection to a request for discovery must be in writing and signed by at least one attorney of record or by the party if the party is not represented. The signature of the attorney or party is a certification under Rule 11. If a request or response is not signed, the receiving party does not need to take any action with respect to it. If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, may take any action authorized by Rule 11 or Rule 37(b).

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

Advisory Committee Notes

Note Adopted 2011

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

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

Subject to the foregoing qualifications, the summary of the witness's expected testimony should be just that–a summary. The rule does not require prefiled testimony or detailed descriptions of everything a witness might say at trial. On the other hand, it requires more than the broad, conclusory statements that often were made under the prior version of Rule 26(a)(1) (e.g., "The witness will testify about the events in question" or "The witness will testify on causation."). The intent of this requirement is to give the other side basic information concerning the subjects about which the witness is expected to testify at trial, so that the other side may determine the witness's relative importance in the case, whether the witness should be interviewed or deposed, and whether additional documents or information concerning the witness should be sought. *See RJW Media Inc. v. Heath*, 2017 UT App 34, ¶¶ 23–25, 392 P.3d 956. This information is important because of the other discovery limits contained in Rule 26.

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

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

The penalty for failing to make timely disclosures is that the evidence may not be used in the party's case-in-chief. To make the disclosure requirement meaningful, and to discourage sandbagging, parties must know that if they fail to disclose important information that is helpful to their case, they will not be able to use that information at trial. The courts will be expected to enforce them unless the failure is harmless or the party shows good cause for the failure.

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

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

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

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

There are a number of difficulties inherent in disclosing expert testimony that may be offered from fact witnesses. First, there is often not a clear line between fact and expert testimony. Many fact witnesses have scientific, technical or other specialized knowledge, and their testimony about the events in question often will cross into the area of expert testimony. The rules are not intended to erect artificial barriers to the admissibility of such testimony. Second, many of these fact witnesses will not be within the control of the party who plans to call them at trial. These witnesses may not be cooperative, and may not be willing to discuss opinions they have with counsel. Where this is the case, disclosures will necessarily be more limited. On the other hand, consistent with the overall purpose of the 2011 amendments, a party should receive advance notice if their opponent will solicit expert opinions from a particular witness so they can plan their case accordingly. In an effort to strike an appropriate balance, the rules require that such

witnesses be identified and the information about their anticipated testimony should include that which is required under Rule 26(a)(1)(A)(ii), which should include any opinion testimony that a party expects to elicit from them at trial. If a party has disclosed possible opinion testimony in its Rule 26(a)(1)(A)(ii) disclosures, that party is not required to prepare a separate Rule 26 (a)(4)(E) disclosure for the witness. And if that disclosure is made in advance of the witness's deposition, those opinions should be explored in the deposition and not in a separate expert deposition. Otherwise, the timing for disclosure of non-retained expert opinions is the same as that for retained experts under Rule 26(a)(4)(C) and depends on whether the party has the burden of proof or is responding to another expert.

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

In the past, the scope of discovery was governed by "relevance" or the "likelihood to lead to discovery of admissible evidence." These broad standards may have secured just results by allowing a party to discover all facts relevant to the litigation. However, they did little to advance two equally important objectives of the rules of civil procedure—the speedy and inexpensive resolution of every action. Accordingly, the former standards governing the scope of discovery have been replaced with the proportionality standards in subpart (b)(1).

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

Any system of rules which permits the facts and circumstances of each case to inform procedure cannot eliminate uncertainty. Ultimately, the trial court has broad discretion

in deciding whether a discovery request is proportional. The proportionality standards in subpart (b)(2) and the discovery tiers in subpart (c) mitigate uncertainty by guiding that discretion. The proper application of the proportionality standards will be defined over time by trial and appellate courts.

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

Parties are expected to be reasonable and accomplish as much as they can during standard discovery. A statement of discovery issues may result in additional discovery and sanctions at the expense of a party who unreasonably fails to respond or otherwise frustrates discovery. After the expiration of the applicable time limitation, a case is presumed to be ready for trial. Actions for nonmonetary relief, such as injunctive relief, are subject to the standard discovery limitations of Tier 2, absent an accompanying monetary claim of $300,000 or more, in which case Tier 3 applies.

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

address this issue in a given case, the usual and expected result should be exclusion of the evidence.

Legislative Note

Note adopted 2012

S.J.R. 15

(1) The amended language in paragraph (b)(1) is intended to incorporate long-standing protections against discovery and admission into evidence of privileged matters connected to medical care review and peer review into the Utah Rules of Civil Procedure. These privileges, found in both Utah common law and statute, include sections 26-25-3, 58-13-4, and 58-13-5, UCA, 1953. The language is intended to ensure the confidentiality of peer review, care review, and quality assurance processes and to ensure that the privilege is limited only to documents and information created specifically as part of the processes. It does not extend to knowledge gained or documents created outside or independent of the processes. The language is not intended to limit the court's existing ability, if it chooses, to review contested documents in camera in order to determine whether the documents fall within the privilege. The language is not intended to alter any existing law, rule, or regulation relating to the confidentiality, admissibility, or disclosure of proceedings before the Utah Division of Occupational and Professional Licensing. The Legislature intends that these privileges apply to all pending and future proceedings governed by court rules, including administrative proceedings regarding licensing and reimbursement.

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

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

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

Tab 6

Rule 29. Stipulations regarding disclosure and discovery procedure.

Effective:

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

Tab 7

Enrolled Copy **S.J.R. 6**

Joint Resolution Amending Court Rules

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Scott D. Sandall

House Sponsor: Katy Hall

LONG TITLE

General Description:

This resolution amends the Utah Rules of Civil Procedure.

Highlighted Provisions:

This resolution:

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

Money Appropriated in this Bill:

None

Other Special Clauses:

This resolution provides a special effective date.

This resolution provides a coordination clause.

Utah Rules of Civil Procedure Affected:

AMENDS:

Rule 42, Utah Rules of Civil Procedure

Utah Code Sections affected by Coordination Clause:

Rule 42, as Utah Rules of Civil Procedure

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

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

The following section is affected by a cooordination clause at the end of this bill.

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

Rule 42 . Consolidation; separate trials; venue transfer.

(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.

[~~(c)~~] (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.

[~~(d)~~] (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 [~~(d)(3)~~] (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 [~~(d)(1)~~] (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 [~~(d)(1)~~] (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 [~~(d)(2)~~] (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.

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

(1) [~~The Attorney General, the Governor, or the Legislature~~] 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 [~~the Attorney General, the Governor, or the Legislature~~] 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.

Section 2. **Effective Date.**

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

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

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

KeyCite Red Flag
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.

End of Document

Tab 8

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.

(2)(a) Appointed constables serving process outside the county in which they are appointed shall contact the sheriff's office or police department of the jurisdiction before serving executions or seizing any property.

(b) An appointed constable or a deputy of an appointed constable shall notify the agency of jurisdiction by contacting the sheriff's office or police department of jurisdiction before serving a warrant of arrest.

(3) The appointed constable may, upon approval of the appointing county, employ and deputize persons who are certified as special function peace officers to function as deputy constables.

(4) If the county legislative body withdraws the authority of an appointed constable, the authority of all deputy constables employed or deputized by the appointed constable is also withdrawn.

(5) If the authority of a constable or deputy constable is withdrawn under Subsection (4), the county shall notify the Peace Officer Standards and Training Division of the Department of Public Safety in accordance with Section 53-6-209.

(6) A constable, contracted or appointed, shall:

(a) attend the justice courts within the constable's county when required by contract or court order; and

(b) execute, serve, and return all process directed or delivered to the constable by a judge of the justice court serving the county, or by any competent authority within the limits of this section.

(7) A constable, contracted or appointed, may:

(a) serve any process throughout the state;[~~and~~]

(b) with the approval of a party directing the constable to seize an individual's property, establish a payment schedule with the individual in lieu of seizing the individual's property; and

[~~(b)~~] (c) carry out all other functions associated with a constable.

(8) A constable shall serve exclusively as an agent for:

(a) the government entity that has a contract with the constable;

(b) the county that appointed the constable; or

(c) the court authorizing or directing the constable.

(9) Except as otherwise provided in this part, a constable may not serve as an agent, or be considered to be serving as an agent, for a person that is not described in Subsection (8).

Section 2. **Effective Date.**

This bill takes effect on May 6, 2026.

Rule 64. Writs in general.

Effective: 5/1/2024

(a) Definitions. As used in Rules 64,64A,64B,64C,64D,64E,69A,69B and 69C:

(1) "Claim" means a claim, counterclaim, cross claim, third party claim or any other claim.

(2) "Defendant" means the party against whom a claim is filed or against whom judgment has been entered.

(3) "Deliver" means actual delivery or to make the property available for pick up and give to the person entitled to delivery written notice of availability.

(4) "Disposable earnings" means that part of earnings for a pay period remaining after the deduction of all amounts required by law to be withheld.

(5) "Earnings" means compensation, however denominated, paid or payable to an individual for personal services, including periodic payments pursuant to a pension or retirement program. Earnings accrue on the last day of the period in which they were earned.

(6) "Notice of exemptions" means a form that advises the defendant or a third person that certain property is or may be exempt from seizure under state or federal law. The notice shall list examples of exempt property and indicate that other exemptions may be available. The notice shall instruct the defendant of the deadline for filing a reply and request for hearing.

(7) "Officer" means any person designated by the court to whom the writ is issued, including a sheriff, constable, deputy thereof, or any person appointed by the officer to hold the property.

(8) "Plaintiff" means the party filing a claim or in whose favor judgment has been entered.

(9) "Property" means the defendant's property of any type not exempt from seizure. Property includes but is not limited to real and personal property, tangible and intangible

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

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

(b) Security.

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

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

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

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

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

(c) Procedures in aid of writs.

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

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

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

(d) Issuance of writ; service

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

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

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

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

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

(3) Service.

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

(B) Limits on writs of garnishment.

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

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

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

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

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

To _____, [Defendant/Garnishee/Claimant]:

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

[Quoting body of writ]

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

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

(e) Claim to property by third person.

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

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

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

(f) Discharge of writ; release of property.

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

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

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

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

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

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

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

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

Rule 64E. Writ of execution.

Effective: 5/1/2014

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

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

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

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

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

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

(d) Reply to writ; request for hearing.

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

(d)(2) The court will set the matter for an evidentiary hearing as soon as possible and not to exceed 14 days. If the court determines that the writ was wrongfully obtained, or that property is exempt from seizure, the court will enter an order directing the officer to release the property. If the court determines that the writ was properly issued and the property is not exempt, the court will enter an order directing the officer to sell or deliver the property. If the date of sale has passed, notice of the rescheduled sale will be given. No sale may be held until the court has decided upon the issues presented at the hearing.

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

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

Tab 9

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

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

(1) "Acknowledged" means verified before a notary public or other individual authorized to take acknowledgements.

(2) "Declarant" means the person who gives a signed declaration.

(3) "Signed declaration" means a sworn declaration or unsworn declaration.

(4) (A) "Sworn declaration" means a declaration in a written and signed document given under oath before a judge, a court clerk, a justice court judge, or a notary public.

(B) A "sworn declaration" includes a written sworn statement, certificate, affidavit, or other document with an acknowledged signature.

(5) "Unsworn declaration" means a declaration in a written and signed document not given under oath but given under penalty of Title 76, Chapter 8, Part 5 Falsification in Official Matters.

(6) "Verification" means the act of causing a document or facts to be verified.

(7) "Verified" means including or accompanied by a signed declaration in accordance with paragraph (d) of this rule.

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

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

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

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

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

_____

Printed name

_____

Signature

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

(e) **Filing.** If a person files a signed declaration or verified document, the filer must comply with Rule 5(f).

Effective: