

**UTAH JUDICIAL COUNCIL
POLICY, PLANNING, & TECHNOLOGY COMMITTEE
MEETING AGENDA**

June 5, 2026– 12:00 p.m. to 1:30 p.m.

Webex

12:00	Welcome and approval of minutes	Action	Tab 1	Judge Gardner
	CJA 4-206. Exhibits	Action	Tab 2	Jace Willard
	CJA 3-421. Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)	Action	Tab 3	Keri Sargent
	CJA 4-906. Guardian ad litem Office, Oversight Committee, and Director CJA 4-906.01. GALs, staff, and volunteers CJA 4-906.02. Private GALs CJA 4-906.03. Complaints	Action	Tab 4	Keisa Williams
	<i>State of Utah v. Mitton</i> , 2024 UT App 44 <i>State of Utah v. Mitton</i> , 2026 UT 11	Discussion	Tab 5	Keisa Williams
1:00	Technology report/proposals	Discussion		Brody Arishita
1:20	Old Business/New Business	Discussion		Judge Gardner
1:30	Adjourn			

2026 Meetings:

July 10, 2026	October 2, 2026
August 7, 2026	November 6, 2026
September 4, 2026	December 4, 2026

TAB 1

Minutes

May 1, 2026

**UTAH JUDICIAL COUNCIL
POLICY, PLANNING and TECHNOLOGY COMMITTEE
MEETING MINUTES**

DRAFT

Webex video conferencing
May 1, 2026 – 12 p.m.

MEMBERS:

PRESENT

EXCUSED

Judge James Gardner, <i>Chair</i>	✓	
Judge Jon Carpenter	✓	
Judge Angela Fonnesbeck	✓	
Judge Christine Johnson	✓	

GUESTS:

Melissa Kennedy
Keri Sargent
Shane Bahr
Jon Puente
Jessica Vázquez-Leavitt
Ramon Rudecindo
Michael Samantha Starks
Jace Willard

STAFF:

Brody Arishita
Keisa Williams
Cindy Schut

(1) Welcome and approval of minutes:

Judge Gardner welcomed the committee members to the Policy, Planning, and Technology Committee (PP&T). PP&T considered the minutes from the March 6, 2026 meeting. With no changes, Judge Johnson moved to approve the minutes as presented. Judge Fonnesbeck seconded the motion. The motion passed unanimously.

(2) Rule back from public comment:

CJA 4-510.04 ADR Training

The public comment period on the above rule has closed. No comments were received.

Judge Fonnesbeck moved to send rule 4-510.04 to the Judicial Council with a recommendation that it be approved as final with a May 18, 2026 effective date. Judge Johnson seconded the motion. The motion passed unanimously.

(3) CJA 3-306.04. Interpreter appointment, payment, and fees:

Jon Puente and Jessica Vázquez-Leavitt presented amendments to rule 3-306.04 regarding interpreter scheduling. To address several issues, including the increasing number of cases requiring interpreter services, contract interpreter double booking, and payment efficiency, the Language Access Program (LAP) recently purchased interpreter scheduling software. During the last four months, the LAP has been piloting the software to make sure that it meets the needs of the Judiciary. LAP sought feedback from all

stakeholders and received concerns from the justice court administration team that some justice courts may be scheduling interpreters outside of the software, which may cause disruptions. The amendments to the rule require interpreters to utilize a scheduling platform approved by the Council.

The committee requested clarification on the language concerning Limited English Proficiency (LEP). LEP is the industry term for people whose native language is not English. Following discussion, the committee removed “a primary language other than English and” on lines 11 and 67 and changed “has a primary language other than English” and LEP to “has LEP” on line 19.

With no further discussion, Judge Gardner moved to send rule 3-306.04 to the Judicial Council with a recommendation that it be posted for a 45-day public comment period. Judge Carpenter seconded the motion. The motion passed unanimously.

(4) S.B. 257. Domestic relations amendments:

- **CJA 4-102. Case, calendar, and panel assignments**

Keri Sargent introduced discussions surrounding S.B. 257, which mandates that, to the extent possible, cases involving the same family should be assigned to a single judge. The committee discussed allowing each district to manage this via local supplemental rules rather than a sweeping statewide rule, to accommodate logistical differences. The committee also discussed the risks of delegating this task to each district. After further discussion, the committee added the following to line 29, “To the extent possible, district courts should assign any civil case or proceeding involving the same child or family to a single judge.”

Judge Gardner moved to recommend to the Judicial Council that rule 4-102 be approved on an expedited basis with a May 18, 2026 effective date, followed by a 45-day public comment period. Judge Fannesbeck seconded the motion. The motion passed unanimously.

(5) H.B. 102. Victim Privacy Amendments:

- **CJA 4-202.02. Records classification**
- **CJA 4-202.12. Request by victim to use initials rather than name**

Keri Sargent and Jace Willard presented amendments to rule 4-202.02 and new rule 4-202.12 in response to the passage of H.B. 102. The bill gives crime victims the choice to have their initials, instead of their names, in public-facing documents. Victims must submit requests to law enforcement, prosecutors, or the court to make this switch. The working group focused on best practices for both training and technological modifications and determined that time limits must be established for when a victim is permitted to make a request and that prosecutors should be responsible for filing corrected charging documents if a request is made after the initial document was filed. Amendments to rule 4-202.02 allow charging documents listing the victim’s name to be classified as “private” pending the receipt of an amended charging document.

The committee discussed adopting a blanket policy utilizing initials for all victims versus requiring a formal request but determined that a blanket policy would be a significant restriction on public access to court records. Melissa Kennedy noted that CARE does not currently have a programmatic mechanism for reclassifying records similar to the programming in CORIS, but juvenile court teams are working to ensure those records are classified as “private.”

Following discussion, the committee defined “Court Record” in line 11 to include “publicly accessible court filings or documents,” to clarify that the rule does not apply to audio or video recordings. That term was capitalized throughout the rule.

Following further discussion, Judge Carpenter moved to recommend to the Judicial Council that all amendments to rule 4-202.02 and new rule 4-202.12 be approved on an expedited basis with a May 18, 2026 effective date, followed by a 45-day public comment period. Judge Johnson seconded the motion. The motion passed unanimously.

(6) S.B. 283. Court fees and administration amendments:

- **CJA 4-202.08. Fees for records, information, and services**

In lines 480-481 of S.B. 283, all fees (copy and filing) are waived for Utah government entities and political subdivisions. Keri Sargent advocated for a narrow interpretation of the waiver, noting that a broad interpretation would overwhelm Judicial Assistants with audio requests from outside agencies. This issue will be resolved when H.B. 540 takes effect in January 2027. The bill restructures audio request processes and allocates funds for the fulfillment of audio requests.

Following discussion, the committee took no action on rule 4-202.08 at this time.

(7) H.B. 540 Judicial transparency and information access amendments

- **CJA 3-110. Judicial Officer Financial Disclosure**

Under H.B. 540, the Council must “by rule” require judges and commissioners in courts of record and not of record to submit annual financial disclosures that are “comparable to” the conflict-of-interest disclosures in Utah Code section 20A-11-1604. The disclosures must be posted on the court’s website. Before November 1, 2026, the Council must submit a written report to the Judiciary Interim Committee “describing the actions the Judicial Council has taken” to comply with H.B. 540. The relevant portion of H.B. 540 will be effective on 5/6/2026.

The committee raised concerns about including too much detail in a court rule. Ms. Williams will draft a simplified rule and create a more detailed disclosure form using language from the statute and this initial rule draft. Some committee members expressed safety concerns regarding the disclosure of confidential information about family members, particularly young adults still living in a judge’s home. The committee also discussed the definition of “income” and Judge Carpenter noted that justice court judges are not paid by the state.

Following further discussion, Judge Carpenter moved to recommend to the Judicial Council that rule 3-110 be approved on an expedited basis with a May 18, 2026 effective date, followed by a 45-day public comment period, and that the financial disclosure form be placed on the Council’s main agenda for discussion. Judge Johnson seconded the motion. The motion passed unanimously.

(8) H.B. 372. Child welfare changes (GAL Oversight)

- **CJA 1-205. Standing and ad hoc committees**
- **CJA 4-906. Guardian ad litem program**

The proposed amendments to rules 1-205 and 4-906 are in response to H.B. 372. In rule 1-205, the committee removed “Judicial” in line 240, removed the statutory reference in line 238, and changed

“not terminate” to “be dissolved” in line 504. Many of the Guardian ad Litem (GAL) Oversight Committee’s and GAL Director’s duties currently in rule 4-906 are now set forth in H.B. 372. To avoid overlap, the committee determined that the rule should refer primarily to duties outlined in statute.

The committee discussed the importance of protecting nonpublic court records, particularly juvenile court records, and records in pending cases. Proposed language stipulates that court record reviews may only include cases that have reached final disposition and are no longer pending or impending before any court. The committee discussed CJA rule 4-202.03 governing access to juvenile court records and asked Ms. Williams to include language from Rule 2.10 of the Utah Code of Judicial Conduct guarding against interference with a fair trial or hearing, including words or actions which may affect the outcome or impair the fairness of a pending or impending matter.

The committee also made the following changes:

- in line 42 removed, “In addition to responsibilities under the Utah Code,” and replaced it with “perform the duties established in Utah Code;”;
- under qualifications and responsibilities, “admitted to the practice of law” was replaced with “be a member in good standing with the Utah State Bar”; and
- removed “with or without a complaint” in line 185.

The committee discussed language to clarify that the Council is the ultimate arbiter in the event of a conflict between the State Court Administrator and the Oversight Committee regarding the GAL Director. The committee also discussed including an appellate review process for complaints against GALs. Ms. Williams will revise the draft of rule 4-906 in accordance with the committee’s feedback and put it on the Council’s main agenda for discussion.

Judge Gardner moved to recommend to the Judicial Council that rules 1-205 and 4-906 (as amended) be approved on an expedited basis with a May 18, 2026 effective date, followed by a 45-day public comment period. Judge Johnson seconded the motion. The motion passed unanimously.

(9) CJA 3-412. Procurement of goods and services

Ms. Williams presented updates to the procurement rule to mirror similar provisions in the Utah Code. The committee asked whether a “written” determination in line 93 was required. Ms. Williams noted that the requirement is set forth in the Utah Code.

Judge Johnson moved to recommend to the Judicial Council that rule 3-412 be approved on an expedited basis with a May 18, 2026 effective date, followed by a 45-day public comment period. Judge Fannesbeck seconded the motion. The motion passed unanimously.

Technology report/proposals:

None.

Old Business/New Business:

None.

Adjourn: With no further items for discussion, the meeting adjourned at 2:24 p.m. The next meeting will be held on June 1, 2026, at 12:00 p.m. via Webex video conferencing.

TAB 2

CJA 4-206. Exhibits

Notes: The Utah Rules of Evidence Committee (URE Committee) presented new proposed URE 107. Illustrative Aids (modeled after FRE 107) to the Supreme Court. The Court asked the URE Committee to coordinate with other relevant rules committees to make related changes. Jace Willard will present proposed amendments to CJA 4-206 to address the treatment of illustrative aids.

Rule 4-206. Exhibits.**Intent:**

To establish a uniform procedure for the receipt, maintenance, and release of exhibits.

Applicability:

This rule applies to all trial courts of record and not of record, except small claims court. In the discretion of the court, this rule may apply to any proceeding in which exhibits are introduced.

Statement of the Rule:**(1) Marking exhibits.**

(1)(A) **Marking Exhibits.** Prior to trial, or at a time specified by the judge, each party must mark all exhibits it intends to introduce with exhibit labels in the format prescribed by the [court](#) ~~clerk-of-court~~. Labels or tags must include, at a minimum, a case number, exhibit number/letter, and an appropriate party designation. With approval of the court, a photograph may be offered as a representation of the original exhibit.

(1)(B) **Digital Exhibits.** Digital exhibits must be marked as provided in paragraph (1)(A) and submitted to the court as prescribed by the [court](#) ~~clerk-of-court~~. Exhibits should not be eFiled.

(1)(C) **Illustrative Aids.** The court may require an illustrative aid used or proposed for use under Rule 107 of the Utah Rules of Evidence to be marked, listed in the exhibit list, retained, or included in the record.

(1)(~~D~~**C**) **Courts not of record.** Courts not of record may exempt parties from the requirements outlined in paragraphs (1)(A) and (1)(B) and prescribe an alternative process for marking exhibits.

(2) Exhibit custody during trial.

(2)(A) **Custody of the Parties.** During the trial, bulky and sensitive exhibits, and exhibits that require law enforcement chain of custody, will remain in the custody of the party offering the exhibit or in the custody of the appropriate law enforcement agency. Such exhibits include, but are not limited to: biological evidence, biohazards, controlled substances, paraphernalia, firearms, ammunition, explosive devices, pornographic materials, jewelry, poisonous or dangerous chemicals, intoxicating liquors, money or articles of high monetary value, counterfeit money, original digital storage media such as a hard drive or computer, and documents or physical exhibits of unusual bulk or weight. The [court](#) ~~clerk-of-court~~ or designee must list these exhibits in the exhibit list and note that the original exhibit is in the custody of the party or agency.

(2)(B) **Custody of the Court.** Physical exhibits offered, other than those in paragraph (2)(A), must be placed in the custody of the [court](#) ~~clerk-of-court~~ or designee. Digital exhibits offered will be stored electronically or on digital media such as a thumb drive and stored in accordance with paragraph (2)(C). The [court](#) ~~clerk-of-court~~ or designee

1 must list all exhibits in the exhibit list, and the list will be made a part of the court record.
2 An exhibit list may be the court's designated case management system or a form
3 approved by the ~~Judicial~~ Council.

4 **(2)(C) Secured Storage.**

5 (2)(C)(i) Upon daily adjournment, the court clerk-~~of court~~ or designee must
6 compare the exhibit list with the exhibits offered that day. Digital exhibits in the
7 custody of the court will be stored electronically in a manner meeting the
8 requirements outlined in paragraph (3)(A)(ii). Physical exhibits in the custody of
9 the court must be stored in an envelope or container, marked with the case
10 number, and stored in a secured storage location that meets the requirements
11 outlined in paragraph (3)(A)(ii).

12 (2)(C)(ii) Exhibits may be stored in a temporary secured location for no more than
13 72 hours, provided the temporary location is sufficient to prevent access by
14 unauthorized persons, and the location is secured with a key lock, combination
15 lock, or electronic lock. Access to the temporary storage location will be limited to
16 the court clerk-~~of court~~, judge, or a designee.

17 **(3) Exhibit custody prior to disposition.**

18 (3)(A) **Pending Disposition.** Exhibits in the court's custody pursuant to paragraph (2)(B)
19 may not be taken from the custody of the court clerk-~~of court~~ or designee until final
20 disposition of the case, except upon order of the court and execution of a receipt that
21 identifies the material, the party or law enforcement agency to whom the exhibit is
22 released, and the date and time of the release. The receipt will be made a part of the
23 court record.

24 (3)(A)(i) **Exhibit Manager.** The court clerk-~~of court~~ will appoint an exhibit
25 manager with responsibility for the security, maintenance, documentation of the
26 chain of custody, and disposition of exhibits. The court clerk-~~of court~~ may also
27 appoint a person to act as exhibit manager during periods when the primary
28 exhibit manager is absent. Unaccompanied or unauthorized access to secured
29 storage locations by anyone other than the exhibit manager, acting exhibit
30 manager, or the court clerk-~~of court~~ is prohibited without a court order.

31 (3)(A)(ii) **Secured Storage Location.** Each court must provide physical and
32 electronic secured storage locations within their facility for storing exhibits
33 retained by the court under subsection (2)(B), and will maintain a current
34 inventory list of all exhibits in the court's custody. The physical secured storage
35 location must be sufficient to prevent access from unauthorized persons, secured
36 with a key lock, combination lock, or electronic lock, and protected from theft or
37 damage. The electronic secured storage location should be sufficient to prevent
38 access from unauthorized persons. Prior to use, physical and electronic secured
39 storage locations must be certified by the Court Security Director. Requests for
40 certification must be made in writing and will fully describe the secured storage

location, local access procedures, and security controls. Any changes to the location, access procedures, or security controls require recertification by the Court Security Director.

(3)(B) Exhibit custody post disposition.

(3)(B)(i) **Courts of record.** In courts of record, upon final disposition of the case, exhibits in the court's custody will be disposed of or returned to the offering parties or appropriate law enforcement agency pursuant to paragraph (5). The ~~court~~ clerk-~~of court~~, exhibit manager, or designee will execute a receipt identifying the material sent, the party to whom the exhibit is released, and the date and time of the release. The receipt will be made a part of the court record.

(3)(B)(ii) **Courts not of record.** In civil cases in courts not of record, upon final disposition of the case, all exhibits in the court's custody will be returned to the parties. In criminal cases in courts not of record, upon final disposition of the case, all exhibits in the court's custody will be given to the offering party or appropriate law enforcement agency, which must comply with Utah Code title 77, chapter 11c, Retention of Evidence. The ~~court~~ clerk-~~of court~~, exhibit manager, or designee will execute a receipt identifying the material sent, the party or law enforcement officer to whom the exhibit is released, and the date and time of the release. The receipt will be made a part of the court record.

(3)(C) Exhibits in the custody of the parties. Unless otherwise ordered by the court, exhibits identified in paragraph (2)(A) will remain in the custody of the parties or law enforcement agency until they are eligible for disposal pursuant to paragraph (5)(A)(i) or (5)(B)(i). Parties are responsible for preserving exhibits in the same condition as when they were first admitted into evidence.

(3)(D) Access to exhibits by parties. Parties may file a motion requesting access to an exhibit in the custody of the court or another party. Upon order of the court, the ~~court~~ clerk-~~of court~~, exhibit manager or designee, or party or law enforcement agency with custody of the exhibits will promptly make available for examination exhibits, or original or true copies of the exhibits.

(4) Appeals. Exhibits and exhibit lists will be provided upon appeal in accordance with the Utah Rules of Appellate Procedure.

(5) Disposal of exhibits. Exhibits will be disposed of as follows:

(5)(A) Criminal. In criminal and juvenile delinquency cases:

(5)(A)(i) **Party custody.** Parties and law enforcement agencies with custody of evidence must comply with Utah Code title 77, chapter 11c, Retention of Evidence.

(5)(A)(ii) **Court custody.** Exhibits in the court's custody will be transferred to the offering party or appropriate law enforcement agency no earlier than 365 days

1 after the time for appeal has expired, provided no appeal has been filed and
2 there are no pending post-conviction relief actions or pending appeals of post-
3 conviction relief actions.

4 (5)(B) **Civil.** In cases that are not criminal in nature:

5 (5)(B)(i) **Disposal time.** Provided no appeal has been filed, parties may dispose
6 of, and exhibit managers, court clerks ~~of court~~, or designees will dispose of any
7 exhibits in their custody no earlier than 90 days after the time for appeal has
8 expired.

9 (5)(B)(ii) **Court custody.** Exhibits in the court's custody will be disposed of as
10 follows:

11 (5)(B)(ii)(a) **No monetary value.** Property having no monetary value will
12 be destroyed by the exhibit manager, court clerk ~~of court~~, or designee.
13 The exhibit manager will create a certificate of destruction including a
14 description of the exhibit, the case and exhibit numbers, and the date and
15 time of the destruction. The certificate of destruction will be made a part of
16 the court record.

17 (5)(B)(ii)(b) **Monetary value.** Property having monetary value will be
18 returned to its owner or, if unclaimed, will be given to the offering party,
19 sheriff of the county, or other law enforcement agency to be sold in
20 accordance with Utah Code. The receiving agency will furnish the court
21 with a receipt identifying the receiving agency, the exhibit received, and
22 the date and time the exhibit was received. The receipt will be made a
23 part of the court record.

24 (5)(C) **Time Period.** Upon receipt of remittitur from an appellate court, the time period for
25 all cases is reset.

26 **Effective: ~~7/1/2025~~ November 1, 2026**

TAB 3

CJA 3-421. Working Interdisciplinary Network of Guardianship Stakeholders (WINGS)

Notes: Keri Sargent will present proposed amendments to CJA 3-421

Rule 3-421. Working Interdisciplinary Network of Guardianship Stakeholders (WINGS).**Intent:**

To establish a committee of stakeholders from various disciplines to improve the state's guardianship and conservatorship services and processes.

Applicability:

This rule ~~shall apply~~ applies to all members of the WINGS committee.

Statement of the Rule:

(1) Objectives. The WINGS committee ~~shall~~ will provide leadership to identify the needs in guardianship and conservatorship matters and to secure and coordinate resources to meet those needs.

(2) Responsibilities. The WINGS committee ~~shall~~ will:

(2)(A) assess available services, forms, and rules for guardianship and conservatorship and gaps in those services, forms, and rules;

(2)(B) recommend measures to the ~~Judicial~~ Council, the Utah State Bar, and other appropriate institutions for improving guardianship and conservatorship processes;

(2)(C) support policy initiatives for the enhancement of guardianship, conservatorship, and related infrastructure;

(2)(D) identify and develop education and outreach opportunities regarding guardianships, conservatorships, and their alternatives;

(2)(E) provide training and support to those engaging with the guardianship/conservatorship system;

(2)(F) promote high standards for guardians and conservators;

(2)(G) promote collaboration between WINGS committee members and other stakeholders;

(2)(H) regularly evaluate the needs and priorities of the WINGS committee's efforts; and

(2)(I) strive to maintain interdisciplinary representation of members drawn from the organizations, entities, and individuals related to guardianship and conservatorship matters.

(3) **Chair.** The Chair of the WINGS committee ~~shall~~ will be a ~~Utah D~~istrict ~~c~~Court judge.

44
45 (4) **Executive Committee.** The WINGS Executive Committee ~~shall~~will consist of the ~~Utah~~
46 WINGS committee chair, the Guardianship Reporting and Monitoring Program
47 (GRAMP)~~GRAMP~~ Coordinator, the Court Visitor Program Coordinator, a staff attorney from the
48 Administrative Office ~~of the Courts~~, and up to three members of the Utah-WINGS committee, as
49 determined by the WINGS committee chair.

50
51 (5) **Community stakeholder terms.** One of the purposes of the WINGS committee is to
52 receive regular input from community stakeholder organizations and individual community
53 representatives who have ongoing and historical knowledge of guardianship and
54 conservatorship matters. ~~→~~ If approved by the WINGS committee chair, community stakeholder
55 ~~organizational~~ and individual community representatives appointed to the WINGS committee in
56 accordance with Rule 1-205 are ~~(Rule 1-205(1)(B)(xv)(b)) will be designated by their~~
57 ~~organizations and~~ not subject to the term limits at established in that rule. ~~ions of Rule 1-~~
58 ~~205(3)(B).~~

59
60 *Effective: ~~November 1, 2022~~November 1, 2026*

TAB 4

CJA 4-906. Guardian ad litem Office, Oversight Committee, and Director

CJA 4-906.01. GALs, staff, and volunteers

CJA 4-906.02. Private GALs

CJA 4-906.03. Complaints

Notes: Among other things, [H.B. 372](#) made significant modifications to the Guardian ad Litem Oversight Committee (*lines 263-346*) and the responsibilities of the Director of the Office of Guardian ad Litem (*lines 449-455 and 462-468*).

In May, the Council directed me to prepare amendments to rule 4-906.03 creating a 3-member panel of the GAL Oversight Committee to review appeals related to GAL complaints, including a requirement that the meetings be closed and a provision regarding confidentiality similar to language found in 4-906.

I'm including all four rules because it's helpful to read them together, but the proposed amendments are to rules 4-906 and 4-906.03.

Rule 4-906. Guardian ad litem Office, Oversight Committee, and Director**Intent:**

To establish the responsibilities of the Guardian ad Litem Oversight Committee ("Committee") and the Director of the Office of Guardian ad Litem ("Director").

Applicability:

This rule applies to the Committee, the Director, the Office of Guardian ad Litem ("Office"), and the guardian ad litem ("GAL") program ("Program").

Statement of the Rule:

(1) **Guardian ad Litem Oversight Committee.** Under the Council's direct supervision, the Committee must:

(1)(A) perform the duties established in Utah Code;

(1)(B) appoint the Director ~~of the Office~~ in accordance with procedures established by the Council;

(1)(C) develop the Director's performance plan and conduct performance evaluations in accordance with policies approved by the Council;

~~(1)(D) hear and decide complaints against the Director, a trained Program volunteer, as described in Utah Code section 78A-2-803 ("Volunteer"), or a private guardian ad litem (PGAL) in accordance with Rule 4-906.03;~~

(1)(~~D~~E) monitor the Office's caseload and recommend to the Council adequate staffing levels for GALs and Program staff ("Staff");

(1)(~~E~~F) ensure policies, requirements, and guidelines established by the Committee comply with this Code, the Utah rules of procedure, and court policies; and

(1)(~~E~~G) provide an annual report to the Council in accordance with Rule 1-205 that includes the Committee's evaluation and assessment of the Program.

(2) Case and record reviews.

(2)(A) "GAL Records" means court records to which GALs are authorized access under Rule 4-202.03 and the Utah rules of procedure. Requests to access court records that GALs are not entitled to access must be made in accordance with this Code and the Utah rules of procedure.

(2)(B) The internal court auditor member of the Committee will generate the annual random sample of cases the Committee reviews using criteria established by the Committee. The sample must be limited to cases that have reached final disposition and are no longer pending or impending before any court. The case and record review process must comply with this Code and the Utah rules of procedure.

(2)(C) The Committee must establish procedures to ensure the Committee's review of individual cases and GAL Records will not interfere with a fair trial or hearing or affect the outcome or impair the fairness of a pending or impending matter.

(2)(D) The procedures established in paragraph (2)(C) must be approved by the Council.

(3) Qualifications of the director. The Director must have the qualifications established in Utah Code.

(4) Responsibilities of the director. The Director must:

(4)(A) perform the duties established in Utah Code;

(4)(B) develop the legislative budget appropriation request for the Program;

(4)(C) coordinate GAL appointments among different court levels;

(4)(D) monitor GALs, Staff, and [trained Program volunteers described in Utah Code section 78A-2-803 \("Volunteer"\)](#) by regularly consulting with users and observers of GAL services, including judges, court executives, and court clerks;

(4)(E) require GALs to submit appropriate written reports;

(4)(F) monitor GAL caseloads to ensure compliance with standards established by the American Bar Association;

(4)(G) select Volunteers and court-employed GALs and Staff in accordance with Rule 4-906.01;

(4)(H) coordinate conflict counsel appointments;

(4)(I) supervise, evaluate, and discipline court-employed GALs and Staff in accordance with this Code and the judiciary's human resource policies;

(4)(J) supervise and evaluate the quality of service provided by contracted GALs;

(4)(K) monitor and report to the Committee GAL, Staff, and Volunteer compliance with federal and state statutes, rules, and case law; and

(4)(L) prepare and submit the annual report required under the Utah Code to the Council and the Committee in October. The Committee may amend the report prior to release to the Child Welfare Legislative Oversight Panel.

Effective: May 18, 2026

1 **Rule 4-906.01. GALs, staff, and volunteers**

2 **Intent:**

3 To establish the policies and procedures for the selection, employment, and management of
4 Volunteers and GALs and Staff employed by the Administrative Office.

5 **Applicability:**

6 This rule applies to the Office and Program.

7 **Statement of the Rule:**

8 **(1) GAL qualification and responsibilities.** A GAL must:

9 (1)(A) be a member in good standing with the Utah State Bar;

10 (1)(B) demonstrate experience and interest in applicable law and procedures;

11 (1)(C) perform the duties and responsibilities established in the Utah Code; and

12 (1)(D) comply with all court rules and policies.

13 **(2) Selection and employment.**

14 (2)(A) GALs and Staff employed by the Administrative Office are at-will employees
15 subject to dismissal by the Director with or without cause.

16 (2)(B) The Director must select, supervise, and discipline GALs and Staff in accordance
17 with this Code and the judiciary's human resource policies.

18 (2)(C) GAL and Staff applicants will be interviewed by a panel consisting of the Director
19 or the Director's designee and two or more of the following persons:

20 (2)(C)(i) the local GAL office managing attorney;

21 (2)(C)(ii) the district court or juvenile court executive;

22 (2)(C)(iii) a Committee member;

23 (2)(C)(iv) a Utah State Bar Association member selected by the Director; or

24 (2)(C)(v) an individual selected by the Director.

25 (2)(D) The interview committee established under paragraph (2)(C) will make hiring
26 recommendations to the Director. The Director will make hiring decisions.

27 **(3) Conflicts of interest and disqualification.**

28 (3)(A) If a GAL has a conflict of interest, the GAL must declare the conflict and request
29 that the court appoint a conflict GAL.

(3)(B) Any party who perceives a conflict of interest may file a motion with the court setting forth the nature of the conflict and a request that the GAL be disqualified from further service in that case.

(3)(C) If a court finds that a conflict of interest exists, the court will relieve the GAL from further duties in that case and appoint a conflict GAL.

(3)(D) The Administrative Office may contract with an attorney to provide conflict GAL services.

(3)(E) If a conflict GAL is arranged on a case-by-case basis, the court will use the order form approved by the Council. The order will list the GAL's duties. The court will file the original order in the case and will distribute one copy each to:

(3)(E)(i) the appointed conflict GAL;

(3)(E)(ii) the GAL;

(3)(E)(iii) all parties of record;

(3)(E)(iv) the parents, guardians, or custodians of the child(ren);

(3)(E)(v) the court executive; and

(3)(E)(vi) the Director.

(3)(F) A conflict GAL's compensation may not exceed \$100 per hour or \$3,000 per case in any 12-month period, whichever is less. The per case compensation limit includes incidental expenses incurred in the case.

(3)(G) Under extraordinary circumstances, the Director may increase the compensation limit upon request from the conflict GAL. The request will include a justification showing that the case required work of much greater complexity than, or time far in excess of, that required in most GAL assignments. If a case is appealed, compensation will be as set forth above.

(3)(H) A conflict GAL is not an Office or Administrative Office employee.

(4) Staff and Volunteers.

(4)(A) The Director will develop a strong Volunteer component to the Program and provide support for Volunteer solicitation, screening, and training. Staff and Volunteer responsibilities will be as established by the Director and set forth in Utah Code.

(4)(B) A GAL must supervise Staff and Volunteer training. The Director will provide administrative support.

(4)(C) Staff and Volunteers will receive training in the areas of child abuse, child psychology, juvenile and district court procedures, and local child welfare agency procedures. Staff and Volunteers will also be trained in guidelines established by the National Court Appointed Special Advocate Association.

65 (4)(D) Volunteers serve at the pleasure of the Director.

66 *Effective: May 18, 2026*

Rule 4-906.02. Private GALs**Intent:**

To establish the policies and procedures for the selection, appointment, and payment of private GALs ("PGALs").

Applicability:

This rule applies to the Office and PGALs.

Statement of the Rule:

(1) **List.** The Director must maintain a list of PGALs qualified for appointment.

(2) **Application.** To be included on the list of eligible PGALs, an applicant must submit a written application to the Office and:

(2)(A) be a member in good standing in the Utah State Bar;

(2)(B) provide a Bureau of Criminal Identification criminal history report;

(2)(C) provide a Utah Division of Child and Family Services child abuse database report and similar information from any state in which the applicant has resided as an adult;

(2)(D) provide a certificate of completion for initial or additional necessary training requirements established by the Director;

(2)(E) meet any minimum qualifications as determined by the Director; and

(2)(F) agree to be evaluated at the Director's discretion for competent, professional, proficient, ethical, appropriate conduct, performance, and minimum qualifications, including tracking the frequency and type of interactions with minor clients.

(3) **Appointment.** Upon the appointment of a PGAL, the court will:

(3)(A) use the following language in its order: "The Court appoints a private attorney guardian ad litem to be assigned by the Office of Guardian ad Litem, to represent the best interests of the minor child(ren) in this matter.";

(3)(B) designate in the order whether the PGAL will:

(3)(B)(i) be paid the set fee, as established by paragraph (6), and an initial retainer;

(3)(B)(ii) not be paid and serve pro bono; or

(3)(B)(iii) be paid at a rate less than the set fee in paragraph (6); and

(3)(C) send the order to the Director c/o the PGAL Program.

(4) **Assignment.** Upon receipt of the court's order appointing a PGAL, the Director will contact and assign the case to an eligible attorney, if available.

(5) **Notice of appearance and representation.** On accepting the court's appointment, the assigned attorney must file a notice of appearance with the court within five business days of acceptance and will thereafter represent the best interests of the minor(s) until released by the court.

(6) **Fees.** The hourly fee to be paid by the parties and to be ordered and apportioned by the court against the parties will be \$150.00 per hour or a higher rate determined reasonable by the court. The retainer amount is \$1,000 or a different amount determined reasonable by the court. The retainer amount will be apportioned by the court among the parties and paid by the parties.

(7) **Education.** Each year, PGALs must complete three hours of continuing legal education ("CLE") relevant to the role and duties of a PGAL. To meet this requirement, the Office will provide training opportunities that are accredited by the Utah State Bar Board of Mandatory Continuing Legal Education. In order to provide access to all PGALs, the Office will provide multiple trainings at locations throughout the State or online.

(8) **Removal.**

(8)(A) A PGAL who fails to complete the required number of CLE hours will be notified that unless all requirements are completed and reported within 30 days, the Director may remove the PGAL from the list of eligible PGALs.

(8)(B) The Director may remove a PGAL from the list of eligible PGALs for failure to perform or conduct themselves in a competent, professional, proficient, ethical, or appropriate manner, or for failure to meet minimum qualifications, including the annual CLE requirement. Within a reasonable time after the removal, and in the event the PGAL has not yet been released by the court in a pending case, the Director will provide written notice to the court of the Director's action, and the court may, in its discretion, determine whether the PGAL should be released from the case.

(9) A PGAL is not an Office or Administrative Office employee.

Effective: May 18, 2026

Rule 4-906.03. Complaints**Intent:**

To establish the policies and procedures for complaints regarding GALs, PGALs, Volunteers, and the Director.

Applicability:

This rule applies to the Office and the Program.

Statement of the Rule:

(1) Complaints against the Director or administrative policies. A person may submit a complaint against the Director or an administrative policy or procedure to the Committee chair.

(1)(A) If a person submits a complaint against the Director to the Director's office, the Director must send the complaint to the Committee chair within a reasonable period of time, but not more than 14 days after receipt.

(1)(B) The Committee may investigate a complaint against the Director using a process approved by the Council.

(1)(C) If the Committee and state court administrator agree, the Director may be disciplined up to and including dismissal. If the Committee and the state court administrator do not agree on the proposed disciplinary action or dismissal, the Council will make the final decision.

(2) Complaints against a GAL or Volunteer.**(2)(A) Director.**

(2)(A)(i) A person may submit a complaint against an employed GAL, a PGAL, or a Volunteer to the Director.

(2)(A)(ii) Upon receiving a complaint, the Director will conduct an investigation as determined reasonable by the Director. The Director may meet separately or together with the complainant and the person against whom the complaint is filed. The Director will provide both parties with a copy of the Director's decision, including what action(s), if any, will be taken in response to the complaint.

(2)(A)(iii) ~~E~~ If a GAL and a Volunteer disagree on the major decisions involved in representation of the client, either may notify the Director that the dispute cannot be resolved. The Director's decision regarding the dispute is final and not subject to appeal.

(2)(B) Appeal.

(2)(B)(i) ~~If the complainant is dissatisfied with the Director's resolution, the~~ A complainant may appeal ~~at the~~ decision issued under paragraph (2)(A)(ii) to a 3-member panel of the Committee ("Panel"). The Panel will be formed in

accordance with procedures approved by the Council. The appeal must be submitted in writing within 30 business days of receipt of the Director's decision and must include the initial complaint, the Director's decision, an argument in support of the appeal, and the relief sought.

~~(2)(B)(ii) The Committee will review the appeal.~~ If an appeal can be resolved without accessing nonpublic court records, the Panel will do so. If the Panel must access nonpublic court records, the review must comply with this Code and the Utah rules of procedure.

(2)(B)(iii) The Panel must establish procedures to ensure the Panel review process will not interfere with a fair trial or hearing or affect the outcome or impair the fairness of a pending or impending matter. Those procedures must be approved by the Council.

(2)(B)(iv) Panel meetings will be closed. The Panel may discuss the matter with the Director and may meet separately or together with the complainant and the person against whom the complaint is filed but may not compel any individual to meet or speak with the Panel regarding the complaint.

(2)(B)(v) The Panel will ~~and~~ issue a decision in accordance with paragraph (4) within 45 business days of receipt. Panel decisions are final and not appealable. ~~The Committee may discuss the matter with the Director and may meet separately or together with the complainant and the person against whom the complaint is filed but may not compel any individual to meet or speak with the Committee regarding the complaint.~~

~~(2)(E) If a GAL and a Volunteer disagree on the major decisions involved in representation of the client, either may notify the Director that the dispute cannot be resolved. The Director's decision regarding the dispute is final and not subject to appeal.~~

~~(2)(F) Under no circumstance may the Director, chair, or Committee interfere with a case or court matter. Review of and access to GAL Records and court records must comply with this Code and Rule 4-906(2).~~

(3) Complaint form and submission. Complaints submitted under paragraphs (1) and (2) must be in writing and include:

(3)(A) the name and contact information of the complainant;

(3)(B) the name of the child(ren) involved;

(3)(C) the facts upon which the complaint is based in sufficient detail to inform the Director or Committee of the nature and date of the alleged misconduct; and

(3)(D) when possible, supporting documentation.

(4) **Decision.** In resolving a complaint or appeal under paragraph (2), the Director or ~~Committee~~ Panel may reasonably investigate the complaint, provided the investigation complies with this Code.

(4)(A) If the complaint is against an employed GAL, the Director may discipline the GAL in accordance with the judiciary's human resource policies. The ~~Committee~~ Panel may recommend to the Director or the state court administrator that a GAL be disciplined but may not impose disciplinary action.

(4)(B) If the complaint is against a PGAL, the Director or ~~Committee~~ Panel may remove a PGAL from the qualified list and the Director will notify the court in accordance with Rule 4-906.02.

(4)(C) If the complaint is against a Volunteer, the Director or ~~Committee~~ Panel may revoke the Volunteer's ability to participate in the Program.

(4)(D) Neither the Director nor the ~~Committee~~ Panel have the authority to remove a GAL or PGAL from a case.

(5) Interference with case or court matters. Under no circumstance may the Director, Panel, or Committee interfere with a case or court matter. Review of and access to GAL Records and court records must comply with this Code and Rule 4-906(2).

(6) Office of professional conduct. Nothing in this Rule prohibits the Director or a Committee member from reporting an attorney's conduct to the Utah Office of Professional Conduct (OPC). However, nonpublic court records, including nonpublic court records associated with complaints filed under this rule, may not be shared. Records will be provided to the OPC in accordance with Rule 4-202.10.

(7) Applicability. Paragraphs (2) through (4) do not apply to conflict GALs.

Effective: May 18, 2026

TAB 5

State of Utah v. Mitton, 2026 UT 11

State of Utah v. Mitton, 2024 UT App 44

Notes: I've attached the opinion summary published by the Supreme Court and both opinions. The case summary will give you the gist. The language relevant to this discussion can be found on pages 17-18, ¶155-57 of the Supreme Court opinion and pages 9-12, ¶122-29 of the Court of Appeals opinion.

In an effort to be helpful, the Court of Appeals took the opportunity in this case to clarify the proper procedures trial court judges—the initial judge, the reviewing judge, and the assigned judge—should follow when faced with a motion to disqualify during a criminal jury trial.

The Supreme Court then took the opportunity to remind the CoA that procedure belongs in court rule, not in caselaw, and referred the issue to both its advisory committees and the Judicial Council to consider whether it would be prudent to adopt additional administrative or procedural rules to guide trial courts facing similar circumstances.

[R]ather than embed new rules within caselaw, we have recently emphasized our preference to create procedural rules through our comprehensive rulemaking process ... That process [] ensures that the rule is appropriately adopted by the body with constitutional authority to create such a rule ...

... to the extent the court of appeals purported to adopt new procedure in its effort to guide the courts, that guidance is not binding. But we do note that much of what the court of appeals described is already found in rule. [] To the extent it's not, we refer this matter to our criminal rules advisory committee and the Judicial Council to consider, as appropriate, whether it would be prudent to adopt additional procedural or administrative rules to guide trial courts in these difficult and often time-sensitive situations.

Although we have, in the past, adopted procedural steps in our caselaw, our procedural and administrative rules should be codified in our rule books where they are more readily accessible to parties, lawyers, and the bench.

I'm bringing this to your attention because the Court referred it to the Council, however, I think these particular issues are best addressed through the rules of procedure, specifically [URCP 63](#) and [URCrP 29\(b\)](#).

Opinion Summary

2026 UT 11

State v. Mitton

Background of the case: The State charged Richard Mitton with two counts of aggravated assault. At the end of the first day of his trial, the judge realized that his wife was related to one of the witnesses, and he told the parties about this connection. Mitton asked to remove the judge from presiding over the rest of the case because the relationship could raise concerns of bias and fairness. A second judge reviewed that request and granted it.

The next morning the second judge declared a “mistrial” —he ended the trial and dismissed the jury. That judge then reassigned the case to a third judge. Mitton later asked the third judge to dismiss his case because he thought a new trial would violate his constitutional protection against double jeopardy. The third judge disagreed and said it was legally necessary to declare a mistrial because a new judge was not available at that time to continue with the original trial. Mitton appealed and the court of appeals sided with him. It concluded that Mitton’s constitutional rights were violated because the second judge did not give Mitton an opportunity to object before declaring the mistrial. The State then asked the Utah Supreme Court to review the case.

What the Court was asked to decide: The Supreme Court had to decide whether the “legal necessity” exception to Utah’s constitutional prohibition against double jeopardy can apply when parties aren’t given an opportunity to object before a mistrial is declared.

The Supreme Court’s decision: The Utah Constitution protects a criminal defendant from being “twice put in jeopardy for the same offense.” This double jeopardy provision prohibits the government “from making repeated attempts to convict an individual for the same offense after jeopardy has attached.” In a jury trial, jeopardy attaches when the jury is sworn in. The State cannot retry a defendant after jeopardy attaches unless: (1) the defendant consents to a mistrial, or (2) there is a “legal necessity” for the mistrial.

This case is about the second exception — the “legal necessity” exception. It permits the retrial of a criminal defendant if declaring a mistrial was the “only reasonable alternative to insure justice under the circumstances.” For this exception to apply, the trial court must have carefully evaluated the circumstances, provided the parties with an opportunity to object, and considered whether there were reasonable alternatives to a mistrial.

In this case, the second judge did not provide the parties with an opportunity to object. But the Supreme Court decided that this mistake did not automatically defeat the “legal necessity” exception. Instead, a court deciding whether a defendant can be retried must look at all the circumstances and decide whether a mistrial was truly necessary. And if it appears there was no reasonable alternative to declaring a mistrial, then a new trial may proceed. The Supreme Court reversed the court of appeals’ decision and sent the case back to that court to consider other arguments Mitton had made.

This is an opinion summary. It is not part of the Utah Supreme Court's opinion. It is not to be quoted or used as if it were part of the Court's opinion. This opinion summary was prepared by court staff for the convenience of the public.

2026 UT 11

IN THE
SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,
Petitioner,

v.

RICHARD SCOTT MITTON,
Respondent.

No. 20240586
Heard September 8, 2025
Filed May 7, 2026*

On Certiorari to the Utah Court of Appeals

First District Court, Box Elder County
The Honorable Spencer D. Walsh
The Honorable Brandon J. Maynard
No. 211100057

Attorneys:

Derek E. Brown, Att’y Gen., Connor Nelson, Asst. Solic. Gen.,
Salt Lake City, for petitioner

Wayne K. Caldwell, Wayman M. Stodart, Logan, for respondent

ASSOCIATE CHIEF JUSTICE POHLMAN authored the opinion of the
Court, in which CHIEF JUSTICE DURRANT, JUSTICE PETERSEN,
JUSTICE HAGEN, and JUDGE MABEY joined.

Due to his retirement, JUSTICE PEARCE did not participate herein;
DISTRICT COURT JUDGE JENNIFER A. MABEY sat.

* As of January 31, 2026, “The Supreme Court consists of seven justices.” UTAH CODE § 78A-3-101(1). Pursuant to Utah Supreme Court Standing Order No. 18, this court sat and rendered judgment in this matter as a division of five justices.

Opinion of the Court

JUSTICE NIELSEN became a member of the Court after oral argument in this matter and accordingly did not participate.

ASSOCIATE CHIEF JUSTICE POHLMAN, opinion of the Court:

INTRODUCTION

¶1 At the close of the first day of Richard Mitton’s trial, the judge overseeing his case discovered and disclosed to the parties that the judge’s wife was related to one of the State’s witnesses. In the ensuing hours, Mitton moved to disqualify the judge, arguing that the relationship could undermine the public’s perception of the court’s impartiality.

¶2 As required by rule, the disqualification motion was referred to another judge—in this case, the district’s presiding judge—for review. The next morning, and before trial resumed, the presiding judge granted the motion, “vacated the trial,” and transferred the case to another judge in the district without affording the parties an opportunity to object. The trial judge then excused the jury and advised counsel and Mitton of the developments. The State later filed an amended information with an enhanced charge and moved for an expedited trial setting with the newly assigned judge.

¶3 Before a subsequent trial could occur, Mitton moved to dismiss the charges against him on the basis that, among other things, Utah’s double jeopardy protection barred his retrial. The new judge disagreed. He rejected the motion to dismiss because he concluded that an exception to double jeopardy applied to Mitton’s case—that is, there were no reasonable alternatives, so the mistrial and discharge of the jury had been legally necessary. Mitton appealed.

¶4 The court of appeals reversed and decided that the legal necessity exception to double jeopardy did not apply. Relying on our precedent, the court of appeals concluded that the trial court’s failure to afford the parties an opportunity to object before declaring a mistrial precluded a finding of legal necessity, regardless of what the circumstances were. And as a result, the court concluded that double jeopardy barred the State from retrying Mitton.

¶5 We granted certiorari to decide whether a failure to afford parties an opportunity to object before declaring a mistrial is dispositive in the legal necessity analysis. We conclude that it is not.

Opinion of the Court

Even where parties are not afforded an opportunity to object, if the record reveals that there were no reasonable alternatives to mistrial under the circumstances, the legal necessity exception to double jeopardy applies.

¶6 Accordingly, we reverse the court of appeals’ decision ordering dismissal of the charges against Mitton. Because the court of appeals did not address whether there were reasonable alternatives to declaring a mistrial, and because the issue is not before us on certiorari review, we remand to the court of appeals to address that question and to consider, if necessary, any remaining arguments.

BACKGROUND¹

The Criminal Charges

¶7 The State charged Mitton with two counts of aggravated assault (domestic violence), which were both classified as third-degree felonies. The charges arose out of an altercation between Mitton and his brother-in-law, Brad,² in which Brad allegedly sustained numerous injuries requiring medical attention. Brad’s wife (Wife) was present during the incident, and the State identified her as a potential trial witness.

The Trial Court Proceedings

¶8 The Honorable Brandon J. Maynard, who is assigned to the Brigham City courthouse, presided over the first day of Mitton’s jury trial. Judge Maynard impaneled and swore in the jury, and the jury heard opening statements and direct testimony from Brad, who began to describe the circumstances leading to his altercation with Mitton.

¹ In providing the relevant background, we emphasize that the allegations against Mitton are not proved and that he is presumed innocent. See UTAH CODE § 76-1-501(1) (“A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt.”).

² The court of appeals used this pseudonym and other conventions to protect the privacy of the witnesses and alleged victim. For consistency, we adopt the same conventions.

Opinion of the Court

¶9 After dismissing the jury for the day, Judge Maynard disclosed to the parties that he recognized and was related by marriage to one of the witnesses in the courtroom. Specifically, he recognized Wife who had been sitting in the courtroom gallery. He explained that he believed Wife’s mother and his own wife’s grandmother are sisters. Judge Maynard stated that he had recognized Wife’s face, but that he did not know her last name or that she was a witness in the case until she was excused from the courtroom after opening statements. Judge Maynard also expressed that he didn’t view the relation as a “conflict that creates any concerns for [him]” but that he disclosed it to give counsel “an opportunity to discuss that or think about that.”

¶10 That night, Mitton filed a motion to disqualify Judge Maynard based on the judge’s disclosure.³ Although he recognized that disqualification was not required by statute, Mitton argued that the connection between Judge Maynard and Wife “clearly raises issues concerning the public perception of impartiality [and] independence.”

¶11 The next morning, before trial resumed, Judge Maynard informed the parties that the Honorable Brian G. Cannell, the presiding judge of the First District Court, had granted Mitton’s motion to disqualify and had “vacated the trial.”⁴ Judge Maynard further advised that he had just visited the jurors and “excused them, t[elling] them . . . that they are no longer paneled in this

³ A party in a criminal case may move to disqualify a judge for bias, prejudice, or a conflict of interest. UTAH R. CRIM. P. 29(b)(1)(A). When such a motion is filed, “[t]he judge against whom the motion . . . [is] directed shall, without further hearing, enter an order granting the motion or certifying the motion . . . to a reviewing judge.” *Id.* R. 29(b)(2)(A). If the sitting judge certifies the motion to a reviewing judge, the sitting judge may not take “further action in the case until the motion is decided.” *Id.* The district’s presiding judge may serve as the reviewing judge for such motions. *Id.*

⁴ Although he didn’t use the exact terminology, by vacating the trial and excusing the jury, Judge Cannell effectively declared a mistrial. *State v. Mitton*, 2024 UT App 44, ¶ 8 n.4, 548 P.3d 908; *see also Mistrial*, BLACK’S LAW DICTIONARY (12th ed. 2024) (“A trial that the judge brings to an end without a determination on the merits because of a procedural error or serious misconduct occurring during the proceedings.”).

Opinion of the Court

case.” Judge Maynard then explained that the case would be reassigned to the Honorable Spencer D. Walsh, and he worked with counsel to set a pretrial hearing before Judge Walsh on his next available hearing date in the Brigham City courthouse.

¶12 The following day, the State filed an amended information, enhancing one of the counts to a second-degree felony. It also moved for an expedited jury trial setting in front of Judge Walsh.

¶13 Several weeks later, Mitton moved to dismiss the charges against him, arguing, among other things, that the State’s continued prosecution of him violates the federal and state constitutional protections against double jeopardy. Mitton argued that the discharge of the jury operates as an acquittal and that “the State is barred from retrying [him]” because he did not consent to the discharge and the discharge was not a “legal necessity.”

¶14 At a hearing on his motion, Mitton posited what he characterized as alternatives to declaring a mistrial and discharging the jury. Specifically, he suggested that Judge Walsh, who “sits often in Brigham City[,] . . . could have been brought in with the same jury impaneled and been brought up to speed on the first day.” Or alternatively, the jurors could have been sent home “while keeping them impaneled” until a new judge could be assigned.

¶15 Judge Walsh denied Mitton’s motion to dismiss. He concluded that, although Mitton did not consent to a mistrial following Judge Maynard’s disqualification, the mistrial was legally necessary. Citing Judge Cannell’s findings, Judge Walsh found that Judge Cannell considered alternatives to discharging the jury and determined that no reasonable alternative existed because not discharging the jury “would not have even been a possibility from a logistical standpoint,” as “calendar constraints” made it impractical for a judge to become immediately available. Indeed, Judge Cannell reported that he had “reviewed [Judge Walsh’s] availability and determined it would be several days, if not several weeks or months, before the retrial could proceed.”⁵ Judge Walsh also concluded that Judge Cannell created

⁵ Judge Cannell twice supplemented his findings related to the necessity for discharging the jury and declaring a mistrial. Some of those findings were made months after the mistrial was declared and after Mitton’s motion to dismiss was filed.

Opinion of the Court

an adequate record disclosing the factual basis for his legal necessity determination.

The Appeal

¶16 Mitton sought interlocutory review of the denial of his motion to dismiss, which the court of appeals granted. On appeal, Mitton argued that Judge Walsh erred by “denying his motion to dismiss on double jeopardy grounds” because “Judge Cannell declared a mistrial without properly establishing legal necessity to do so.” *State v. Mitton*, 2024 UT App 44, ¶¶ 16–17, 548 P.3d 908.

¶17 The court of appeals agreed with Mitton. Relying on *State v. Manatau*, 2014 UT 7, 322 P.3d 739, it determined that the “legal necessity” exception to double jeopardy cannot apply unless the parties are afforded an “adequate opportunity to object” to the mistrial before the jury is discharged. *Mitton*, 2024 UT App 44, ¶ 20 (cleaned up). The court then concluded that, because neither Mitton nor the State were given such an opportunity, Mitton cannot be retried without violating Utah’s constitutional prohibition against double jeopardy.⁶ *Id.* ¶ 21.

¶18 As part of its decision, the court of appeals also offered procedural guidance to trial courts facing a conflict issue like the one that arose in Mitton’s trial. *Id.* ¶ 22. It outlined the steps the initial judge, reviewing judge, and assigned judge should take when confronted with a motion to disqualify mid-trial. *See id.* ¶¶ 22–29 & n.8.

¶19 We granted the State’s petition for certiorari review.

ISSUE AND STANDARD OF REVIEW

¶20 We granted certiorari to address whether the legal necessity exception to Utah’s constitutional prohibition against

⁶ In reaching its conclusion, the court of appeals deemed it unnecessary to address two other issues Mitton raised: (1) a challenge based on Utah’s statutory bar against multiple prosecutions, UTAH CODE § 76-1-403; and (2) a challenge to the propriety of Judge Walsh’s reliance on Judge Cannell’s amended findings, *supra* ¶ 15 n.5. *See Mitton*, 2024 UT App 44, ¶ 16 n.6. Neither issue is before us on certiorari review. Further, because the court of appeals confined its analysis to the double jeopardy protections afforded by the Utah Constitution, we do not separately address any challenge Mitton raised under the Fifth Amendment.

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double jeopardy can apply even where the parties were not afforded an opportunity to object before a mistrial was declared and the jury discharged. The court of appeals resolved this issue based on its interpretation of our caselaw. That interpretation presents a question of law, which we review for correctness. *State v. Labrum*, 2025 UT 12, ¶ 17, 568 P.3d 1075.

ANALYSIS

I. THE LEGAL NECESSITY EXCEPTION TO DOUBLE JEOPARDY MAY STILL APPLY EVEN WHEN PARTIES AREN'T PROVIDED AN OPPORTUNITY TO OBJECT BEFORE A MISTRIAL IS DECLARED

¶21 Article I, section 12 of the Utah Constitution protects a criminal defendant from being “twice put in jeopardy for the same offense.” This provision prohibits, among other things, the government “from making repeated attempts to convict an individual for the same offense after jeopardy has attached.” *State v. Harris*, 2004 UT 103, ¶ 22, 104 P.3d 1250.

¶22 In a jury trial, jeopardy attaches when the jury is impaneled and sworn. *State v. Ambrose*, 598 P.2d 354, 358 (Utah 1979), *overruled on other grounds by Harris*, 2004 UT 103, ¶ 20. Thus, if a mistrial is declared and a jury is discharged before a verdict has been rendered, the State—with two exceptions—is barred from trying the defendant again for the same offense. *Harris*, 2004 UT 103, ¶ 24. Specifically, Utah’s Double Jeopardy Clause bars the State from retrying a criminal defendant after jeopardy attaches unless: (1) the defendant consents to the jury’s discharge, or (2) “legal necessity” requires the jury be discharged in the interest of justice. *Id.* (cleaned up). These exceptions allow courts to “balance the defendant’s right to have his trial concluded by a particular tribunal with the public’s interest in fair trials designed to end in just judgments.” *State v. Cram*, 2002 UT 37, ¶ 8, 46 P.3d 230 (cleaned up).

¶23 The second of these two exceptions—the “legal necessity” exception—permits the retrial of a criminal defendant if declaring a mistrial and discharging the jury was the “only reasonable alternative to insure justice under the circumstances.” *Ambrose*, 598 P.2d at 358; *see also Harris*, 2004 UT 103, ¶ 26. Although we have consistently resisted setting “specific rules for what constitutes legal necessity, . . . we have provided trial courts with an articulable guideline” to aid in their assessment of the issue. *Harris*, 2004 UT 103, ¶ 26 (cleaned up); *see also Ambrose*, 598 P.2d at 359.

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¶24 First, we have said that “a trial court must carefully evaluate all of the circumstances” that may necessitate a mistrial, which “requires the trial judge to afford the parties adequate opportunity to object” and “to consider possible curative alternatives” to mistrial. *Harris*, 2004 UT 103, ¶ 27. Second, we require a trial court to “create a record disclosing the factual basis for the court’s determinations that a mistrial is legally necessary and that no reasonable alternative exists.” *State v. Manatau*, 2014 UT 7, ¶ 16, 322 P.3d 739; *see also Harris*, 2004 UT 103, ¶ 28.

¶25 The question presented in this appeal is what happens when the trial court fails “to afford the parties adequate opportunity to object.” After observing that neither Mitton nor the State were afforded that opportunity, the court of appeals concluded that such a failure is dispositive of the legal necessity question, regardless of whether the record reveals that a mistrial was the only reasonable alternative to ensure justice under the circumstances. *See State v. Mitton*, 2024 UT App 44, ¶ 21, 548 P.3d 908. It stated that “for this reason alone, the State cannot retry Mitton without violating his constitutional protections against double jeopardy.” *Id.*

¶26 The State contends that the court of appeals erred in interpreting our legal necessity jurisprudence. It describes that precedent as establishing “multi-component guidelines” that allow us to consider “the circumstances the trial court faced comprehensively, to ensure that the trial judge exercised sound discretion before deciding that a mistrial was the only reasonable choice.” It argues that the court of appeals departed significantly from those guidelines, rendering “the opportunity to object a mandatory feature of legal necessity” and barring retrial even where a mistrial “would have been inevitable had an objection been raised.”

¶27 We agree with the State that a trial court’s failure to provide an opportunity to object before declaring a mistrial is not, standing alone, dispositive of the legal necessity question. Because we have often framed our procedural guidelines in mandatory terms, it is understandable that Mitton and the court of appeals read our legal necessity jurisprudence as supporting a different conclusion. But, as explained below, we have yet to articulate what consequences flow from a trial court’s failure to afford the parties an opportunity to object before a mistrial is declared. And with the question now squarely before us, we conclude that even without

Opinion of the Court

an opportunity to object, if the record reveals that there were no reasonable alternatives to mistrial under the circumstances, the legal necessity exception to double jeopardy still applies.

A. The Legal Necessity Exception to Double Jeopardy Has Evolved to Include a Requirement that Parties Be Allowed to Object Before a Court Declares a Mistrial

¶28 We begin our analysis of the legal necessity exception by examining the four cases that largely form our jurisprudence on the subject.

¶29 First, *State v. Whitman*, 74 P.2d 696 (Utah 1937). There, the trial court judge “became somewhat incensed” at defense counsel’s in-trial remarks and, after labeling counsel’s conduct as “reprehensible,” declared a mistrial over the defendant’s objection and discharged the jury. *Id.* at 697. In reversing the court’s subsequent rejection of the defendant’s double jeopardy claim, we stated that “before the court may discharge a jury,” (1) “there should exist . . . a legal necessity for such discharge,” (2) “the court must make inquiry and find and determine that such necessity existed at the time of the discharge,” and (3) “the essential facts as to such necessity, and the findings of the court thereon, must be made a matter of record.” *Id.* at 698. We ultimately applied only the first step of the analysis, concluding that “there was no apparent reason for declaring a mistrial” and thus “the jury was unnecessarily discharged.” *Id.* at 697–98. And based on that determination, we reversed the trial court’s rejection of the defendant’s double jeopardy claim. *Id.* at 698.

¶30 Second, *State v. Ambrose*, 598 P.2d 354 (Utah 1979), *overruled on other grounds by Harris*, 2004 UT 103, ¶ 20. The prosecutor in *Ambrose* recommended—in the presence of the deadlocked jury—that the jury should be urged to continue deliberating given “the costs involved, the expense, [and the] inconvenience to everybody.” *Id.* at 356. After soliciting defense counsel’s view of whether it was problematic for the prosecutor to comment on the cost of retrial, the trial court immediately declared a mistrial and discharged the jury without fielding any comments or objections. *Id.* at 356–58.

¶31 On appeal from the subsequent denial of a motion to dismiss, we analyzed whether the defendant could be retried without running afoul of Utah’s Double Jeopardy Clause. *Id.* at 358. In discussing the legal necessity exception, we reaffirmed our intent not to “lay down specific rules in this area.” *Id.* at 359. Still,

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we described legal necessity as requiring “a determination that discharging the jury was the only reasonable alternative to insure justice under the circumstances.” *Id.* And we emphasized that a trial court must be “careful” in making its determination given “the important rights . . . involved,” and must exercise its discretion to declare a mistrial “scrupulous[ly].” *Id.* at 358, 360 (cleaned up).

¶32 In applying these “principles,” we concluded that the record did not reveal that discharging the jury was the only reasonable alternative under the circumstances, and that, due to a lack of explanation from the trial court, we could not discern whether it “engaged in the scrupulous exercise of judicial discretion required.” *Id.* at 359–60 (cleaned up). We then cautioned that a trial court “must . . . not only determine that legal necessity exists, but it must make its findings to that effect a matter of record, or a defendant may successfully claim former jeopardy on appeal.” *Id.* at 360.

¶33 Finally, we discussed the State’s separate assertion that because the defendant did not object to the trial court’s discharge of the jury, the defendant implicitly consented to the mistrial and waived protection under the Double Jeopardy Clause. *Id.* We rejected that assertion, observing that “the court acted so abruptly” that defense counsel “had no opportunity to object.” *Id.* Notably, however, we did not state that an opportunity to object was a dispositive element of the legal necessity determination. *See id.* at 360–61.

¶34 Third, *State v. Harris*, 2004 UT 103, 104 P.3d 1250. After the trial court discovered that the courtroom’s equipment failed to record the first morning session of trial, the court asked the parties how they wanted to proceed. *Id.* ¶¶ 5–6. Defense counsel proposed that they either reexamine the first witness or continue without reexamination, agreeing that the defendant would waive his right to appeal. *Id.* ¶ 6. The State objected and argued that the trial could not continue. *Id.* The court declared a mistrial and another judge subsequently declined to dismiss the case based on double jeopardy. *Id.* ¶¶ 7–9.

¶35 On appeal, we analyzed whether the discharge of the jury was legally necessary.⁷ *Id.* ¶¶ 22–39. We began by restating the

⁷ Our review of the trial court’s denial of defendant’s motion to dismiss on double jeopardy grounds necessitated our review of the
(continued . . .)

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“articulable guideline” we had provided to trial courts “for determining whether a particular set of facts is such that ‘legal necessity’ requires the court to discharge the jury in the interest of justice.” *Id.* ¶ 26. Specifically, we stated that a trial court may discharge a jury if, “after careful inquiry,” it determines that “discharging the jury is *the only reasonable alternative to insure justice under the circumstances.*” *Id.* (cleaned up).

¶36 We then described the “‘only reasonable alternative’ standard” as having two elements that “must be satisfied.” *Id.* ¶ 27. The first element requires a trial court to “carefully evaluate all of the circumstances and conclude that legal necessity mandates the discharge of the jury.” *Id.* We explained that such an evaluation “requires” the court to consider possible alternatives to mistrial and to determine that none of the proposed alternatives are reasonable. *Id.* And although our discussion in *Ambrose* about objections was confined to the issue of waiver, *see* 598 P.2d at 360–61, in *Harris* we adopted another requirement: the opportunity to object, 2004 UT 103, ¶ 27 (citing *Ambrose*, 598 P.2d at 360–61). But we had no occasion to opine on how the absence of that opportunity would affect the ultimate analysis. After all, in *Harris*, both parties had an opportunity to object to the mistrial before it was declared.⁸ *See* 2004 UT 106, ¶¶ 5–6.

¶37 We then moved to the second element of the “only reasonable alternative” standard, where we repeated the admonition from *Ambrose* that “the record must adequately disclose both the factual basis” for the mistrial and the reasons why the alternatives to mistrial were “unreasonable under the circumstances.” *Id.* ¶¶ 27–28 (citing *Ambrose*, 598 P.2d at 360). We, at times, referred to this as a “requirement” on the trial court to “document its findings.” *Id.* ¶ 29. At other times, we merely “encourage[d]” the court to “expressly articulat[e]” its thinking. *Id.* ¶ 28. But ultimately, we concluded that “a mistrial granted *without* express findings and determinations” would “*not* necessarily foreclose the retrial of a defendant.” *Id.* (emphases added).

underlying declaration of the mistrial based on legal necessity. *State v. Harris*, 2004 UT 103, ¶¶ 1, 21–39, 104 P.3d 1250.

⁸ We adopted the obligation to afford the parties an opportunity to object to the declaration of a mistrial without any analysis or explanation. *See id.* ¶ 27.

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¶38 We explained that rather than offending double jeopardy protections, a trial court's lack of findings would impact the nature of appellate review. *Id.* ¶¶ 28–30. Specifically, we said that when a court, on the record, articulates the factual basis for the mistrial and explains why the alternatives are unreasonable, “we will not disturb that decision unless it is plainly wrong or is beyond the limits of reasonability.” *Id.* ¶ 29 (cleaned up). But if a court fails to make such a record, we said that “the mistrial will operate as an acquittal unless the factual basis for the mistrial is readily apparent from the record.” *Id.* ¶ 30. We cautioned that without an explanation of the grounds for legal necessity, “the trial judge cedes to us the authority and responsibility to second-guess his judgment by conducting an independent assessment of the reasonableness of the proposed alternatives.” *Id.* ¶ 33.

¶39 We then completed our review by independently assessing the options available to the *Harris* trial court because it had not explained why the proposed alternatives to mistrial were unreasonable. *Id.* ¶¶ 33–38. We concluded that even if imperfect, the proposed alternatives were reasonable. *Id.* ¶¶ 34–36, 38–39. Thus, we held that because the trial court exceeded its discretion in declaring a mistrial, the reviewing court erred in subsequently concluding that the defendant could be retried without violating Utah's constitutional prohibition against double jeopardy. *Id.* ¶ 39.

¶40 Fourth, *State v. Manatau*, 2014 UT 7, 322 P.3d 739. The most recent of our cases discussing the legal necessity exception arose where the trial judge recused herself and declared a mistrial after a pocketknife was found in the suit jacket the defendant's wife had brought to the defendant to wear in court. *Id.* ¶¶ 3–5. Before the jury was dismissed, both parties objected to the mistrial, but the judge declined to change her mind and expressed her belief that double jeopardy would not attach. *Id.* ¶ 6. When the defendant later moved to dismiss the case on double jeopardy grounds, the newly assigned judge denied the motion on the grounds that the mistrial was legally necessary. *Id.* ¶ 7.

¶41 On appeal, we reviewed the mistrial decision to determine whether it was legally necessary.⁹ *Id.* ¶ 8. Citing *Harris*,

⁹ As we did in *Harris*, in assessing whether the trial court erred in not dismissing a retrial on double jeopardy grounds, “we review[ed] the rulings of two separate trial [judges].” *State v.* (continued . . .)

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we said we would review that determination for abuse of discretion, “afford[ing] substantial deference” to the trial court, if it articulated on the record the factual basis for its decision. *Id.* ¶¶ 8, 13. But in the absence of such findings, we said we would “independently assess whether the mistrial was legally necessary,” *id.* ¶ 8, and that “the mistrial will operate as an acquittal if we are unable to find a readily apparent factual basis for the mistrial on the face of the record,” *id.* ¶ 13. We added that a defendant “does not bear a burden to show a mistrial is legally necessary if the defendant objects to the mistrial.” *Id.* ¶ 12. And we emphasized that “[a]bsent an adequate record, we resolve uncertainties as to the existence of legal necessity in favor of the defendant.” *Id.* ¶ 13.

¶42 Applying these standards, we concluded that the trial court did not meet either of the two “only reasonable alternative” elements we had articulated in *Harris*. *Id.* ¶¶ 18–19; *see also supra* ¶¶ 36–37. We concluded that the trial court did not, in fact, consider alternatives to mistrial because the court was operating under the mistaken understanding that jeopardy had not yet attached when the mistrial was declared. *Manatau*, 2014 UT 7, ¶ 18. We then separately concluded that because the trial court did not consider alternatives to mistrial, it necessarily failed to make record findings about why alternatives were unreasonable. *Id.* ¶ 20.

¶43 Still, we recognized that we could independently assess “whether the trial court had any reasonable option to a mistrial.” *Id.* ¶ 22. We took this opportunity, even though the trial court did not consider any alternatives on the record, and neither party offered any. *Id.* But we concluded that in making our independent assessment, we would “resolv[e] all uncertainties caused by gaps in the record in favor of the defendant.” *Id.*

¶44 Finally, we conducted an independent assessment, reviewed the record, and concluded that “a reasonable alternative did exist” — or at least “it *may* have been reasonable for the case to have been reassigned to another judge.” *Id.* ¶ 23 (emphasis added) (citing UTAH R. CRIM. P. 29(a) (describing the process for a judge reassignment mid-trial)). We acknowledged that “in some

Manatau, 2014 UT 7, ¶ 8, 322 P.3d 739. We reviewed the initial trial judge’s order declaring a mistrial “to determine whether the mistrial was legally necessary.” *Id.* And we reviewed the second trial judge’s double jeopardy ruling denying the defendant’s motion to dismiss. *Id.*

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situations this alternative may be unreasonable—for example, where no other judge is available to continue the trial within a reasonable amount of time.” *Id.* But, we stated that there was “no evidence of any circumstances that would make reassignment of the case to another judge unreasonable here.” *Id.* And “[a]bsent findings that reassignment was not feasible, we must resolve any uncertainty caused by this gap in the record in favor of the defendant.” *Id.*

*B. The Failure to Afford an Opportunity to Object Before
Mistrial Does Not Foreclose the Legal Necessity Exception
Under Utah’s Double Jeopardy Clause*

¶45 With our legal necessity precedent well in mind, we turn to the parties’ arguments on appeal. The State contends that the court of appeals “disregarded this precedent and established a new test premised on rigid adherence to requirements.” It argues that the factually varied circumstances that lead to mistrials demand “a holistic and discretionary analysis instead of a rigid, one-size-fits-all approach.” It asserts that the court of appeals should have considered whether the trial court’s decision to declare a mistrial “was ultimately an exercise of sound discretion” based on all the circumstances rather than concluding that the legal necessity exception did not apply solely because the parties were not given an opportunity to object. Mitton, on the other hand, argues that the court of appeals got it exactly right. He argues that Utah’s legal necessity test “requires certain elements”—including the opportunity to object—“be[] satisfied.” In other words, like the court of appeals, Mitton views the trial court’s failure to afford that opportunity as “dispositive.”¹⁰

¶46 To resolve this dispute, we return to the beginning. In *Whitman*, we simply said that a trial court may declare a mistrial and “discharge the jury under peculiar circumstances in cases of necessity.” 74 P.2d at 698. Then, in *Ambrose*, we described the legal necessity exception as requiring “a determination that discharging the jury was the only reasonable alternative to insure justice under

¹⁰ Mitton also argues that “the lack of an opportunity to object was the basis upon which the Court applied double jeopardy” in *Ambrose*. We disagree. Our reference to the lack of such an opportunity in *Ambrose* was made in the context of our discussion of a possible waiver of double jeopardy rights. It was not part of our legal necessity analysis. See *supra* ¶ 36.

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the circumstances.” 598 P.2d at 359. And we reaffirmed that standard in *Harris* and *Manatau*. See *Harris*, 2004 UT 103, ¶ 26; *Manatau*, 2014 UT 7, ¶ 10.

¶47 Thus, applying this precedent in situations where a criminal defendant has not consented to a mistrial, the fundamental question a trial court must ask itself is whether discharging the jury is the only reasonable alternative to ensure justice under the circumstances. If the answer is no, the court should remedy the circumstances that gave rise to the question by employing another alternative. But if the answer is yes, and a mistrial is declared without the defendant’s consent, a reviewing court may need to resolve whether the trial court abused its discretion in concluding that declaring a mistrial was the only reasonable alternative available under the circumstances. See *infra* ¶ 52.

¶48 The other procedural steps we first articulated in *Whitman*, and repeated in *Ambrose*, remain. In considering whether to declare a mistrial, a trial court must (1) carefully evaluate all of the circumstances, (2) consider possible curative alternatives to a mistrial, and (3) if it decides to declare a mistrial, disclose on the record the factual basis for its determination that a mistrial is necessary and that no other reasonable alternative exists. *Whitman*, 74 P.2d at 698; *Ambrose*, 598 P.2d at 358–60. And, as part of step two—the requirement that a trial court consider other alternatives to a mistrial—a trial court must provide an opportunity for the parties to object and to propose alternatives. *Harris*, 2004 UT 103, ¶ 27; *Manatau*, 2014 UT 7, ¶ 11.

¶49 We have articulated these requirements in mandatory terms because of their importance. To avoid unnecessarily declaring a mistrial and subjecting a criminal defendant to successive trials, we expect trial courts to comply with these procedural requirements. But we have never established these procedural requirements as a constitutional test that absolutely determines whether the trial court has exercised sound discretion in declaring a mistrial. Instead, we have explained that the nature of our review of the legal necessity determination will vary depending on whether the court has complied with these requirements.

¶50 For example, in *Manatau*, even though the parties had an opportunity to object to the mistrial, neither side proposed an alternative, the trial court did not consider any possible alternatives, and it did not create a record of a legal necessity

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determination. 2014 UT 7, ¶ 22. Still, we considered whether the mistrial was, in fact, legally necessary. *Id.* ¶¶ 22–24. We explained that *if* a trial court considers alternatives to mistrial and makes supporting findings on the record, “we afford substantial deference to its determination that legal necessity warrants a mistrial.” *Id.* ¶ 13. But *if* a trial court fails to engage in the necessary analysis and articulate why no reasonable alternatives existed, we will independently assess whether there were reasonable alternatives to a mistrial, “resolving all uncertainties caused by gaps in the record in favor of the defendant.” *Id.* ¶ 22.

¶51 Although we didn’t discuss in *Harris* or *Manatau* whether these same rules would apply if the trial court failed to afford the parties an opportunity to object, we don’t read either case as requiring anything different. After all, the parties in both cases were given an opportunity to object before the jury was discharged. *See Harris*, 2004 UT 103, ¶ 6; *Manatau*, 2014 UT 7, ¶ 6. Thus, we had no occasion to consider the consequence of a failure to afford such an opportunity. But we see no reason why we would treat this requirement any differently than the other procedural requirements guiding a legal necessity determination.

¶52 So, if a trial court affords the parties an opportunity to object and offer alternatives to mistrial, and the trial court explains why those alternatives were not reasonable under the circumstances, then a reviewing court will afford more deference to that “only reasonable alternative” determination. But if a trial court fails to afford an opportunity to object, then a reviewing court is tasked with independently determining whether the trial court had a reasonable alternative to a mistrial. And under those circumstances, the reviewing court will resolve any uncertainties caused by gaps in the record in favor of the defendant.

¶53 We endorse this approach as both consistent with our legal necessity jurisprudence and as striking the appropriate balance between the criminal defendant’s right against double jeopardy with “the public’s interest in fair trials designed to end in just judgments.” *Cram*, 2002 UT 37, ¶ 8 (cleaned up). It incentivizes a trial court to follow these procedural requirements. But where

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infeasible, this procedural misstep does not become a windfall for the accused.¹¹

¶54 Applying these rules here, we conclude that the court of appeals erred by forgoing an independent determination of reasonable alternatives and, instead, treating Judge Cannell’s failure to afford an opportunity to object prior to mistrial as dispositive of the legal necessity question. The court must conduct an independent assessment of the record to determine whether Judge Cannell had any reasonable alternatives to declaring a mistrial under the circumstances as they existed when Judge Maynard was disqualified mid-trial.¹² Because Judge Cannell did not afford the parties an opportunity to object, the court of appeals must resolve any uncertainty caused by gaps in the record in Mitton’s favor.

C. We Refer the Consideration for Additional Procedural Guidance to Our Judicial Council and Rules Committees

¶55 Finally, we pause to address the “clarification of the proper procedure” that the court of appeals offered in response to Judge Cannell’s expressed uncertainty about what trial judges should do when faced with a motion to disqualify a judge during a criminal trial. *Mitton*, 2024 UT App 44, ¶ 22. We appreciate the court of appeals’ responsiveness to Judge Cannell’s request for

¹¹ The State’s primary objection to the court of appeals’ rigid application of the opportunity to object requirement was that there may be instances where a mistrial is required, and the court simply cannot afford the parties an opportunity to lodge an objection. For example, the State imagines catastrophic events like earthquakes or mass casualty events where trials are interrupted and there is no opportunity to invite counsel to offer objections before a jury is discharged from service. In such extreme circumstances, a trial court may fail to comply with the procedural requirements of our precedent. But even without an opportunity to object or an adequate record, a reviewing court will still retain the ability to examine those circumstances and conclude that retrial would not offend double jeopardy protections because no reasonable alternatives existed.

¹² Because the question of whether reasonable alternatives existed and whether Judge Cannell abused his discretion in declaring a mistrial is not before us on certiorari review, we do not undertake this assessment ourselves and express no opinion on it.

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additional “clarity.” But rather than embed new rules within caselaw, we have recently emphasized our preference to create procedural rules through our comprehensive rulemaking process, which accounts for consideration of public comment and “perspectives beyond those of the parties to a case at bar.” *See State v. Labrum*, 2025 UT 12, ¶ 39, 568 P.3d 1075. That process also ensures that the rule is appropriately adopted by the body with constitutional authority to create such a rule. *See, e.g.*, UTAH CONST. art. VIII, § 4 (“The Supreme Court shall adopt rules of procedure and evidence to be used in the courts of the state”); *id.* § 12(1) (“There is created a Judicial Council which shall adopt rules for the administration of the courts of the state.”).

¶56 Thus, to the extent the court of appeals purported to adopt new procedure in its effort to guide the courts, that guidance is not binding. But we do note that much of what the court of appeals described is already found in rule. *See Mitton*, 2024 UT App 44, ¶¶ 24–26 (citing UTAH R. CRIM. P. 29(b)). To the extent it’s not, we refer this matter to our criminal rules advisory committee and the Judicial Council to consider, as appropriate, whether it would be prudent to adopt additional procedural or administrative rules to guide trial courts in these difficult and often time-sensitive situations.

¶57 We also ask our advisory rules committee to consider whether the procedural steps outlined in our legal necessity jurisprudence should be codified in rule. *See supra* Section I.A. Although we have, in the past, adopted procedural steps in our caselaw, our procedural and administrative rules should be codified in our rule books where they are more readily accessible to parties, lawyers, and the bench.

CONCLUSION

¶58 The State contends that the court of appeals erred in treating the trial court’s failure to provide an opportunity to object as dispositive of legal necessity, a decision that resulted in double jeopardy barring retrial of Mitton. We agree. Specifically, we hold that the court of appeals erred by foreclosing application of the legal necessity exception solely because the trial court did not afford the parties an opportunity to object to the mistrial. Accordingly, we reverse the court of appeals’ decision ordering dismissal of the charges against Mitton, and we remand to the court of appeals for further proceedings consistent with this opinion.

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,

v.

RICHARD SCOTT MITTON,
Appellant.

Opinion
No. 20221076-CA
Filed April 4, 2024

First District Court, Brigham City Department
The Honorable Brandon J. Maynard
The Honorable Spencer D. Walsh
No. 211100057

Wayne K. Caldwell, Attorney for Appellant
Sean D. Reyes and Connor Nelson,
Attorneys for Appellee

JUDGE AMY J. OLIVER authored this Opinion, in which
JUDGES RYAN M. HARRIS and RYAN D. TENNEY concurred.

OLIVER, Judge:

¶1 At the end of the first day of Richard Scott Mitton’s jury trial, the judge realized he was distantly related by marriage to the alleged victim’s wife and notified the parties, setting in motion a rapid sequence of events. Later that evening, Mitton filed a motion to disqualify the judge. By 9:30 the next morning, the presiding judge had granted the motion, assigned a new judge to the case, and declared a mistrial. After the motion was granted, the now-disqualified judge discharged the jury and then notified the parties of what had transpired that morning.

¶2 The next day, the State filed an amended information, adding a more serious charge. Mitton filed a motion to dismiss,

arguing that the amended information subjected him to double jeopardy in violation of his constitutional rights. The new judge denied Mitton's motion to dismiss under the legal necessity exception to double jeopardy, and we granted Mitton's petition to appeal from that interlocutory order. For the reasons set forth below, we reverse the denial of Mitton's motion to dismiss and remand the matter for dismissal of the charges against him with prejudice on the basis of double jeopardy.

BACKGROUND¹

¶3 Mitton and Brad² became brothers-in-law when Mitton married Brad's sister (Sister). In December 2020, Mitton and Brad got into an altercation at the home of Brad and Sister's aging father after the father had been placed in a care facility, leaving his house unoccupied. Brad's wife (Wife) pulled out her phone to call the police, but Sister grabbed it and threw it. Wife eventually called 911 while Mitton was "beating on [Brad]." When Brad fell to the floor, Mitton kicked him "in the ear several times and then he started choking him" to the point that Brad's "eyes rolled back into his head." Police and emergency personnel soon arrived and began treating Brad. Brad suffered multiple injuries: bleeding in his eyes and brain; a concussion; bruised vocal cords; hearing and memory loss; swelling in his face and right ear; blurry vision; and back, head, jaw, and neck pain.

¶4 The State charged Mitton with two counts of aggravated assault (domestic violence), both third-degree felonies.

1. "Because this case comes to us on an interlocutory appeal, the allegations we recite have not been tried and therefore remain allegations." *State v. Stewart*, 2018 UT 24, ¶ 2 n.1, 438 P.3d 515. "On interlocutory review, we recount the facts as alleged and in a light most favorable to the ruling below." *Id.* (cleaned up).

2. A pseudonym.

Approximately one month before trial, the State disclosed its witness list, which included Wife and Sister.

¶5 The jury trial began in Brigham City, Utah, on July 20, 2022, with Judge Maynard presiding. Before testimony began, Mitton invoked the exclusionary rule, and Judge Maynard excused Wife and Sister from the courtroom. Brad testified about the family and the circumstances leading up to the incident, and the first day of trial ended with Brad still on direct examination.

¶6 At the end of that first day, Judge Maynard spoke with the parties outside the presence of the jury, informing them that he recognized Wife when she left the courtroom, and he realized he has a familial connection to her: Wife’s mother is a sister of Judge Maynard’s wife’s grandmother. Judge Maynard explained he had never met Brad and he “didn’t recognize [his] last name.” He went on to say, “I don’t believe I have any conflict that creates any concerns for me, but I wanted to disclose that to counsel, give you an opportunity to discuss that or think about that.” Judge Maynard did not recuse himself.

¶7 Just before nine o’clock that evening, Mitton filed a motion to disqualify, arguing that “Judge Maynard should be disqualified and the case re-assigned.” Mitton argued that although “a relationship to the fifth degree of affinity is not mandatorily prohibited by Utah Code [section] 78A-2-222, the degree of relationship is not so distinct as to remedy the appearance of bias.”³ He also noted that Judge Maynard’s disclosure that he recognized Wife as a family member “raises issues concerning the public perception of impartiality.”

3. “Except by consent of all parties, a justice [or] judge . . . may not sit or act in any action or proceeding . . . when [that judge] is related to either party by consanguinity or affinity within the third degree” Utah Code § 78A-2-222(1).

¶8 By eight o'clock the next morning, the parties were back in the courtroom to resume the trial. But the trial never resumed. Judge Maynard informed the parties that he could not take any action regarding the trial until the judge reviewing the motion to disqualify ruled on it. Meanwhile, Judge Cannell—the presiding judge of the district—had been reviewing Mitton's motion to disqualify from his office in Logan, Utah. By 9:30 that morning, Judge Cannell had issued a three-sentence order of recusal and reassignment (the Initial Order) that read in its entirety, "[Mitton's] Motion to Disqualify is granted. This case is now transferred to Judge Spencer D. Walsh for all future court proceedings. The jury trial is vacated."⁴ Judge Maynard—after having been disqualified—informed the parties, who were still waiting in the courtroom, that when Judge Cannell signed the Initial Order that removed him from the case, "I, prior to coming in here, went back to visit with the jury and I've excused them, told them that they are free to leave, that they are no longer paneled in this case."⁵

¶9 The following day, the State filed an amended information based on the same alleged conduct but increased one of the counts to a second-degree felony. The State also filed a motion for an

4. We note that the term "vacated" was not the correct terminology. A jury is *discharged* when a mistrial is declared. *See, e.g., State v. Harris*, 2004 UT 103, ¶ 39, 104 P.3d 1250 (reversing denial of motion to dismiss on grounds of double jeopardy after judge declared a mistrial and discharged the jury). A *conviction* is vacated if an appeal is successful. *See e.g., State v. Lee*, 2024 UT App 2, ¶ 19, 542 P.3d 974 (vacating convictions and remanding the case for a new trial). We encourage district courts to use the correct terminology to avoid any confusion that may result.

5. The record does not reflect whether Judge Cannell instructed Judge Maynard to speak to the jury or if he did so of his own accord.

expedited jury trial to “mitigate” the “due process violations” caused by the State not having an opportunity to respond to Mitton’s motion to disqualify or to be heard on the issue of a mistrial before the jury was excused.

¶10 Six days after the Initial Order was issued, on July 27, 2022, Judge Cannell filed an amended order of recusal (the First Amended Order), noting it was “intended to replace” the Initial Order and “confirm its ruling.” Judge Cannell stated that when Mitton filed his motion to disqualify, Judge Cannell had “acted as promptly as possible” under rule 29 of the Utah Rules of Criminal Procedure and although he had found no impropriety with Judge Maynard’s actions, he had decided “removal and reassignment” were both “appropriate and necessary” to “avoid any appearance of impropriety and to promote the public’s confidence in the proceedings and ultimate outcome.” Judge Cannell recognized “the frustration of everyone involved with the wasted expenditure of resources, loss of time, impacts on the parties and the alleged victim, costs to the jurors and to the system, etc., resulting from the trial delay.” He explained it “was a very difficult decision to make knowing the potential impacts on everyone involved.” The First Amended Order also mentioned Judge Walsh’s calendar for the first time, stating the hope that “the trial may be expedited according to Judge Walsh’s determination and calendar requirements.” And finally, the First Amended Order reiterated that the Initial Order had granted Mitton’s motion to disqualify, assigned the case to Judge Walsh, and “vacated” the jury trial.

¶11 On September 1, 2022, Mitton filed a motion to dismiss the amended information with prejudice, arguing that the discharge of a jury operated as an acquittal. Mitton argued the State was prohibited from pursuing charges against him by his constitutional protection against double jeopardy and Utah’s single criminal episode statute. *See generally* Utah Code §§ 76-1-401 to -405. And because the jury was discharged without

Mitton's consent and without adequate findings, Mitton argued that the exceptions to double jeopardy should not apply.

¶12 At the hearing on the motion on October 4, 2022, Mitton posited alternatives that he asserted should have been considered before declaring a mistrial, such as (1) letting the jury go home while an alternate judge was found, (2) bringing Judge Walsh—who sits in Logan but also “sits often in Brigham City”—“up to speed” and having him preside over the trial with the same jury, or (3) releasing the jury for a longer period while keeping them empaneled. Judge Walsh took the motion under advisement and on November 17, he scheduled a hearing for November 30 to issue his decision orally. On November 21, however, Judge Walsh notified the parties that the hearing was cancelled and he would issue a written decision instead.

¶13 The next day, Judge Cannell issued another amended order of recusal and reassignment (the Second Amended Order). He stated the Second Amended Order did not replace the First Amended Order but simply “supplement[ed]” it with “further information regarding [the] decision making process to replace the assigned trial judge, vacate the jury trial and excuse the jury, necessarily resulting in a mistrial.” Specifically, Judge Cannell stated legal necessity existed to declare a mistrial due to “calendaring constraints” because there “was no practical way for Judge Walsh to drop his regularly scheduled calendar and make himself immediately available for trial.” Judge Cannell stated that after reviewing Judge Walsh's availability, he “determined it would be several days, if not several weeks or months, before the retrial could proceed.” The order concluded with the observation that “there are no specific rules or case law aiding the reviewing judge to make real time determinations both as to removal of a judge and what to do about a seated jury mid-trial” and the hope that “such lack of clarity can be corrected in the near future so all parties may likewise have confidence in the judiciary and its processes.”

¶14 On December 1, 2022, Judge Walsh denied Mitton’s motion to dismiss, ruling that retrial may proceed because, although Mitton did not consent to a mistrial, legal necessity was established when “Judge Cannell considered alternatives to a mistrial and determined that no reasonable alternative existed.” The court relied solely on the Second Amended Order for these findings.

¶15 Mitton filed a petition to appeal from that interlocutory order, which we granted.

ISSUE AND STANDARD OF REVIEW

¶16 Mitton contends the trial court erred in denying his motion to dismiss on double jeopardy grounds.⁶ Typically, a “trial court’s decision to grant or deny a mistrial will not be disturbed on appeal absent an abuse of discretion,” but because the newly assigned judge reviewing the motion to dismiss “was in no better position than this court to determine the necessity of a mistrial, we review [his] denial of defendant’s motion to dismiss” for correctness. *West Valley City v. Patten*, 1999 UT App 149, ¶ 7, 981 P.2d 420.

ANALYSIS

¶17 Mitton claims that the double jeopardy clause of the Utah Constitution bars his retrial. He argues that Judge Walsh erred in denying his motion to dismiss because Judge Cannell declared a

6. Mitton also challenges the denial of his motion to dismiss under Utah’s single criminal episode statute and argues Judge Cannell erred by failing to make the required findings on the record when he declared a mistrial. But we need not reach these issues because we conclude that double jeopardy prohibits the re-prosecution of Mitton.

mistrial without properly establishing legal necessity to do so. We agree.

I. Utah's Double Jeopardy Clause

¶18 In a jury trial, “jeopardy attaches when a jury has been sworn and empaneled.” *State v. Manatau*, 2014 UT 7, ¶ 9, 322 P.3d 739; *see also id.* ¶ 15 (declaring “there [was] no question” that “jeopardy had attached” when the judge declared a mistrial after the jury “had been sworn and empaneled the previous day”). When a mistrial is declared after jeopardy has attached, “the double jeopardy clauses of the United States Constitution and the Utah Constitution” are “automatically invoke[d].” *Id.* ¶ 9. *See generally* U.S. Const. amend. V (“nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb”); Utah Const. art. I, § 12 (“nor shall any person be twice put in jeopardy for the same offense”). Thus, the “declaration of a mistrial before a verdict is entered, as a general rule, operates as an acquittal.” *Manatau*, 2014 UT 7, ¶ 9.

¶19 For the State to retry the defendant after a mistrial without violating Utah’s constitutional double jeopardy provision, one of two exceptions must apply: “(1) the defendant consents to the discharge of the jury, or (2) legal necessity requires the discharge in the interest of justice.” *State v. Harris*, 2004 UT 103, ¶ 24, 104 P.3d 1250 (cleaned up). It is undisputed that Mitton did not consent to the discharge of the jury. We thus turn to the legal necessity exception, which applies only in cases where a trial court “determines, after careful inquiry, that discharging the jury is the only reasonable alternative to insure justice under the circumstances.” *Id.* ¶ 26 (cleaned up).

¶20 The legal necessity exception to double jeopardy applies only when two elements are met. “First, the trial judge has a duty to carefully evaluate the circumstances of the particular case and determine that legal necessity requires the discharge of the jury.” *Manatau*, 2014 UT 7, ¶ 11. As part of this inquiry, the judge “must

afford the parties adequate opportunity to object” and must “consider possible alternatives to terminating the proceeding.” *Id.* (cleaned up). Second, the judge “must establish a record of the factual basis for its conclusion that a mistrial is necessary, as well as the reasons why there is no reasonable alternative under the circumstances.” *Id.* ¶ 13.

¶21 Here, neither Mitton nor the State were given an “adequate opportunity to object” to the discharge of the jury. *See id.* ¶ 11 (cleaned up). Indeed, the parties were not given any opportunity at all—they were simply notified after the fact that the jury had been discharged.⁷ Thus, this part of the first element of the legal necessity exception to double jeopardy was not met. Absent this element, “a mistrial acts as an acquittal.” *Id.* ¶ 18. Therefore, for this reason alone, the State cannot retry Mitton without violating his constitutional protections against double jeopardy.

II. Procedural Guidance

¶22 We take this opportunity to provide clarification of the proper procedure in these circumstances, in part to address Judge

7. At oral argument, we expressed doubt that the jury was, in fact, properly discharged because Judge Maynard was the one who did so, and he had already been disqualified from the case by the time he “excused the [jury], told them that they [were] free to leave, [and said] that they [were] no longer paneled in this case.” If a judge who may be disqualified cannot take any action in a case, *see State v. Gavette*, 2019 UT App 73, ¶ 12, 442 P.3d 1243 (“[O]nce a disqualification motion is filed, the trial judge lacks authority to proceed until the motion is decided and any action taken by the court in the intervening time is void.”), then it follows that a judge who actually is disqualified cannot either. Ultimately, we need not grapple with this issue because regardless of whether the jury was properly discharged, a mistrial was declared after jeopardy attached and the legal necessity exception was not met.

Cannell’s statement in the Second Amended Order that he hoped the “lack of clarity” on what judges should do when faced with a motion to disqualify a judge during a criminal trial “can be corrected in the near future so all parties may likewise have confidence in the judiciary and its processes.”

¶23 There was understandably some urgency in dealing with the disqualification of the trial judge in the middle of a jury trial, and we appreciate Judge Cannell’s efforts to quickly address the issue. We also recognize that it may not be practical to expect that a new trial judge will be readily available to step in for a disqualified judge in a similar situation, particularly in those districts with geographically dispersed judges. Therefore, we offer the following guidance on the proper procedure for trial courts to follow when addressing a motion to disqualify a judge during a criminal trial.

A. The Initial Judge

¶24 “When faced with a motion to disqualify, a judge has only two options: grant the motion or certify the motion to a reviewing judge for decision.” *State v. Gavette*, 2019 UT App 73, ¶ 1, 442 P.3d 1243; *see also* Utah R. Crim. P. 29(b)(2)(A) (“The judge against whom the motion and affidavit are directed shall, without further hearing, enter an order granting the motion or certifying the motion and affidavit to a reviewing judge. The judge shall take no further action in the case until the motion is decided.”). This rule “presents a trial judge with a binary choice” of recusing herself or certifying the motion to another judge. *See Gavette*, 2019 UT App 73, ¶ 8.

¶25 Here, Judge Maynard chose the second option by sending the motion to disqualify to Judge Cannell. Judge Maynard informed the parties that because he did not recuse himself, he could not take any action regarding the trial until the judge reviewing the motion to disqualify ruled on it. Judge Maynard was correct that he could not take any action in the trial while

Judge Cannell was reviewing the motion to disqualify. And once Judge Cannell granted the motion, Judge Maynard could not take any action whatsoever, so he had no authority to discharge the jury in a trial from which he had been disqualified. We acknowledge that Judge Maynard was in Brigham City and Judge Cannell and Judge Walsh were both in Logan. But as we explain below, it was incumbent upon Judge Cannell or Judge Walsh (or another non-disqualified judge) to hold a hearing to determine—with input from the parties—whether to declare a mistrial and to communicate with the jury.

B. The Reviewing Judge

¶26 Rule 29(b) of the Utah Rules of Criminal Procedure articulates the steps the reviewing judge must take when considering a motion to disqualify. “If the reviewing judge finds that the motion” is timely and meritorious, “the reviewing judge shall assign another judge to the action or hearing or request the presiding judge to do so.” Utah R. Crim. P. 29(b)(2)(B). Here, Judge Cannell was both the reviewing and the presiding judge.

¶27 We recognize that Judge Cannell was dealing with exigent circumstances—what to do with a criminal jury trial that no longer had a judge. We instruct the reviewing judge in these circumstances to assign the case to a judge who can immediately deal with the issue of whether to declare a mistrial or to temporarily assign the case to herself to make that determination. *See id.* (stating that “the reviewing judge shall assign another judge to the action *or hearing*” (emphasis added)).

C. The Assigned Judge

¶28 A judge who is assigned to a case with an ongoing criminal jury trial where the initial judge has been disqualified should first address the issue of whether a mistrial should be declared. Here, Judge Walsh did not hold a hearing on whether to declare a mistrial and discharge the jury because Judge Cannell had already

declared a mistrial and Judge Maynard had already excused the jurors before Judge Walsh had an opportunity to hold a hearing on the matter. As a result, Judge Walsh could not “afford the parties adequate opportunity to object to the declaration of a mistrial.” See *State v. Manatau*, 2014 UT 7, ¶ 11, 322 P.3d 739 (cleaned up).

¶29 The assigned judge should be given the opportunity to hold a hearing on these issues of immediate concern, regardless of whether that judge’s calendaring constraints would prevent her from immediately continuing the trial should it be determined that it will proceed.⁸ Once the issue of a mistrial has been resolved, the assigned judge may remain on the case or it may be reassigned to a judge who can preside over the trial in a reasonable timeframe (assuming it moves forward).

CONCLUSION

¶30 Utah’s constitutional protections against double jeopardy prohibit Mitton’s retrial because the elements of legal necessity were not established where the court failed to give the parties an opportunity to object to the declaration of a mistrial. Thus, we reverse the denial of Mitton’s motion to dismiss and remand the matter for dismissal of the charges against him with prejudice on double jeopardy grounds.

8. We leave to the discretion of the assigned judge the specific manner in which to hold a hearing. But we note that it could be conducted via telephonic or virtual means should an in-person hearing be impractical.