Agenda

Supreme Court Advisory Committee
Utah Rules of Civil Procedure
August 24, 2022
4:00 to 6:00 p.m.
Via Webex

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Rule 3(a)(2)	Tab 2	Tim Clark
Public Comments to Rules 76, 4, 41, 42, 43, 26.1	Tab 3	Lauren DiFrancesco
Notice of Event Due Dates	Tab 4	Keri Sargent
Eviction Expungements per UCA 78B-6-852	Tab 5	Stacy Haacke
Rule 5	Tab 6	Loni Page and Susan Vogel
Standard Protective Orders	Tab 7	Judge Holmberg
Rule 53	Tab 8	Judge Holmberg / Jim Hunnicutt
Rule 26	Tab 9	Judge Stucki
Other Business		Lauren DiFrancesco
Consent agenda - *None*		
Verify Pipeline items: • Rule 26 "any damages claimed" (Judge Stone and Judge Holmberg) • Rule 30(b)(6) (Justin, Rod, Tonya, Kim)		Lauren DiFrancesco

Next Meeting: September 28

Future Meetings: September 28, October 26, November 23, December 28

Meeting Schedule: 4th Wednesday at 4pm unless otherwise scheduled

Committee Webpage: http://www.utcourts.gov/committees/civproc/

Tab 1

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – May 25, 2022

DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason	X		Stacy Haacke, Staff
Lauren DiFrancesco, Chair	X		Crystal Powell, Recording Secretary
Judge Kent Holmberg	X		Keri Sargent
James Hunnicutt	X		Jacqueline Carlton
Trevor Lee	X		
Ash McMurray		X	
Judge Amber M. Mettler	X		
Kim Neville	X		
Timothy Pack	X		
Loni Page	X		
Bryan Pattison		X	
Judge Laura Scott		X	
Judge Clay Stucki	X		
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Tonya Wright	X		
Vacant Academic Seat			
Vacant Academic Seat			
2 *Emeritus* Seats			

(1) INTRODUCTIONS

The meeting started at 4:03 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the Minutes subject to minor amendments noted by the minutes subcommittee. Judge Clay Stucki moved to adopt the Minutes as amended. Mr. Justin Toth seconded. The Minutes were unanimously approved.

(3) RULE 26(a)(1)(A)(ii)

Mr. Tim Pack summarized case law *Johansen v. Johansen*, 2021 UT App 130, and its impact on Rule 26(a) (1)(A)(ii). Mr. Pack wondered if the Committee should consider removing the adverse party exception to the requirement to disclose testimony summary for case-in-chief witnesses. Ms. DiFrancesco questioned if it relates to initial disclosures or final pretrial disclosures. Ms. Vogel questioned whether the lack of initial disclosures wouldn't come up in a meet and confer, but Mr. Pack explained that it is not required. Judge Holmberg reviewed the advisory committee note when the Rule was adopted which discusses the scope and level required for initial disclosures. After a full discussion on how the rule would affect various types of cases, Mr. Pack expressed that he was not intending to propose a rule change at this time, but merely wanted to raise the issue. Judge Stone suggested that the Committee wait on more case law before looking at changing the Rule.

(4) RULES 26 ADVISORY COMMITTEE NOTES

Ms. Stacy Haacke, referred the issue raised by Rep. Todd Weiler to the Committee concerning the Advisory Committee Notes having some references that do not correspond the rules that they refer to in the printed version of Lexis Nexis. After examining the Rule, Judge Clay Stucki offered that he would do a redline of the comments and give recommendations for harmonizing/correcting the references.

(5) RULES 7B, 109, AND 7A(h) - MOTIONS TO ENFORCE

Judge Amber Mettler related that the issue is whether Rule 7B(i) regarding motions to enforce apply to the domestic relations injunction issued pursuant to Rule 109 where the Rule 7B(i) provides that it does not apply to orders issued at the court's initiative which would then include domestic relations. Mr. Jim Hunniucut explained that the Rule relates to attorneys and not judges but now sees know the rule can be misread and suggested to remove the sentence from the Rule. Ms. Vogel expressed her appreciation for Rule 109 and the positive impact it has had for pro se parties seeking to enforce orders. Judge Stone suggested that it does need to be clear that the Rule does not apply to the court seeking to enforce its own order. The Committee discussed draft language. Ms. DiFrancesco added that the same amendments would be included for Rule 7A(h). Judge Stone moved to approve the draft amendment. Mr. Toth Seconded. The motion was unanimously approved.

(6) Rule 7(l)(1) - MOTIONS THAT CAN BE ACTED UPON WITHOUT WAITING FOR A RESPONSE

Mr. Rod Andreason suggested adding motions to expedite under Rule 7(l)(1) as motions that can be acted on without waiting for a response. He expressed this is the type of motion that can be easily added to this list and could be beneficial to parties. Ms. Vogel and Ms. DiFrancesco wondered whether there was an idea of what types of hearings that would be expedited as there could be potential for abuse of the rule. Mr. Andreason noted that such a situation currently exists with the other types of motions listed but it is ultimately the judge's discretion. Judge Stone raised a hypothetical of whether the motion could be used to shorten a party's response time and disagreed with having a rule that lessens a party's rights in responding to an issue. He suggested that the proper procedure would

be to have a scheduling conference with the judge to discuss the briefing schedule with the parties. Mr. Andreason expressed that the steps in getting a status conference might result in the reason for requesting the expedite becoming moot, but he is open to the compromise. Ms. Vogel questioned what the reason for expediting might be in the absence of another motion such as a temporary restraining order and wondered how the revised rule would impact family law cases. Judge Holmberg agreed with Judge Stone regarding not impacting party rights.

The Committee discussed various types of issues that might arise; the general reluctance to grant requests without hearing from the other side; and the general impact on motion practice and case management. The Committee also discussed the role of Rule 16 conferences in expediting cases/issues. Based on the discussion Mr. Andreason moved to add Rule 16 conferences under Rule 7 as the mechanism to expedite hearings rather than a formal motion to expedite. Judge Stone seconded. The motion passed unanimously.

(7) RULE 7 AND 37. WORD LIMITS

Mr. Trevor Lee presented on the revised drafts of Rules 7 and 37 based on feedback from previous meetings. Ms. Vogel thanked him for his hard work and asked him if there is a word limit for attachments and exhibits. He responded there wasn't and that although Rule 101 does have an overall page limit, that is something else to be addressed. Ms. Vogel also noted that the word 'brief' is not usually very common with pro se parties and questioned whether more descriptive or common words could be used such as a 'paper' or 'document.' Judge Stone reminded the Committee that they had landed on the word 'paper' in a previous meeting.

Judge Holmberg expressed that many times in motions for summary judgment, a party doesn't repeat in the motion the facts that they are opposing which makes the motion extremely difficult to read. He finds it useful to include that the page limit would not include repeating the facts being opposed in motions for summary judgment. He noted that he gets a lot of requests for overlength motions for summary judgment. Judge Holmberg also raised whether the rule would be using the word limit or page limit and the effect that might have on pro se parties who may be using court forms. Ms. Vogel answered that it becomes difficult to use word limits especially when parties are using handwritten briefs or are using court forms because it's very tedious to count the words. Mr. Lee suggested he could work on the proposal a bit more to iron out some of those potential issues. The Committee edited the language of the table to make it clearer. Mr. Lee moved to adopt the draft changes to the table. Mr. Andreason seconded. The motion unanimously passed.

(8) URCP SUBCOMMITTEES

Ms. Lauren Di Francesco asked the Committee to confirm the list of subcommittees to ensure that none are forgotten. The Committee discussed the mandate of each subcommittee and a general status of work.

Ms. Vogel summarized some of the work that has been done on some of the subcommittees that will make the system easier to navigate. Ms. Powell asked to join the terminology subcommittee and was accepted.

Ms. DiFrancesco reminded the Committee that Judge Blanch and Mr. Slaugh were emeritus, and their positions can only be filled emeritus. Ms. Haacke reached out to all members whose terms are expiring and all who can serve a second term have accepted to do so. Ms. DiFrancesco raised whether to ask a non-attorney representative to join the Committee. Ms. Vogel suggested someone that assists pro se parties to fill out forms. Some Members expressed that Ms. Vogel already brings a breadth of knowledge and representation that a lay person may not be able to contribute. Ms. DiFrancesco suggested that a subcommittee would be a more appropriate place. Ms. Vogel also suggested perhaps a subcommittee where feedback of layperson may be gained on certain issues and gave the example of a study done by the University of Utah that shows that persons are frustrated with the layout of the court website and find it somewhat difficult to use.

(9) ADJOURNMENT.

The next meeting will be on August 24, 2022, at 4:00 p.m. The Chair encouraged Committee members to reach out to her and Ms. Haacke if the pipeline issues will not be ready for the next Committee meeting and thanked everyone for their time and effort. She wished everyone a great summer. The meeting adjourned at 5:56 p.m.

Tab 2

Tim Clark (10778)
tclark84105@gmail.com
(801) 463-1518

February 23, 2022

VIA EMAIL

Lauren DiFrancesco
Chair, Supreme Court's Advisory Committee on the Rules of Civil Procedure
difrancescol@gtlaw.com

Re: Rule 3(a)(2) of the Utah Rules of Civil Procedure

Dear Lauren,

I write regarding Rule 3(a)(2) of the Utah Rules of Civil Procedure and hope that the Supreme Court's Advisory Committee on the Rules of Civil Procedure might briefly review that provision. Having recently had the unfortunate experience of being personally sued by a collection agency in relation to a disputed medical bill, I was able to gain the perspective of an actual defendant in that type of case. My case was relatively unimportant and itself not an issue for the committee. As a result of this learning experience, however, I would like to draw some attention on certain gaps in Rule 3(a)(2). While I realize that this rule is not a high profile or particularly significant rule, I am afraid that this rule is adding to the disadvantage that legally unsophisticated and economically vulnerable parties already have in trying to navigate the system. While some amount financial hardship is unavoidable when consumers of medical services are private pay or have a high deductible plan, I am concerned that gaming of the rules only exacerbates these issues. Accordingly, I respectfully suggest, for the committee's consideration, a couple amendments regarding Rule 3(a)(2).

1. Eliminate Rule 3(a)(2).

Rule 3(a)(2) is unnecessary and can be deleted. Current Rule 3(a)(2) allows for formal service of a Complaint prior to the Complaint being filed (with filing then at plaintiff's discretion). The defendant has to check with the court clerk, after the period for filing has passed, to see if the complaint is actually filed. Presumably, this rule variation is intended to facilitate quick settlement before filing costs are incurred. I'm skeptical. For example, I was sued on a $225 medical bill; after being served, I was told I

would have to pay over $600 to resolve the claim; within a day, I offered $345 to settle.[1] Express Recovery Services, represented by the Law Office of Edwin Parry, stubbornly insisted that I was required to pay the full amount demanded, and I never received any response to my offer, much less a meaningful counter-offer. Perhaps my experience is simply anecdotal and not representative of more common circumstances, but I have a hard time believing that an unsophisticated party gets any better treatment than an attorney with over 15 years litigation experience. Rule 3(a)(2) is confusing to defendants and causes additional stress to figure out if a case is actually being filed or not. In sum, why keep the relative complexity of Rule 3(a)(2) if it doesn't actually help resolve cases? The process for initiating cases and making a responsive pleading would be easier to understand if Rule 3(a)(2) were simply deleted.

2. <u>If Rule 3(a)(2) Remains, Clarify the Deadline for Responsive Pleadings</u>.

Even if Rule 3(a)(2) is retained, the responsive pleading deadline for a case initiated under Rule 3(a)(2) should be clarified. Again, I'll use my case for illustration purposes only. Instead of responding to my settlement offer, the Law Office of Edwin Parry filed the Complaint on day 10, the last day allowed under Rule 3(a)(2). From what I understand, the Law Office of Edwin Parry files many cases on behalf of Express Recovery Services, and filing on Day 10 is their common practice. Although I am very familiar with litigation, I was still rattled by this process. On Day 1, I explained the medical provider's billing error to them and hoped that it would be resolved without resorting to a lawsuit. On Day 2, I offered to pay more than the original bill and was told that Mr. Parry might get back to me. On Day 11, I was happy that a lawsuit didn't show on Exchange. On Day 14, I was dismayed to learn that the Complaint had been filed. As a practical matter, even though I was aware that a complaint might be filed, 14 days passed before I came to understand that I was actually being sued in Third District Court.

After talking with the court clerk and learning that a complaint has been filed, a defendant served under Rule 3(a)(2) then has to figure out when a responsive pleading is due. Under a reasonable reading of Rule 12, I believe that service is not "complete" until a Complaint is actually filed, meaning that the responsive pleading deadline should be 21 days after the actual filing date of the Complaint. But the Law Office of Edwin Parry firmly insists that a responsive pleading is due 21 days *after initial service*, regardless of when the Complaint is filed. And they can point to a form of summons on the court's website supporting this interpretation.[2] The Summons served with a copy of the Complaint advises defendants to wait "at least 14 days after service" before calling the court clerk to see if a Complaint has been filed. As a result, unsophisticated parties, already confused by the process, find themselves at an immediate disadvantage when they realize, after talking to the court clerk, that they are supposed to file a formal document with the court within seven days. From a very practical perspective, defendants may file a responsive pleading to meet this deadline before even learning of options for representation. Even if representation is later obtained, a *pro se* defendant may make unwarranted admissions in their answer; they may also fail to assert affirmative defenses or compulsory counterclaims. As a result,

[1] While I believed in the merits of my defense, I did not want to litigate. I explained my offer was for the full amount potentially recoverable, because UTAH CODE § 12-1-11, explicitly referenced in the contract, limited the collection fee to $90 (being 40% of $225).

[2] *See* Ten Day Summons, available at https://www.utcourts.gov/howto/filing/summons/.

before the case has even started, defendants are at a disadvantage, adding to the perception that the deck is stacked in the collection agency's favor.

Consistent with the spirit of the Rules of Civil Procedure, all defendants should get at least 21 days to file an answer after knowing that a complaint has actually been filed, regardless of whether they are sued under Rule 3(a)(1) or (a)(2). Even if this process for serving an unfiled complaint is retained, there is an extremely easy fix for the responsive pleading deadline. Rule 12 could be amended to state an answer must be served within 28 days after the filing of a Complaint if a case is initiated under Rule 3(a)(2) (with the extra seven days provided because of the requirement to call the court clerk to learn about the filing, which the collection agency itself recommends not be done until at least 14 days after service).

3. Procedures for Funneling Minor Disputes to Small Claims Court.

The specific issues related to Rule 3(a)(2) discussed above can be addressed with an easy amendment. Nonetheless, I will also generally encourage the committee to consider how routine collection actions on relatively minor medical bills can be steered to small claims (if litigation is truly warranted at all). As a general principle, unsophisticated and unrepresented lay persons are better served by the small claims process, which is much more likely to provide the defendant a meaningful opportunity to present an actual defense on the merits, which should be a goal of the system. Our judges and other court staff do a great job of helping *pro se* litigants navigate the system. But small claims is specifically structured to handle these types of cases. Especially with the threat of attorney's fees for a prevailing party, the *pro se* defendant cannot afford the risks associated with learning to navigate the more complex procedures for district court. I suspect that a collection agency would still accomplish a very high percentage of default judgments in small claims, because a high percentage of cases involve undisputed bills (the main problem being an ability to pay). But for the small percentage of cases involving an actual dispute on the merits, the small claims process would allow a *pro se* defendant to adequately, and briefly, present their side of the story to a human being authorized to decide the case. Even if the defendant loses, the small claims judge is best positioned to make sure that the judgment entered fairly reflects an amount truly warranted under the contract at issue, versus whatever the collection agency unilaterally asserts in its demands.

Thank you for your consideration of these issues.

Sincerely,

/s/ Tim Clark

Rule 3. Commencement of action.

(a) How commenced. A civil action is commenced (1) by filing a complaint with the court, or (2) by service of a summons together with a copy of the complaint in accordance with Rule 4. If the action is commenced by the service of a summons and a copy of the complaint, then the complaint, the summons and proof of service, must be filed within ten days of such service. If, in a case commenced under paragraph (a)(2) of this rule, the complaint, summons and proof of service are not filed within ten days of service, the action commenced shall be deemed dismissed and the court shall have no further jurisdiction thereof. If a check or other form of payment tendered as a filing fee is dishonored, the party shall pay the fee by cash or cashier's check within 10 days after notification by the court. Dishonor of a check or other form of payment does not affect the validity of the filing, but may be grounds for such sanctions as the court deems appropriate, which may include dismissal of the action and the award of costs and attorney fees.

(b) Time of jurisdiction. The court shall have jurisdiction from the time of filing of the complaint or service of the summons and a copy of the complaint.

Advisory Committee Notes

Rule 3 constitutes a significant change from the prior rule. The rule retains service of the ten-day summons as one of two means to commence an action, but the rule requires that the summons together with a copy of the complaint be served on the defendant pursuant to Rule 4. In so doing, the rule eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. The changes in Rule 3 must be read and should be interpreted in conjunction with coordinate changes in Rule 4 and with a change in Rule 12(a) that begins the running of the defendant's 20-day response time from the service of the summons and complaint.

Paragraph (a). This paragraph eliminates the requirement that a copy of the complaint be deposited with the clerk for the defendant whose address is unknown. Paragraph (b) of the former rule, which permitted the plaintiff to deposit copies of the complaint with the clerk for defendants not otherwise served with a copy at the time of the service of the summons, has also been eliminated. The rule requires, in effect, that both the summons and the complaint be served pursuant to Rule 4. Under a coordinate change in Rule 12(a), the defendant's time for answering or otherwise responding to the complaint does not begin to run until service of the summons and complaint pursuant to Rule 4.

Paragraph (b). This paragraph is substantially identical to paragraph (c) of the former rule.

Tab 3

Rules Returning from Public Comment:

Rule 76

No public comments

Rule 26.1

I see nothing wrong with requiring that the initial disclosures be served at the same time as the Rule 26.1 financial declaration, but 14 days to get them both done and served is just too short a period.
14 days in which to prepare and serve the initial disclosures and Rule 26.1 financial declaration is way too short. As it is now, next to nobody completes and serves a financial declaration in 14 days, and that's without having the obligation to complete and serve initial disclosures at the same time. I suggest 28 days for the deadline.

- Eric Johnson

Rule 4

URCP004. Process. AMEND. Based upon the regular practice with default judgments..
It strikes me that as a general rule the courts should follow the rules as adopted, and seek a change to those rules prior to changing their regular practice.

- Chip Shaner

Rule 41

No public comments

Rule 42

AMEND (2) A motion to consolidate may be filed or opposed by any party. The motion must be filed in and heard by the judge assigned to the first action filed and must be served on all parties in each action pursuant to Rule 5.
Can the language state the motion must be filed in "either" case instead of the first action, the system does not allow a non party to the first action to file the motion to consolidate into the first action. Yes the case assigned judge to the first action should hear any pending motion, and yes the newer case is consolidated to the first action once granted.

- Monica Fjeldsted

Rule 43

No public comments

Tab 4

SIXTH DISTRICT COURT-RICHFIELD
SEVIER COUNTY, STATE OF UTAH

TEST CASE, Plaintiff vs TEST CASE, Defendant	NOTICE OF EVENT DUE DATES Case 210600107 Discovery Tier: 3 Judge: TEST JUDGE

To Counsel and Parties:

The district court case management system has automatically generated this notice, calculating the dates set forth below under Utah Rules of Civil Procedure 26. These dates will constitute the schedule for disclosures, fact discovery, expert discovery, ADR and readiness for trial. This schedule does not govern extraordinary discovery.

Based on the date the answer was filed, the following event due dates apply in this case. If any date is a Saturday, Sunday or legal holiday, the due date is the following business day.

Date Answer Filed	11-Jan-22	
*Moving party's initial disclosures due:	25-Jan-22	(Date answer filed plus 14 days)
*Responding party's initial disclosures due:	25-Jan-22	(Date answer filed plus 14 or 42 days, depending on discovery tier.)
*Financial disclosures due: (if Tier 4)	25-Jan-22	(Date answer filed plus 14 days)
*Fact discovery completed:	20-Sep-22	(Date responding party's disclosures due plus 90, 120, 180 or 210 days, depending on discovery tier.)
*Expert discovery completed:	18-Apr-23	(Date fact discovery completed plus 210 days)
*ADR completed (unless exempt):	18-Apr-23	(Date expert discovery completed)

*Certificate of Readiness for Trial due: 18-Apr-23 (Date expert discovery completed)

The parties shall promptly notify the Court of any settlements or stipulations. Self Help Resources are available at www.utcourts.gov.

CERTIFICATION OF NOTIFICATION HERE

SIXTH DISTRICT COURT-RICHFIELD
SEVIER COUNTY, STATE OF UTAH

LORI HALLOWS, Plaintiff	: :	
vs.	:	NOTICE OF EVENT DUE DATES
WILLIAM WELLS, Defendant	: :	Case No: 210600107 TA Discovery Tier: 3 Judge: MARVIN D BAGLEY

To Counsel and Parties:

The district court case management system has automatically generated this notice, calculating the dates set forth below under Utah Rule of Civil Procedure 26. These dates will constitute the schedule for disclosures, fact discovery, expert discovery, ADR and readiness for trial. This schedule does not govern extraordinary discovery.

Based on the date the answer was filed, the following event due dates apply in this case. If any date is a Saturday, Sunday or legal holiday, the due date is the following business day.

Date Answer filed:	11-Jan-22	
* Moving party's initial disclosures due:	25-Jan-22	(Date answer filed plus 14 days)
* Responding party's initial disclosures due:	22-Feb-22	(Date answer filed plus 42 days)
* Fact discovery completed:	20-Sep-22	(Date responding party's disclosures due plus 90, 120, 180, or 210 days, depending on the discovery tier.)
* Expert discovery completed:	18-Apr-23	(Date fact discovery completed plus 210 days)
* ADR completed (unless exempt):	18-Apr-23	(Date expert discovery completed)
* Certificate of Readiness for Trial due:	18-Apr-23	(Date expert discovery completed)

The parties shall promptly notify the Court of any settlements or stipulations. Self Help Resources are available at www.utcourts.gov.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 210600107 by the method and on the date specified.

EMAIL: JOHN ROMNEY

EMAIL: ZACHARY LOWE

Date: January 11, 2022 /s/ LINDA EKKER

Clerk/Clerk of Court

SIXTH DISTRICT COURT-RICHFIELD
SEVIER COUNTY, STATE OF UTAH

In the matter of the marriage of	:	
CHASE BLAKE PETERSON,	:	
Petitioner	:	
and	:	NOTICE OF EVENT DUE DATES
KANDACE ANN PETERSON,	:	Case No: 194600147 DA
Respondent	:	Discovery Tier: 2
	:	Judge: BRODY KEISEL

To Counsel and Parties:

The district court case management system has automatically generated this notice, calculating the dates set forth below under Utah Rule of Civil Procedure 26. These dates will constitute the schedule for disclosures, fact discovery, expert discovery, ADR and readiness for trial. This schedule does not govern extraordinary discovery.

Based on the date the answer was filed, the following event due dates apply in this case. If any date is a Saturday, Sunday or legal holiday, the due date is the following business day.

Date Answer filed:	08-Jun-22	
* Moving party's initial disclosures due:	22-Jun-22	(Date answer filed plus 14 days)
* Responding party's initial disclosures due:	20-Jul-22	(Date answer filed plus 42 days)
* Fact discovery completed:	16-Jan-23	(Date responding party's disclosures due plus 90, 120, 180, or 210 days, depending on the discovery tier.)
* Expert discovery completed:	14-Aug-23	(Date fact discovery completed plus 210 days)
* ADR completed (unless exempt):	14-Aug-23	(Date expert discovery completed)
* Certificate of Readiness for Trial due:	14-Aug-23	(Date expert discovery completed)

The parties shall promptly notify the Court of any settlements or stipulations. Self Help Resources are available at www.utcourts.gov.

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 194600147 by the method and on the date specified.

EMAIL: DOUGLAS NEELEY

EMAIL: DAVID VAN DYKE

Date: June 08, 2022 /s/ LINDA EKKER

Clerk/Clerk of Court

Tab 5

Effective 7/1/2022

78B-6-852 Automatic expungement of eviction.

(1)

(a) Without the filing of a petition, a court shall order expungement of all records of an eviction if:

(i) the entire case was dismissed;

(ii) there is no appeal pending for the case; and

(iii) at least three years have passed from the day on which the eviction was filed; or

(b) the parties to the eviction stipulated to expungement and have filed a stipulation with the court.

(2) The court shall issue an order of expungement when the court determines that an eviction qualifies for automatic expungement under Subsection (1).

(3) This section applies to evictions filed on or after July 1, 2022.

Enacted by Chapter 372, 2022 General Session

Tab 6

Current Proposed Redline

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

Effective: 1/1/2021

(a) When service is required.

(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served by a party on every other party to the case:

(A) a judgment;

(B) an order that states it must be served;

(C) a pleading after the original complaint;

(D) a paper relating to disclosure or discovery; and

(E) other than an ex parte request, every~~a~~ paper filed with the court by a party, ~~other than a motion that may be heard ex parte; and~~

~~(F) a written notice, appearance, demand, offer of judgment, or similar paper.~~

(2) Serving parties in default. No service is required on a party who is in default except that:

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

(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

(C) a party in default for any reason must be served with notice of any hearing to determine the amount of damages to be entered against the defaulting party;
(D) a party in default for any reason must be served with notice of entry of judgment under Rule 58A(g); and
(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.

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

(b) How service is made.

(1) Whom to serve. If a party is self-represented, service must be made upon the self-represented party. If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:
(A) an attorney has filed a Notice of Limited Appearance under Rule 75 and the papers being served relate to a matter within the scope of the Notice; or

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

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(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

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

(A) except in the juvenile court, the person serving it submitting it ~~for~~ to their electronic filing account (including MyCase), or the court submitting it to ~~the~~ its electronic filing service provider, if the person being served also has an electronic filing account (including MyCase);

(B) If the party serving or being served a paper does not have an electronic filing account, emailing it to
(i) the most recent email address the person being served has provided ~~by the person~~ to the court under Rule 10(a)(3) or Rule 76, or

(ii) if service is to a licensed attorney or paralegal, to the email address on their pleadings ~~on their pleading~~ and/or on file with the Utah State Bar;

(C) If the party serving or being served a paper does not have an electronic filing account or email, mailing it to the most recent street address the person being served has provided the court under Rule 10(a)(3) or Rule 76 or, if none, the person's last known address;

(D) handing it to the person;

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

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

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

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

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

(A) every paper required to be served must be served by the party filing ~~preparing~~ it; and

(B) every paper prepared by the court will be served by the court~~.~~

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

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

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

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

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

(d) Certificate of service. A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B)when service to all parties is made under paragraph (b)(3)(A).

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(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:
(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section 46-1-16(7);

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

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

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

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

February 2022 Meeting Version

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

(a) When service is required.

(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

(A) a judgment;

(B) an order that states it must be served;

(C) a pleading after the original complaint;

(D) a paper relating to disclosure or discovery;

(E) a paper filed with the court other than a motion that may be heard ex parte; and

(F) a written notice, appearance, demand, offer of judgment, or similar paper.

(2) Serving parties in default. No service is required on a party who is in default except that:

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

(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

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

(D) a party in default for any reason must be served with notice of entry of judgment under Rule 58A(g); and

(E) a party in default for any reason must be served under Rule 4 with pleadings asserting new or additional claims for relief against the party.

(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required

before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

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

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

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

(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(3) Methods of service. A paper is served under this rule by using one or more of the methods in the following paragraphs.~~:~~

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

(B) **Email.** A paper not electronically served under paragraph (b)(3)(A) is served by emailing it to (i) the most recent email address provided by the person to the court and other parties ~~under Rule 10(a)(3) or Rule 76~~, or (ii) ~~to~~ the email address on file with the Utah State Bar. If email service to the email address is returned as undeliverable, service must then be made by another method in accordance with paragraph (b)(3)(C). Service is complete upon the attempted email service for purposes of the sender meeting any time period, provided service by another

method is made within 3 days following receipt of an undeliverable email notice, excluding Saturday, Sunday, or legal holidays.

(C) **Mail and other methods.** This paragraph applies if the person required to serve or be served with a paper has notified the court and the parties that the person does not have the ability to serve and receive documents by email or an email is returned as undeliverable. This paragraph also applies if the person to be served has not provided an email address to the court under Rule 10. A paper may be served under this paragraph by:

(i) mailing it to the ~~person's~~ last known mailing address provided by the person to the court and other parties under Rule 10(a)(3) or Rule 76;

~~(D)~~(ii) handing it to the person;

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

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

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

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

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

(A) every paper required to be served must be served by the party preparing it; and

(B) every paper prepared by the court will be served by the court.

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

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

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

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

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

(d) Certificate of service. No certificate of service is required when a paper is served by filing it with the court's electronic-filing system under paragraph (b)(3)(A). When a paper that is required to be served is served by other means:

(1) if the paper is filed, a certificate of service showing the date and manner of service must be filed with it or within a reasonable time after service; and

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

~~A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B) when service to all parties is made under paragraph (b)(3)(A).~~

(e) Filing. Except as provided in Rule 7(j) and Rule 26(f), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

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

(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section 46-1-16(7);

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

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

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

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

Effective

Advisory Committee Notes

Note adopted 2015

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

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

having been filed. So in the juvenile court, a party electronically filing a document must serve that document by one of the other permitted methods.

Tab 7

STANDARD PROTECTIVE ORDER FOR CIVIL DISCOVERY

(a) **Applicability**. Except in cases exempt under paragraph (a)(3) of this rule, cases to which Rules 26.1, 26.2, or 26.4 apply, or cases filed as debt collection matters, the Standard Protective Order for Civil Discovery, available on the court's website, applies in every case involving the disclosure of any information designated as confidential, unless the court orders otherwise. The Standard Protective Order for Civil Discovery is effective by operation of this rule at the time a case is filed and need not be entered by the court to be effective.

(b) **Improper Withholding and Discovery Objections**. Except as the court may otherwise order, it is improper to withhold disclosures or object to a discovery request because the court has not entered a protective order.

(c) **Relief From the Standard Protective Order**. A party may move for relief from the Standard Protective Order for Civil Discovery.

IN THE ~~UNITED STATES~~ _____ JUDICIAL DISTRICT COURT ~~FOR THE DISTRICT~~ _____ COUNTY, STATE OF UTAH	
_____, Plaintiffs, vs. _____, Defendants.	STANDARD PROTECTIVE ORDER ~~Civil~~FOR CIVIL DISCOVERY Case No. Honorable ~~Magistrate~~

Pursuant to Rule ~~26(c~~26X and 37(a)(7)(G) of the ~~Federal~~Utah Rules of Civil Procedure and for good cause,

IT IS HEREBY ORDERED THAT:

1. Scope of Protection

This Standard Protective Order for Civil Discovery (Standard Protective Order) shall govern any record of information produced in this action and designated pursuant to this Standard Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Standard Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under ~~any federal procedural rule or~~

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~~local rule of the Court~~the Utah Rules of Civil Procedure and any supplementary disclosures thereto.

This Standard Protective Order shall apply to the parties and to any nonparty from whom discovery may be sought who desires the protection of this Standard Protective Order.

Nonparties may challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-designate.

2. Definitions

(a) The term PROTECTED INFORMATION shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information designated as such by the producing party.

(b) The term CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL - ATTORNEYS EYES ONLY may be used only for the following types of past, current, or future PROTECTED INFORMATION: (1) sensitive technical information, including current research, development and manufacturing information and patent prosecution information, (2) sensitive business information, including highly sensitive financial or marketing information and the identity of suppliers, distributors and potential or actual customers, (3) competitive technical information, including technical analyses or comparisons of competitor's products, (4) competitive business information, including non-public financial or marketing analyses or comparisons of competitor's products and strategic product planning, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Standard Protective Order the producing party reasonably and in good faith believes would likely cause harm.

(c) The term CONFIDENTIAL INFORMATION shall mean all PROTECTED INFORMATION that is not designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" information.

(d) For entities covered by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the term CONFIDENTIAL INFORMATION shall include Confidential Health Information. Confidential Health Information shall mean information supplied in any form, or any portion thereof, that identifies an individual or subscriber in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual or subscriber, the provision of health care to such individual or subscriber, or the past, present, or future payment for the provision of health care to such individual or subscriber. Confidential Health Information includes claim data, claim forms, grievances, appeals, or other documents or records that contain any patient health information required to be kept confidential under any state or federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R. §§ 164.501 & 160.103), and the following subscriber, patient, or member identifiers:

(1) names;

(2) all geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;

(3) all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;

(4) telephone numbers;

(5) fax numbers;

(6) electronic mail addresses;

(7) social security numbers;

(8) medical record numbers;

(9) health plan beneficiary numbers;

(10) account numbers;

(11) certificate/license numbers;

(12) vehicle identifiers and serial numbers, including license plate numbers;

(13) device identifiers and serial numbers;

(14) web universal resource locators ("URLs");

(15) internet protocol ("IP") address numbers;

(16) biometric identifiers, including finger and voice prints;

(17) full face photographic images and any comparable images; and/or any other unique identifying number, characteristic, or code.

(e) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party's PROTECTED INFORMATION, including CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, and CONFIDENTIAL INFORMATION. Each party's TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party's counsel, are reasonably necessary for development and presentation of that party's case. These

persons include outside experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party's TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A ("Disclosure Agreement"). Copies of the Disclosure Agreement signed by any person or entity to whom PROTECTED INFORMATION is disclosed shall be provided to the other party promptly after execution by facsimile and overnight mail. No disclosures shall be made to a TECHNICAL ADVISOR until seven (7) days after the executed Disclosure Agreement is served on the other party.

(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to the producing party and received no less than seven (7) days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's curriculum vitae, a brief description, including education, present and past employment and general areas of expertise of the TECHNICAL ADVISOR. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within seven (7) days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within seven (7) days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any objections, the parties shall attempt in good faith to promptly resolve any objections informally. If the objections cannot be resolved, the party

seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall move within seven (7) days for an Order of the Court preventing the disclosure. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness provided that the party seeking such deposition has a good faith, demonstrable basis independent of the Disclosure Agreement or the information provided under subparagraph (a) above that such person possesses facts relevant to this action, or facts likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION, by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION

(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY

(c) During discovery, a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.

(d) A party may designate information disclosed at a deposition as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the reporter to so designate the transcript at the time of the deposition.

(e) A producing party shall designate its discovery responses, responses to requests for admission, briefs, memoranda, and all other papers sent to the court or to opposing counsel as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY when such papers are served or sent.

(f) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the court, at the time the information is proffered or adduced, to receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

(g) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that is not entitled to such designation or which is generally available to the public. The parties shall designate only that part of a document or deposition that is CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, rather than the entire document or deposition. For example, if a party claims that a document contains pricing information that is CONFIDENTIAL – ATTORNEYS EYES ONLY, the party will designate only that part of the document setting forth the specific pricing information as ATTORNEYS EYES ONLY, rather than the entire document.

(h) In multi-party cases, Plaintiffs and/or Defendants shall further be able to designate documents as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS for documents that shall not be disclosed to other parties.

5. Disclosure and Use of Confidential Information

Information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be disclosed by the receiving party only to Qualified Recipients. All Qualified Recipients shall hold such

information received from the disclosing party in confidence, shall use the information only for purposes of this action and for no other action, and shall not use it for any business or other commercial purpose, and shall not use it for filing or prosecuting any patent application (of any type) or patent reissue or reexamination request, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Order.

In multi-party cases, documents designated as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to other plaintiffs and/or defendants.

6. Qualified Recipients

For purposes of this Order, "Qualified Recipient" means

(a) For CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY:

(1) Outside counsel of record for the parties in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record, subject to the requirements in Paragraph 3 above;

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee's employment; and

(6) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the parties, and his or her staff, provided that such individuals agree in writing, pursuant to the Disclosure Agreement, to be bound by the terms of this Order.

(b) FOR CONFIDENTIAL INFORMATION:

(1) Those persons listed in paragraph 6(a);

(2) In-house counsel for a party to this action who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary;

(3) The insurer of a party to litigation and employees of such insurer to the extent reasonably necessary to assist the party's counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes; and

(4) Representatives, officers, or employees of a party as necessary to assist outside counsel with this litigation.

7. Use of Protected Information

(a) In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission, or other papers of any kind that are served or filed include another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the papers must be appropriately designated pursuant to paragraphs 4(a) and (b) and ~~governed by DUCivR 5-3~~shall be marked and treated as "PROTECTED" by the parties and the Court as that term is used in the Utah Code of Judicial Administration 4-202.02 and 4-202.03.

(b) All documents, including attorney notes and abstracts, that contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall be handled as if they were designated pursuant to paragraph 4(a) or (b).

(c) Documents, papers, and transcripts that are filed with the court and contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be filed ~~in sealed envelopes and filed in accordance with DUCivR 5-3.~~ marked and treated as "PROTECTED" by the parties and the Court as that term is used in the Utah Code of Judicial Administration 4-202.02 and 4-202.03.

(d) To the extent that documents are reviewed by a receiving party prior to production, any knowledge learned during the review process will be treated by the receiving party as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY until such time as the documents have been produced, at which time any stamped classification will control. No photograph or any other means of duplication, including but not limited to electronic means, of materials provided for review prior to production is permitted before the documents are produced with the appropriate stamped classification.

(e) In the event that any question is asked at a deposition with respect to which a party asserts that the answer requires the disclosure of CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, such question shall nonetheless be answered by the witness fully and completely. Prior to answering, however, all persons present shall be advised of this Order by the party making the confidentiality assertion and, in the case of information designated as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY at the request of such party, all persons who

are not allowed to obtain such information pursuant to this Order, other than the witness, shall leave the room during the time in which this information is disclosed or discussed.

(f) Nothing in this Standard Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this action and, in the course thereof, from relying in a general way upon his examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to paragraph 4, it may later designate by notifying the receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a producing party's designation at any time. A failure of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.

(b) Any receiving party may disagree with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. In that case, any receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may request the producing party in writing to change the designation of a document or documents, stating with particularity the reasons for that request, and specifying the category to which the challenged document(s) should be de-designated The producing party shall then have seven (7) days from the date of service of the request to:

(i) advise the receiving parties whether or not it persists in such designation; and

(ii) if it persists in the designation, to explain the reason for the particular designation and to state its intent to seek a protective order or any other order to maintain the designation.

(c) If no response is made within seven (7) days after service of the request under subparagraph (b), the information will be de-designated to the category requested by the receiving party. If, however, the request under subparagraph (b) above is responded to under subparagraph (b)(i) and (ii), within seven (7) days the producing party may then move the court for a protective order or any other order to maintain the designation. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days after the statement to seek an order under subparagraph (b)(ii), the information will be de-designated to the category requested by the receiving party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall not

be made until the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

(d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:

(i) the information in question has become available to the public through no violation of this Order; or

(ii) the information was known to any receiving party prior to its receipt from the producing party; or

(iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Inadvertently Producing Privileged Documents

The ~~production in this case~~ parties hereto also acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work- product ~~protected documents, electronically stored information, or other information (collectively "discovery" in this section), whether inadvertent or otherwise, is not a waiver of the privilege or protection in this case or in any other federal or state proceeding. This Order shall be interpreted to provide the maximum protection allowed under Fed. R.~~ materials may occur. ~~Evid. 502(d).~~ In accordance with ~~Fed.~~Utah R. Civ. P. 26(b)(~~5)(B~~8) and ~~Fed.~~Utah R. Evid. ~~502(d), the parties~~504 and 510, they therefore agree that if a party through inadvertence produces

or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product ~~protection, whether inadvertent or otherwise~~, the producing party may give written notice to the receiving party that the ~~discovery~~document or thing is subject to a claim of attorney-client privilege or attorney work product ~~protection~~ and request that ~~it~~the document or thing be returned to the producing party. ~~-~~The receiving party ~~must: (a) promptly~~ shall return~~, sequester, or destroy~~ to the producing party such ~~discovery and copies thereof; (b) not use or disclose the material until the matter is resolved; and (c) must take reasonable steps to retrieve the information if the party disclosed it before being notified.~~ document or thing. Return of the ~~discovery~~document or thing shall not constitute an admission or concession, or permit any inference, that the ~~discovery~~returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work~~-~~ product ~~protection. If the~~ , nor shall it foreclose any party from moving the Court pursuant to Utah R. Civ. P. 26(b)(8) and Utah R. Evid. ~~returning the discovery to the producing party believes that the discovery is not subject to the attorney-client privilege or work-product protection, it must promptly meet~~504 and ~~confer with the party seeking to claw back the discovery. If resolution of the dispute cannot be worked out between the parties, then the party seeking production of the purportedly privileged or work-product protected discovery should move the court under seal for an order requiring the production of the previously disclosed discovery within the time required under DUCivR 37-1. The producing party must preserve the information until the claim is resolved. The court's determination of attorney-client privilege or work-product protection will not consider the provisions of Fed. R. Evid. 502(b) because those provisions do not apply.~~

~~If a party that receives a request to claw back discovery refuses to promptly return, sequester, or destroy the requested discovery, the producing party may move the court under~~

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~~seal~~510 for an ~~order seeking return of the discovery within the time required under DUCivR 37-1~~Order that such document or thing has been improperly designated or should be produced.

11. Inadvertent Disclosure of Confidential Information

In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to a non-Qualified Recipient, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

12. Limitation

This Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

13. Conclusion of Action

(a) At the conclusion of this action, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the producing party all materials and documents containing CONFIDENTIAL INFORMATION or

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and to certify to the producing party such destruction or return. Such return or destruction shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. Trial counsel's archive copy shall remain subject to all obligations of this Order.

(c) The provisions of this paragraph shall not be binding on the ~~United States~~State of Utah, any insurance company, or any other party to the extent that such provisions conflict with applicable ~~Federal~~federal or ~~State~~state law. The ~~Department of Justice~~Utah Attorney General's Office, any insurance company, or any other party shall notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the Court.

14. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY produced by third parties according to the terms of this Order.

15. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order

seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY of a producing party, the receiving party shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

16. Jurisdiction to Enforce Standard Protective Order

After the termination of this action, the Court will continue to have jurisdiction to enforce this Order.

17. Modification of Standard Protective Order

This Order may be modified any time either through stipulation or Order of the Court.

18. Confidentiality of Party's Own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Standard Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Standard Protective Order shall not preclude a party from showing its own information, including its own information that is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.

19. Findings and Conclusions Pursuant to Rule 4-202.04(6) of the Utah Code of Judicial Administration

The Court makes the following Findings and Conclusions regarding the filing of documents or information designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY under this Standard Protective Order:

(a) Certain information and documents, including pleadings, disclosures, discovery requests, or responses, motions, briefs, or other papers may be filed in this litigation that contain information that the parties have designated as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, pursuant to this Standard Protective Order. As defined above, CONFIDENTIAL INFORMATION and CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY includes confidential information, including but not limited to trade secrets, confidential or proprietary financial information, operational data, business plans, business records, competitive analyses, personnel files, personal information that is protected by law, and other sensitive information.

(b) "The [C]ourt may classify [a] record as private, protected, or sealed, … or redact information from the record if the record or information … is classified as private, protected, sealed … under Rule 4-202.02" or "is a record containing information the disclosure of which constitutes an unwarranted invasion of personal privacy." Utah Code of Judicial Admin. R. 4-202.04(4).

(c) Protected records include:

(i) any records submitted to a governmental entity "that the person believes should be protected under Subsection 63G-2-305(1) or (2)," UTAH CODE ANN. § 63G-2-309(1);

(ii) "confidential business records under Utah Code Section 63G-2-309," Utah Code of Judicial Admin. R. 4-202.02(5)(I);

(iii) "trade secrets as defined in Utah Code Section 13-24-2," Utah Code of Judicial Admin. R. 4-202.02(5)(R); and

(iv) "other records as ordered by the court under Rule 4- 202.04." *See* Utah Code of Judicial Admin. R. 4-202.02(5)(V).

(d) As set forth herein, the disclosing parties have made "a written claim of business confidentiality" and provided "a concise statement of reasons supporting the claim of business confidentiality." UTAH CODE ANN. § 63G-2-309(1)(a)(i).

(e) The Court finds that, if filings containing such CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY are not closed to the public, the disclosing party may be subject to competitive or financial injury or potential legal liability to third parties.

(f) The Court further finds that, given the confidential and sensitive nature of the CONFIDENTIAL INFORMATION and CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the public's right of access to filings containing such CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY is outweighed by the interests of the disclosing party in the confidentiality of such information.

(g) The Court further finds that the disclosing party's good faith designation of such filings as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY justifies closing such records to the public by classifying such filings as protected, pursuant to Rule 4-202.04(5) of the Utah Code of Judicial Administration.

(h) The Court concludes that, on balance, the interests of the parties disclosing

CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that may be included in filings in this action outweighs the public's interest in open court records and that no reasonable alternative exists to closing filings to the public that the parties in good faith designate as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, subject to the parties' and public's right to challenge the designation of information as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and the closure of certain filings to the public.

(i) Accordingly, the Court classifies as protected documents and information designated as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, pursuant to this Standard Protective Order.

(j) The Court orders the Clerk to maintain CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY as protected, pursuant to Rule 4-202.04(4) and 4-202.09(9) of the Utah Code of Judicial Administration. Accordingly, and pursuant to Rules 4-202.04(4) and 4-202.09(9) of the Utah Code of Judicial Administration, the Clerk of this Court is directed to maintain as protected all pleadings, disclosures, discovery requests or responses, motions, briefs, or other papers filed in this litigation that have been classified, in whole or in part, as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY under this Standard Protective Order.

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SO ORDERED AND ENTERED BY THE COURT PURSUANT TO ~~DUCivR 26-2~~RULES 26X and 37(a)(7)(G) OF THE UTAH RULES OF CIVIL PROCEDURE EFFECTIVE AS OF THE COMMENCE OF THE ACTION.

IN THE ~~UNITED STATES~~ _____ JUDICIAL DISTRICT COURT ~~FOR THE DISTRICT~~ _____ COUNTY, STATE OF UTAH	
_____, Plaintiffs, vs. _____, Defendant.	DISCLOSURE AGREEMENT Case No. Honorable ~~Magistrate Judge~~

I, _____, am employed by _____. In connection with this action, I am:

_____ a director, officer or employee of _____ who is directly assisting in this action;

_____ have been retained to furnish technical or other expert services or to give testimony (a "TECHNICAL ADVISOR");

_____ Other Qualified Recipient (as defined in the Standard Protective Order) (Describe:_____).

I have read, understand and agree to comply with and be bound by the terms of the Standard Protective Order in the matter of _____, Civil Action No. _____, pending in the United States District Court for the District of Utah. I further state that the Standard Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any PROTECTED INFORMATION, including documents, for any purpose not appropriate or necessary to my participation in this action or disclosing such documents or information to any person not

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entitled to receive them under the terms of the Standard Protective Order. To the extent I have been given access to PROTECTED INFORMATION, I will not in any way disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized under the Standard Protective Order to have access to such information, and (b) have executed a Disclosure Agreement. I will return, on request, all materials containing PROTECTED INFORMATION, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Standard Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the District of Utah for purposes of its enforcement and the enforcement of my obligations under this Disclosure Agreement. I declare under penalty of perjury that the foregoing is true and correct.

_____
Signed by Recipient

_____
Name (printed)

Date: _____

IN THE _____ JUDICIAL DISTRICT COURT
_____ COUNTY, STATE OF UTAH

_____, Plaintiffs, vs. _____, Defendants.	STANDARD PROTECTIVE ORDER FOR CIVIL DISCOVERY Case No. Honorable

Pursuant to Rule 26X and 37(a)(7)(G) of the Utah Rules of Civil Procedure and for good cause,

IT IS HEREBY ORDERED THAT:

1. Scope of Protection

This Standard Protective Order for Civil Discovery (Standard Protective Order) shall govern any record of information produced in this action and designated pursuant to this Standard Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Standard Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under the Utah Rules of Civil Procedure and any supplementary disclosures thereto.

This Standard Protective Order shall apply to the parties and to any nonparty from whom discovery may be sought who desires the protection of this Standard Protective Order.

Nonparties may challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-designate.

2. Definitions

(a) The term PROTECTED INFORMATION shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information designated as such by the producing party.

(b) The term CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL - ATTORNEYS EYES ONLY may be used only for the following types of past, current, or future PROTECTED INFORMATION: (1) sensitive technical information, including current research, development and manufacturing information and patent prosecution information, (2) sensitive business information, including highly sensitive financial or marketing information and the identity of suppliers, distributors and potential or actual customers, (3) competitive technical information, including technical analyses or comparisons of competitor's products, (4) competitive business information, including non-public financial or marketing analyses or comparisons of competitor's products and strategic product planning, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Standard Protective Order the producing party reasonably and in good faith believes would likely cause harm.

(c) The term CONFIDENTIAL INFORMATION shall mean all PROTECTED INFORMATION that is not designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" information.

(d) For entities covered by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the term CONFIDENTIAL INFORMATION shall include Confidential Health Information. Confidential Health Information shall mean information supplied in any form, or any portion thereof, that identifies an individual or subscriber in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual or subscriber, the provision of health care to such individual or subscriber, or the past, present, or future payment for the provision of health care to such individual or subscriber. Confidential Health Information includes claim data, claim forms, grievances, appeals, or other documents or records that contain any patient health information required to be kept confidential under any state or federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R. §§ 164.501 & 160.103), and the following subscriber, patient, or member identifiers:

(1) names;

(2) all geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;

(3) all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;

(4) telephone numbers;

(5) fax numbers;

(6) electronic mail addresses;

(7) social security numbers;

(8) medical record numbers;

(9) health plan beneficiary numbers;

(10) account numbers;

(11) certificate/license numbers;

(12) vehicle identifiers and serial numbers, including license plate numbers;

(13) device identifiers and serial numbers;

(14) web universal resource locators ("URLs");

(15) internet protocol ("IP") address numbers;

(16) biometric identifiers, including finger and voice prints;

(17) full face photographic images and any comparable images; and/or any other unique identifying number, characteristic, or code.

(e) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party's PROTECTED INFORMATION, including CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, and CONFIDENTIAL INFORMATION. Each party's TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party's counsel, are reasonably necessary for development and presentation of that party's case. These persons include outside experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party's TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A ("Disclosure Agreement"). Copies of the Disclosure Agreement signed by any person or entity to whom PROTECTED INFORMATION is disclosed shall be provided to the other party promptly after execution by facsimile and overnight mail. No disclosures shall be made to a TECHNICAL ADVISOR until seven (7) days after the executed Disclosure Agreement is served on the other party.

(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to the producing party and received no less than seven (7) days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's curriculum vitae, a brief description, including education, present and past employment and general areas of expertise of the TECHNICAL ADVISOR. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within seven (7) days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within seven (7) days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any objections, the parties shall attempt in good faith to promptly resolve any objections informally. If the objections cannot be resolved, the party seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall move within seven (7) days for an Order of the Court preventing the disclosure. The burden of

proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness provided that the party seeking such deposition has a good faith, demonstrable basis independent of the Disclosure Agreement or the information provided under subparagraph (a) above that such person possesses facts relevant to this action, or facts likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION, by placing on each

page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION

(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY

(c) During discovery, a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.

(d) A party may designate information disclosed at a deposition as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the reporter to so designate the transcript at the time of the deposition.

(e) A producing party shall designate its discovery responses, responses to requests for admission, briefs, memoranda, and all other papers sent to the court or to opposing counsel as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY when such papers are served or sent.

(f) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the court, at the time the information is proffered or adduced, to

receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

(g) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that is not entitled to such designation or which is generally available to the public. The parties shall designate only that part of a document or deposition that is CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, rather than the entire document or deposition. For example, if a party claims that a document contains pricing information that is CONFIDENTIAL – ATTORNEYS EYES ONLY, the party will designate only that part of the document setting forth the specific pricing information as ATTORNEYS EYES ONLY, rather than the entire document.

(h) In multi-party cases, Plaintiffs and/or Defendants shall further be able to designate documents as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS for documents that shall not be disclosed to other parties.

5. Disclosure and Use of Confidential Information

Information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be disclosed by the receiving party only to Qualified Recipients. All Qualified Recipients shall hold such information received from the disclosing party in confidence, shall use the information only for purposes of this action and for no other action, and shall not use it for any business or other commercial purpose, and shall not use it for filing or prosecuting any patent application (of any

type) or patent reissue or reexamination request, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Order.

In multi-party cases, documents designated as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to other plaintiffs and/or defendants.

6. Qualified Recipients

For purposes of this Order, "Qualified Recipient" means

(a) For CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY:

(1) Outside counsel of record for the parties in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record, subject to the requirements in Paragraph 3 above;

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee's employment; and

(6) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the parties, and his or her staff, provided that such individuals agree in writing, pursuant to the Disclosure Agreement, to be bound by the terms of this Order.

(b) FOR CONFIDENTIAL INFORMATION:

(1) Those persons listed in paragraph 6(a);

(2) In-house counsel for a party to this action who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary;

(3) The insurer of a party to litigation and employees of such insurer to the extent reasonably necessary to assist the party's counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes; and

(4) Representatives, officers, or employees of a party as necessary to assist outside counsel with this litigation.

7. Use of Protected Information

(a) In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission, or other papers of any kind that are served or filed include another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the papers must be appropriately designated pursuant to paragraphs 4(a) and (b) and shall be marked and treated as "PROTECTED" by the parties and the Court as that term is used in the Utah Code of Judicial Administration 4-202.02 and 4-202.03.

(b) All documents, including attorney notes and abstracts, that contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall be handled as if they were designated pursuant to paragraph 4(a) or (b).

(c) Documents, papers, and transcripts that are filed with the court and contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be filed marked and treated as "PROTECTED" by the parties and the Court as that term is used in the Utah Code of Judicial Administration 4-202.02 and 4-202.03.

(d) To the extent that documents are reviewed by a receiving party prior to production, any knowledge learned during the review process will be treated by the receiving party as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY until such time as the documents have been produced, at which time any stamped classification will control. No photograph or any other means of duplication, including but not limited to electronic means, of materials provided for review prior to production is permitted before the documents are produced with the appropriate stamped classification.

(e) In the event that any question is asked at a deposition with respect to which a party asserts that the answer requires the disclosure of CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, such question shall nonetheless be answered by the witness fully and completely. Prior to answering, however, all persons present shall be advised of this Order by the party making the confidentiality assertion and, in the case of information designated as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY at the request of such party, all persons who are not allowed to obtain such information pursuant to this Order, other than the witness, shall leave the room during the time in which this information is disclosed or discussed.

(f) Nothing in this Standard Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this action and, in the

course thereof, from relying in a general way upon his examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to paragraph 4, it may later designate by notifying the receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a producing party's designation at any time. A failure of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.

(b) Any receiving party may disagree with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. In that case, any receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may

request the producing party in writing to change the designation of a document or documents, stating with particularity the reasons for that request, and specifying the category to which the challenged document(s) should be de-designated The producing party shall then have seven (7) days from the date of service of the request to:

(i) advise the receiving parties whether or not it persists in such designation; and

(ii) if it persists in the designation, to explain the reason for the particular designation and to state its intent to seek a protective order or any other order to maintain the designation.

(c) If no response is made within seven (7) days after service of the request under subparagraph (b), the information will be de-designated to the category requested by the receiving party. If, however, the request under subparagraph (b) above is responded to under subparagraph (b)(i) and (ii), within seven (7) days the producing party may then move the court for a protective order or any other order to maintain the designation. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days after the statement to seek an order under subparagraph (b)(ii), the information will be de-designated to the category requested by the receiving party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall not be made until the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

(d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:

(i) the information in question has become available to the public through no violation of this Order; or

(ii) the information was known to any receiving party prior to its receipt from the producing party; or

(iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Inadvertently Producing Privileged Documents

The parties hereto also acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work product materials may occur. In accordance with Utah R. Civ. P. 26(b)(8) and Utah R. Evid. 504 and 510, they therefore agree that if a party through inadvertence produces or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product, the producing party may give written notice to the receiving party that the document or thing is subject to a claim of attorney-client privilege or attorney work product and request that the document or thing be returned to the producing party. The receiving party shall return to the producing party such document or thing. Return of the document or thing shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work product, nor shall it foreclose any party from moving the Court pursuant to Utah R. Civ. P. 26(b)(8) and Utah R. Evid. 504 and

510 for an Order that such document or thing has been improperly designated or should be produced.

11. Inadvertent Disclosure of Confidential Information

In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to a non-Qualified Recipient, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

12. Limitation

This Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

13. Conclusion of Action

(a) At the conclusion of this action, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the producing party all materials and documents containing CONFIDENTIAL INFORMATION or

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and to certify to the producing party such destruction or return. Such return or destruction shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. Trial counsel's archive copy shall remain subject to all obligations of this Order.

(c) The provisions of this paragraph shall not be binding on the State of Utah, any insurance company, or any other party to the extent that such provisions conflict with applicable federal or state law. The Utah Attorney General's Office, any insurance company, or any other party shall notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the Court.

14. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY produced by third parties according to the terms of this Order.

15. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order

seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY of a producing party, the receiving party shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

16. Jurisdiction to Enforce Standard Protective Order

After the termination of this action, the Court will continue to have jurisdiction to enforce this Order.

17. Modification of Standard Protective Order

This Order may be modified any time either through stipulation or Order of the Court.

18. Confidentiality of Party's Own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Standard Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Standard Protective Order shall not preclude a party from showing its own information, including its own information that is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.

19. Findings and Conclusions Pursuant to Rule 4-202.04(6) of the Utah Code of Judicial Administration

The Court makes the following Findings and Conclusions regarding the filing of documents or information designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY under this Standard Protective Order:

(a) Certain information and documents, including pleadings, disclosures, discovery requests, or responses, motions, briefs, or other papers may be filed in this litigation that contain information that the parties have designated as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, pursuant to this Standard Protective Order. As defined above, CONFIDENTIAL INFORMATION and CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY includes confidential information, including but not limited to trade secrets, confidential or proprietary financial information, operational data, business plans, business records, competitive analyses, personnel files, personal information that is protected by law, and other sensitive information.

(b) "The [C]ourt may classify [a] record as private, protected, or sealed, … or redact information from the record if the record or information … is classified as private, protected, sealed … under Rule 4-202.02" or "is a record containing information the disclosure of which constitutes an unwarranted invasion of personal privacy." Utah Code of Judicial Admin. R. 4-202.04(4).

(c) Protected records include:

(i) any records submitted to a governmental entity "that the person believes should be protected under Subsection 63G-2-305(1) or (2)," UTAH CODE ANN. § 63G-2-309(1);

(ii) "confidential business records under Utah Code Section 63G-2-309," Utah Code of Judicial Admin. R. 4-202.02(5)(I);

(iii) "trade secrets as defined in Utah Code Section 13-24-2," Utah Code of Judicial Admin. R. 4-202.02(5)(R); and

(iv) "other records as ordered by the court under Rule 4- 202.04." *See* Utah Code of Judicial Admin. R. 4-202.02(5)(V).

(d) As set forth herein, the disclosing parties have made "a written claim of business confidentiality" and provided "a concise statement of reasons supporting the claim of business confidentiality." UTAH CODE ANN. § 63G-2-309(1)(a)(i).

(e) The Court finds that, if filings containing such CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY are not closed to the public, the disclosing party may be subject to competitive or financial injury or potential legal liability to third parties.

(f) The Court further finds that, given the confidential and sensitive nature of the CONFIDENTIAL INFORMATION and CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the public's right of access to filings containing such CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY is outweighed by the interests of the disclosing party in the confidentiality of such information.

(g) The Court further finds that the disclosing party's good faith designation of such filings as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY justifies closing such records to the public by classifying such filings as protected, pursuant to Rule 4-202.04(5) of the Utah Code of Judicial Administration.

(h) The Court concludes that, on balance, the interests of the parties disclosing

CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that may be included in filings in this action outweighs the public's interest in open court records and that no reasonable alternative exists to closing filings to the public that the parties in good faith designate as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, subject to the parties' and public's right to challenge the designation of information as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and the closure of certain filings to the public.

(i) Accordingly, the Court classifies as protected documents and information designated as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, pursuant to this Standard Protective Order.

(j) The Court orders the Clerk to maintain CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY as protected, pursuant to Rule 4-202.04(4) and 4-202.09(9) of the Utah Code of Judicial Administration. Accordingly, and pursuant to Rules 4-202.04(4) and 4-202.09(9) of the Utah Code of Judicial Administration, the Clerk of this Court is directed to maintain as protected all pleadings, disclosures, discovery requests or responses, motions, briefs, or other papers filed in this litigation that have been classified, in whole or in part, as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY under this Standard Protective Order.

SO ORDERED AND ENTERED BY THE COURT PURSUANT TO RULES 26X and 37(a)(7)(G) OF THE UTAH RULES OF CIVIL PROCEDURE EFFECTIVE AS OF THE COMMENCE OF THE ACTION.

IN THE _____ JUDICIAL DISTRICT COURT
_____ COUNTY, STATE OF UTAH

_____, Plaintiffs, vs. _____, Defendant.	DISCLOSURE AGREEMENT Case No. Honorable

I, _____, am employed by _____. In connection with this action, I am:

_____ a director, officer or employee of _____ who is directly assisting in this action;

_____ have been retained to furnish technical or other expert services or to give testimony (a "TECHNICAL ADVISOR");

_____ Other Qualified Recipient (as defined in the Standard Protective Order) (Describe:_____).

I have read, understand and agree to comply with and be bound by the terms of the Standard Protective Order in the matter of _____, Civil Action No. _____, pending in the United States District Court for the District of Utah. I further state that the Standard Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any PROTECTED INFORMATION, including documents, for any purpose not appropriate or necessary to my participation in this action or disclosing such documents or information to any person not

entitled to receive them under the terms of the Standard Protective Order. To the extent I have been given access to PROTECTED INFORMATION, I will not in any way disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized under the Standard Protective Order to have access to such information, and (b) have executed a Disclosure Agreement. I will return, on request, all materials containing PROTECTED INFORMATION, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Standard Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the District of Utah for purposes of its enforcement and the enforcement of my obligations under this Disclosure Agreement. I declare under penalty of perjury that the foregoing is true and correct.

_____
Signed by Recipient

_____
Name (printed)

Date: _____

IN THE _____ JUDICIAL DISTRICT COURT
_____ COUNTY, STATE OF UTAH

_____, Plaintiffs, vs. _____, Defendants.	STANDARD PROTECTIVE ORDER FOR CIVIL DISCOVERY Case No. Honorable

Pursuant to Rule 26X and 37(a)(7)(G) of the Utah Rules of Civil Procedure and for good cause,

IT IS HEREBY ORDERED THAT:

1. Scope of Protection

This Standard Protective Order for Civil Discovery (Standard Protective Order) shall govern any record of information produced in this action and designated pursuant to this Standard Protective Order, including all designated deposition testimony, all designated testimony taken at a hearing or other proceeding, all designated deposition exhibits, interrogatory answers, admissions, documents and other discovery materials, whether produced informally or in response to interrogatories, requests for admissions, requests for production of documents or other formal methods of discovery.

This Standard Protective Order shall also govern any designated record of information produced in this action pursuant to required disclosures under the Utah Rules of Civil Procedure and any supplementary disclosures thereto.

This Standard Protective Order shall apply to the parties and to any nonparty from whom discovery may be sought who desires the protection of this Standard Protective Order.

Nonparties may challenge the confidentiality of the protected information by filing a motion to intervene and a motion to de-designate.

2. Definitions

(a) The term PROTECTED INFORMATION shall mean confidential or proprietary technical, scientific, financial, business, health, or medical information designated as such by the producing party.

(b) The term CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall mean PROTECTED INFORMATION that is so designated by the producing party. The designation CONFIDENTIAL - ATTORNEYS EYES ONLY may be used only for the following types of past, current, or future PROTECTED INFORMATION: (1) sensitive technical information, including current research, development and manufacturing information and patent prosecution information, (2) sensitive business information, including highly sensitive financial or marketing information and the identity of suppliers, distributors and potential or actual customers, (3) competitive technical information, including technical analyses or comparisons of competitor's products, (4) competitive business information, including non-public financial or marketing analyses or comparisons of competitor's products and strategic product planning, or (5) any other PROTECTED INFORMATION the disclosure of which to non-qualified people subject to this Standard Protective Order the producing party reasonably and in good faith believes would likely cause harm.

(c) The term CONFIDENTIAL INFORMATION shall mean all PROTECTED INFORMATION that is not designated as "CONFIDENTIAL - ATTORNEYS EYES ONLY" information.

(d) For entities covered by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the term CONFIDENTIAL INFORMATION shall include Confidential Health Information. Confidential Health Information shall mean information supplied in any form, or any portion thereof, that identifies an individual or subscriber in any manner and relates to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual or subscriber, the provision of health care to such individual or subscriber, or the past, present, or future payment for the provision of health care to such individual or subscriber. Confidential Health Information includes claim data, claim forms, grievances, appeals, or other documents or records that contain any patient health information required to be kept confidential under any state or federal law, including 45 C.F.R. Parts 160 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (*see* 45 C.F.R. §§ 164.501 & 160.103), and the following subscriber, patient, or member identifiers:

(1) names;

(2) all geographic subdivisions smaller than a State, including street address, city, county, precinct, and zip code;

(3) all elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, age, and date of death;

(4) telephone numbers;

(5) fax numbers;

(6) electronic mail addresses;

(7) social security numbers;

(8) medical record numbers;

(9) health plan beneficiary numbers;

(10) account numbers;

(11) certificate/license numbers;

(12) vehicle identifiers and serial numbers, including license plate numbers;

(13) device identifiers and serial numbers;

(14) web universal resource locators ("URLs");

(15) internet protocol ("IP") address numbers;

(16) biometric identifiers, including finger and voice prints;

(17) full face photographic images and any comparable images; and/or any other unique identifying number, characteristic, or code.

(e) The term TECHNICAL ADVISOR shall refer to any person who is not a party to this action and/or not presently employed by the receiving party or a company affiliated through common ownership, who has been designated by the receiving party to receive another party's PROTECTED INFORMATION, including CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, and CONFIDENTIAL INFORMATION. Each party's TECHNICAL ADVISORS shall be limited to such person as, in the judgment of that party's counsel, are reasonably necessary for development and presentation of that party's case. These persons include outside experts or consultants retained to provide technical or other expert services such as expert testimony or otherwise assist in trial preparation.

3. Disclosure Agreements

(a) Each receiving party's TECHNICAL ADVISOR shall sign a disclosure agreement in the form attached hereto as Exhibit A ("Disclosure Agreement"). Copies of the Disclosure Agreement signed by any person or entity to whom PROTECTED INFORMATION is disclosed shall be provided to the other party promptly after execution by facsimile and overnight mail. No disclosures shall be made to a TECHNICAL ADVISOR until seven (7) days after the executed Disclosure Agreement is served on the other party.

(b) Before any PROTECTED INFORMATION is disclosed to outside TECHNICAL ADVISORS, the following information must be provided in writing to the producing party and received no less than seven (7) days before the intended date of disclosure to that outside TECHNICAL ADVISOR: the identity of that outside TECHNICAL ADVISOR, business address and/or affiliation and a current curriculum vitae of the TECHNICAL ADVISOR, and, if not contained in the TECHNICAL ADVISOR's curriculum vitae, a brief description, including education, present and past employment and general areas of expertise of the TECHNICAL ADVISOR. If the producing party objects to disclosure of PROTECTED INFORMATION to an outside TECHNICAL ADVISOR, the producing party shall within seven (7) days of receipt serve written objections identifying the specific basis for the objection, and particularly identifying all information to which disclosure is objected. Failure to object within seven (7) days shall authorize the disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR. As to any objections, the parties shall attempt in good faith to promptly resolve any objections informally. If the objections cannot be resolved, the party seeking to prevent disclosure of the PROTECTED INFORMATION to the expert shall move within seven (7) days for an Order of the Court preventing the disclosure. The burden of

proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days, disclosure to the TECHNICAL ADVISOR shall be permitted. In the event that objections are made and not resolved informally and a motion is filed, disclosure of PROTECTED INFORMATION to the TECHNICAL ADVISOR shall not be made except by Order of the Court.

(c) Any disclosure agreement executed by any person affiliated with a party shall be provided to any other party who, based upon a good faith belief that there has been a violation of this order, requests a copy.

(d) No party shall attempt to depose any TECHNICAL ADVISOR until such time as the TECHNICAL ADVISOR is designated by the party engaging the TECHNICAL ADVISOR as a testifying expert. Notwithstanding the preceding sentence, any party may depose a TECHNICAL ADVISOR as a fact witness provided that the party seeking such deposition has a good faith, demonstrable basis independent of the Disclosure Agreement or the information provided under subparagraph (a) above that such person possesses facts relevant to this action, or facts likely to lead to the discovery of admissible evidence; however, such deposition, if it precedes the designation of such person by the engaging party as a testifying expert, shall not include any questions regarding the scope or subject matter of the engagement. In addition, if the engaging party chooses not to designate the TECHNICAL ADVISOR as a testifying expert, the non-engaging party shall be barred from seeking discovery or trial testimony as to the scope or subject matter of the engagement.

4. Designation of Information

(a) Documents and things produced or furnished during the course of this action shall be designated as containing CONFIDENTIAL INFORMATION, by placing on each

page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION

(b) Documents and things produced or furnished during the course of this action shall be designated as containing information which is CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by placing on each page, each document (whether in paper or electronic form), or each thing a legend substantially as follows:

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY

(c) During discovery, a producing party shall have the option to require that all or batches of materials be treated as containing CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY during inspection and to make its designation as to particular documents and things at the time copies of documents and things are furnished.

(d) A party may designate information disclosed at a deposition as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the reporter to so designate the transcript at the time of the deposition.

(e) A producing party shall designate its discovery responses, responses to requests for admission, briefs, memoranda, and all other papers sent to the court or to opposing counsel as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY when such papers are served or sent.

(f) A party shall designate information disclosed at a hearing or trial as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by requesting the court, at the time the information is proffered or adduced, to

receive the information only in the presence of those persons designated to receive such information and court personnel, and to designate the transcript appropriately.

(g) The parties will use reasonable care to avoid designating any documents or information as CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that is not entitled to such designation or which is generally available to the public. The parties shall designate only that part of a document or deposition that is CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, rather than the entire document or deposition. For example, if a party claims that a document contains pricing information that is CONFIDENTIAL – ATTORNEYS EYES ONLY, the party will designate only that part of the document setting forth the specific pricing information as ATTORNEYS EYES ONLY, rather than the entire document.

(h) In multi-party cases, Plaintiffs and/or Defendants shall further be able to designate documents as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS for documents that shall not be disclosed to other parties.

5. Disclosure and Use of Confidential Information

Information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be disclosed by the receiving party only to Qualified Recipients. All Qualified Recipients shall hold such information received from the disclosing party in confidence, shall use the information only for purposes of this action and for no other action, and shall not use it for any business or other commercial purpose, and shall not use it for filing or prosecuting any patent application (of any

type) or patent reissue or reexamination request, and shall not disclose it to any person, except as hereinafter provided. All information that has been designated CONFIDENTIAL INFORMATION or as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be carefully maintained so as to preclude access by persons who are not qualified to receive such information under the terms of this Order.

In multi-party cases, documents designated as CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER PLAINTIFFS or CONFIDENTIAL INFORMATION – NOT TO BE DISCLOSED TO OTHER DEFENDANTS shall not be disclosed to other plaintiffs and/or defendants.

6. Qualified Recipients

For purposes of this Order, "Qualified Recipient" means

(a) For CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY:

(1) Outside counsel of record for the parties in this action, and the partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in the action, outside copying services, document management services and graphic services;

(2) Court officials involved in this action (including court reporters, persons operating video recording equipment at depositions, and any special master appointed by the Court);

(3) Any person designated by the Court in the interest of justice, upon such terms as the Court may deem proper;

(4) Any outside TECHNICAL ADVISOR employed by the outside counsel of record, subject to the requirements in Paragraph 3 above;

(5) Any witness during the course of discovery, so long as it is stated on the face of each document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document. Where it is not stated on the face of the confidential document being disclosed that the witness to whom a party is seeking to disclose the document was either an author, recipient, or otherwise involved in the creation of the document, the party seeking disclosure may nonetheless disclose the confidential document to the witness, provided that: (i) the party seeking disclosure has a reasonable basis for believing that the witness in fact received or reviewed the document, (ii) the party seeking disclosure provides advance notice to the party that produced the document, and (iii) the party that produced the document does not inform the party seeking disclosure that the person to whom the party intends to disclose the document did not in fact receive or review the documents. Nothing herein shall prevent disclosure at a deposition of a document designated CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to the officers, directors, and managerial level employees of the party producing such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, or to any employee of such party who has access to such CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY in the ordinary course of such employee's employment; and

(6) Any designated arbitrator or mediator who is assigned to hear this matter, or who has been selected by the parties, and his or her staff, provided that such individuals agree in writing, pursuant to the Disclosure Agreement, to be bound by the terms of this Order.

(b) FOR CONFIDENTIAL INFORMATION:

(1) Those persons listed in paragraph 6(a);

(2) In-house counsel for a party to this action who are acting in a legal capacity and who are actively engaged in the conduct of this action, and the secretary and paralegal assistants of such counsel to the extent reasonably necessary;

(3) The insurer of a party to litigation and employees of such insurer to the extent reasonably necessary to assist the party's counsel to afford the insurer an opportunity to investigate and evaluate the claim for purposes of determining coverage and for settlement purposes; and

(4) Representatives, officers, or employees of a party as necessary to assist outside counsel with this litigation.

7. Use of Protected Information

(a) In the event that any receiving party's briefs, memoranda, discovery requests, requests for admission, or other papers of any kind that are served or filed include another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the papers must be appropriately designated pursuant to paragraphs 4(a) and (b) and shall be marked and treated as "PROTECTED" by the parties and the Court as that term is used in the Utah Code of Judicial Administration 4-202.02 and 4-202.03.

(b) All documents, including attorney notes and abstracts, that contain another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, shall be handled as if they were designated pursuant to paragraph 4(a) or (b).

(c) Documents, papers, and transcripts that are filed with the court and contain any other party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY shall be filed marked and treated as "PROTECTED" by the parties and the Court as that term is used in the Utah Code of Judicial Administration 4-202.02 and 4-202.03.

(d) To the extent that documents are reviewed by a receiving party prior to production, any knowledge learned during the review process will be treated by the receiving party as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY until such time as the documents have been produced, at which time any stamped classification will control. No photograph or any other means of duplication, including but not limited to electronic means, of materials provided for review prior to production is permitted before the documents are produced with the appropriate stamped classification.

(e) In the event that any question is asked at a deposition with respect to which a party asserts that the answer requires the disclosure of CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, such question shall nonetheless be answered by the witness fully and completely. Prior to answering, however, all persons present shall be advised of this Order by the party making the confidentiality assertion and, in the case of information designated as CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY at the request of such party, all persons who are not allowed to obtain such information pursuant to this Order, other than the witness, shall leave the room during the time in which this information is disclosed or discussed.

(f) Nothing in this Standard Protective Order shall bar or otherwise restrict outside counsel from rendering advice to his or her client with respect to this action and, in the

course thereof, from relying in a general way upon his examination of materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, provided, however, that in rendering such advice and in otherwise communicating with his or her clients, such counsel shall not disclose the specific contents of any materials designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY.

8. Inadvertent Failure to Designate

(a) In the event that a producing party inadvertently fails to designate any of its information pursuant to paragraph 4, it may later designate by notifying the receiving parties in writing. The receiving parties shall take reasonable steps to see that the information is thereafter treated in accordance with the designation.

(b) It shall be understood however, that no person or party shall incur any liability hereunder with respect to disclosure that occurred prior to receipt of written notice of a belated designation.

9. Challenge to Designation

(a) Any receiving party may challenge a producing party's designation at any time. A failure of any party to expressly challenge a claim of confidentiality or any document designation shall not constitute a waiver of the right to assert at any subsequent time that the same is not in-fact confidential or not an appropriate designation for any reason.

(b) Any receiving party may disagree with the designation of any information received from the producing party as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. In that case, any receiving party desiring to disclose or to permit inspection of the same otherwise than is permitted in this Order, may

request the producing party in writing to change the designation of a document or documents, stating with particularity the reasons for that request, and specifying the category to which the challenged document(s) should be de-designated The producing party shall then have seven (7) days from the date of service of the request to:

(i) advise the receiving parties whether or not it persists in such designation; and

(ii) if it persists in the designation, to explain the reason for the particular designation and to state its intent to seek a protective order or any other order to maintain the designation.

(c) If no response is made within seven (7) days after service of the request under subparagraph (b), the information will be de-designated to the category requested by the receiving party. If, however, the request under subparagraph (b) above is responded to under subparagraph (b)(i) and (ii), within seven (7) days the producing party may then move the court for a protective order or any other order to maintain the designation. The burden of proving that the designation is proper shall be upon the producing party. If no such motion is made within seven (7) days after the statement to seek an order under subparagraph (b)(ii), the information will be de-designated to the category requested by the receiving party. In the event objections are made and not resolved informally and a motion is filed, disclosure of information shall not be made until the issue has been resolved by the Court (or to any limited extent upon which the parties may agree).

No party shall be obligated to challenge the propriety of any designation when made, and failure to do so shall not preclude a subsequent challenge to the propriety of such designation.

(d) With respect to requests and applications to remove or change a designation, information shall not be considered confidential or proprietary to the producing party if:

(i) the information in question has become available to the public through no violation of this Order; or

(ii) the information was known to any receiving party prior to its receipt from the producing party; or

(iii) the information was received by any receiving party without restrictions on disclosure from a third party having the right to make such a disclosure.

10. Inadvertently Producing Privileged Documents

The parties hereto also acknowledge that regardless of the producing party's diligence an inadvertent production of attorney-client privileged or attorney work product materials may occur. In accordance with Utah R. Civ. P. 26(b)(8) and Utah R. Evid. 504 and 510, they therefore agree that if a party through inadvertence produces or provides discovery that it believes is subject to a claim of attorney-client privilege or attorney work product, the producing party may give written notice to the receiving party that the document or thing is subject to a claim of attorney-client privilege or attorney work product and request that the document or thing be returned to the producing party. The receiving party shall return to the producing party such document or thing. Return of the document or thing shall not constitute an admission or concession, or permit any inference, that the returned document or thing is, in fact, properly subject to a claim of attorney-client privilege or attorney work product, nor shall it foreclose any party from moving the Court pursuant to Utah R. Civ. P. 26(b)(8) and Utah R. Evid. 504 and

510 for an Order that such document or thing has been improperly designated or should be produced.

11. Inadvertent Disclosure of Confidential Information

In the event of an inadvertent disclosure of another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY to a non-Qualified Recipient, the party making the inadvertent disclosure shall promptly upon learning of the disclosure: (i) notify the person to whom the disclosure was made that it contains CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY subject to this Order; (ii) make all reasonable efforts to preclude dissemination or use of the CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY by the person to whom disclosure was inadvertently made including, but not limited to, obtaining all copies of such materials from the non-Qualified Recipient; and (iii) notify the producing party of the identity of the person to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to ensure against the dissemination or use of the information.

12. Limitation

This Order shall be without prejudice to any party's right to assert at any time that any particular information or document is or is not subject to discovery, production or admissibility on the grounds other than confidentiality.

13. Conclusion of Action

(a) At the conclusion of this action, including through all appeals, each party or other person subject to the terms hereof shall be under an obligation to destroy or return to the producing party all materials and documents containing CONFIDENTIAL INFORMATION or

CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and to certify to the producing party such destruction or return. Such return or destruction shall not relieve said parties or persons from any of the continuing obligations imposed upon them by this Order.

(b) After this action, trial counsel for each party may retain one archive copy of all documents and discovery material even if they contain or reflect another party's CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. Trial counsel's archive copy shall remain subject to all obligations of this Order.

(c) The provisions of this paragraph shall not be binding on the State of Utah, any insurance company, or any other party to the extent that such provisions conflict with applicable federal or state law. The Utah Attorney General's Office, any insurance company, or any other party shall notify the producing party in writing of any such conflict it identifies in connection with a particular matter so that such matter can be resolved either by the parties or by the Court.

14. Production by Third Parties Pursuant to Subpoena

Any third party producing documents or things or giving testimony in this action pursuant to a subpoena, notice or request may designate said documents, things, or testimony as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY. The parties agree that they will treat CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY produced by third parties according to the terms of this Order.

15. Compulsory Disclosure to Third Parties

If any receiving party is subpoenaed in another action or proceeding or served with a document or testimony demand or a court order, and such subpoena or demand or court order

seeks CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY of a producing party, the receiving party shall give prompt written notice to counsel for the producing party and allow the producing party an opportunity to oppose such subpoena or demand or court order prior to the deadline for complying with the subpoena or demand or court order. No compulsory disclosure to third parties of information or material exchanged under this Order shall be deemed a waiver of any claim of confidentiality, except as expressly found by a court or judicial authority of competent jurisdiction.

16. Jurisdiction to Enforce Standard Protective Order

After the termination of this action, the Court will continue to have jurisdiction to enforce this Order.

17. Modification of Standard Protective Order

This Order may be modified any time either through stipulation or Order of the Court.

18. Confidentiality of Party's Own Documents

Nothing herein shall affect the right of the designating party to disclose to its officers, directors, employees, attorneys, consultants or experts, or to any other person, its own information. Such disclosure shall not waive the protections of this Standard Protective Order and shall not entitle other parties or their attorneys to disclose such information in violation of it, unless by such disclosure of the designating party the information becomes public knowledge. Similarly, the Standard Protective Order shall not preclude a party from showing its own information, including its own information that is filed under seal by a party, to its officers, directors, employees, attorneys, consultants or experts, or to any other person.

19. Findings and Conclusions Pursuant to Rule 4-202.04(6) of the Utah Code of Judicial Administration

The Court makes the following Findings and Conclusions regarding the filing of documents or information designated CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY under this Standard Protective Order:

(a) Certain information and documents, including pleadings, disclosures, discovery requests, or responses, motions, briefs, or other papers may be filed in this litigation that contain information that the parties have designated as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, pursuant to this Standard Protective Order. As defined above, CONFIDENTIAL INFORMATION and CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY includes confidential information, including but not limited to trade secrets, confidential or proprietary financial information, operational data, business plans, business records, competitive analyses, personnel files, personal information that is protected by law, and other sensitive information.

(b) "The [C]ourt may classify [a] record as private, protected, or sealed, … or redact information from the record if the record or information … is classified as private, protected, sealed … under Rule 4-202.02" or "is a record containing information the disclosure of which constitutes an unwarranted invasion of personal privacy." Utah Code of Judicial Admin. R. 4-202.04(4).

(c) Protected records include:

(i) any records submitted to a governmental entity "that the person believes should be protected under Subsection 63G-2-305(1) or (2)," UTAH CODE ANN. § 63G-2-309(1);

(ii) "confidential business records under Utah Code Section 63G-2-309," Utah Code of Judicial Admin. R. 4-202.02(5)(I);

(iii) "trade secrets as defined in Utah Code Section 13-24-2," Utah Code of Judicial Admin. R. 4-202.02(5)(R); and

(iv) "other records as ordered by the court under Rule 4- 202.04." *See* Utah Code of Judicial Admin. R. 4-202.02(5)(V).

(d) As set forth herein, the disclosing parties have made "a written claim of business confidentiality" and provided "a concise statement of reasons supporting the claim of business confidentiality." UTAH CODE ANN. § 63G-2-309(1)(a)(i).

(e) The Court finds that, if filings containing such CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY are not closed to the public, the disclosing party may be subject to competitive or financial injury or potential legal liability to third parties.

(f) The Court further finds that, given the confidential and sensitive nature of the CONFIDENTIAL INFORMATION and CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, the public's right of access to filings containing such CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY is outweighed by the interests of the disclosing party in the confidentiality of such information.

(g) The Court further finds that the disclosing party's good faith designation of such filings as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY justifies closing such records to the public by classifying such filings as protected, pursuant to Rule 4-202.04(5) of the Utah Code of Judicial Administration.

(h) The Court concludes that, on balance, the interests of the parties disclosing

CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY that may be included in filings in this action outweighs the public's interest in open court records and that no reasonable alternative exists to closing filings to the public that the parties in good faith designate as containing CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, subject to the parties' and public's right to challenge the designation of information as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY and the closure of certain filings to the public.

(i) Accordingly, the Court classifies as protected documents and information designated as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY, pursuant to this Standard Protective Order.

(j) The Court orders the Clerk to maintain CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY as protected, pursuant to Rule 4-202.04(4) and 4-202.09(9) of the Utah Code of Judicial Administration. Accordingly, and pursuant to Rules 4-202.04(4) and 4-202.09(9) of the Utah Code of Judicial Administration, the Clerk of this Court is directed to maintain as protected all pleadings, disclosures, discovery requests or responses, motions, briefs, or other papers filed in this litigation that have been classified, in whole or in part, as CONFIDENTIAL INFORMATION or CONFIDENTIAL INFORMATION – ATTORNEYS EYES ONLY under this Standard Protective Order.

SO ORDERED AND ENTERED BY THE COURT PURSUANT TO RULES 26X and 37(a)(7)(G) OF THE UTAH RULES OF CIVIL PROCEDURE EFFECTIVE AS OF THE COMMENCE OF THE ACTION.

IN THE _____ JUDICIAL DISTRICT COURT
_____ COUNTY, STATE OF UTAH

_____, Plaintiffs, vs. _____, Defendant.	DISCLOSURE AGREEMENT Case No. Honorable

I, _____, am employed by _____. In connection with this action, I am:

_____ a director, officer or employee of _____ who is directly assisting in this action;

_____ have been retained to furnish technical or other expert services or to give testimony (a "TECHNICAL ADVISOR");

_____ Other Qualified Recipient (as defined in the Standard Protective Order) (Describe:_____).

I have read, understand and agree to comply with and be bound by the terms of the Standard Protective Order in the matter of _____, Civil Action No. _____, pending in the United States District Court for the District of Utah. I further state that the Standard Protective Order entered by the Court, a copy of which has been given to me and which I have read, prohibits me from using any PROTECTED INFORMATION, including documents, for any purpose not appropriate or necessary to my participation in this action or disclosing such documents or information to any person not

entitled to receive them under the terms of the Standard Protective Order. To the extent I have been given access to PROTECTED INFORMATION, I will not in any way disclose, discuss, or exhibit such information except to those persons whom I know (a) are authorized under the Standard Protective Order to have access to such information, and (b) have executed a Disclosure Agreement. I will return, on request, all materials containing PROTECTED INFORMATION, copies thereof and notes that I have prepared relating thereto, to counsel for the party with whom I am associated. I agree to be bound by the Standard Protective Order in every aspect and to be subject to the jurisdiction of the United States District Court for the District of Utah for purposes of its enforcement and the enforcement of my obligations under this Disclosure Agreement. I declare under penalty of perjury that the foregoing is true and correct.

_____
Signed by Recipient

_____
Name (printed)

Date: _____

Tab 8

Rule 53A Special Masters in Domestic Cases

(a) **Scope.** This rule applies to the following domestic relations actions: This rule applies to the following domestic relations actions: divorce; temporary separation; separate maintenance; parentage; custody; child support; and modification.

(b) **Definition**. Special Masters are quasi-judicial officers appointed by the courts who are given limited powers to manage parenting disputes, including but not limited to: child custody, visitation or parent time, co-parenting, child related expenses, complying with and interpreting written parenting plans or orders, and shielding the child from parental conflict.

(c) **Appointment.** A court may appoint a special master following this rule. A special master is a court-ordered individual who may provide dispute resolution services in a domestic relations action after entry of a parenting plan, temporary order, or final order in a case. A court may appoint a special master as follows:

(1) Upon stipulation of the parties.

(2) Upon motion of a party and for good cause shown.

(3) Upon the court's own order, if the court finds that: i) there is an extraordinary need for the appointment of a special master expedient to the administration of justice; and ii) that the parties are able to pay for the cost of the special master.

(d) **Term and Scope of Appointment.** The court shall specify the length of time and scope of the special master's appointment at the time of appointment. The court may extend, terminate, or modify the scope and term of the appointment upon motion of a party or the special master for good cause shown.

(e) **Special Master Authority Regarding Existing Orders.** The special master shall not make decisions that are contrary or inconsistent with existing orders, judgments, decrees, or court-ordered parenting plans. Recognizing that the special master's role may involve creating rules, clarifications, or additional requirements for the parties to follow to resolve disputes pursuant to the terms of their Decree/Order, the special master shall not issue any orders or modifications of orders that would otherwise require a judicial order, absent express authority to do so by the court in the order appointing the special master.

(f) **Quasi-Judicial Immunity.** A special master, when acting within their appointment order in the furtherance of the judicial process, a special master shall have quasi-judicial immunity.

(g) **Sanctions.** A special master may not make a finding of contempt pursuant to Utah law. However, a special master may only issue sanctions if specifically authorized to do so in the appointment order. A special master may not issue any sanctions as stated in UCA 78B-6-310.

(h) **Reports of Decisions**. A special master shall issue all decisions in writing. A special master shall provide the written decisions informally to the parties or by filing with the court.

(i) **Procedure to Modify or Vacate Special Master Decision.** A court has authority to modify or vacate a special master decision as follows:

(1) A recommendation of a special master is a binding order on the parties until modified or vacated by the court. A party may file a written motion to vacate the special master's decision within 14 days after the decision is made. A court may consider a motion filed later than 14 days after a decision upon good cause shown.

(2) The motion must identify succinctly and with particularity the decision to which the motion is made, state the relief sought and an accompanying declaration must provide all information and documents to support the request. The time for filing, length and content of the pleadings, declarations, and request to submit for decision are as stated for motions under Rule 7 or if the matter has a domestic commissioner assigned, under Rule 101.

(3) The court shall make independent findings of fact and conclusions of law based on the evidence presented to the court. The court shall proceed on a de novo standard.

(j) **Termination or Suspension of Special Master.** A special master may be terminated or suspend their services as follows:

(1) **Termination or Suspension by Special Master.** A special master may self-terminate or suspend their services at any time by issuing a notice of resignation or suspension to the parties, all counsel, and the court. A notice of termination may only be issued while no issue is pending before the special master.

(2) **Termination by Parties.** Parties can terminate the special master upon written stipulation.

(3) **Termination by the Court.** The court may terminate the special master on its own motion or by motion of a party for good cause shown.

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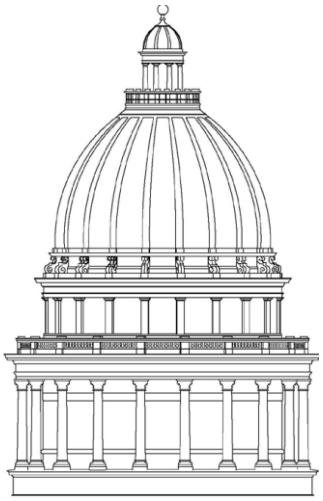
REPORT TO THE

UTAH LEGISLATURE

Number 2019-08



A Performance Audit of Child Welfare During Divorce Proceedings

August 20, 2019

Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

STATE OF UTAH

Office of the Legislative Auditor General

315 HOUSE BUILDING • PO BOX 145315 • SALT LAKE CITY, UT 84114-5315
(801) 538-1033 • FAX (801) 538-1063

KADE R. MINCHEY, CIA, CFE
AUDITOR GENERAL

August 20, 2019

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of Child Welfare During Divorce Proceedings** (Report #2019-08). A digest is found on the blue pages located at the front of the report. The Audit Scope and Objectives are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

Kade Minchey

Kade R. Minchey, CIA, CFE
Auditor General

Digest of
A Performance Audit of Child Welfare During Divorce Proceedings

The mission of the Utah Judiciary is to "provide the people an open, fair, efficient, and independent system for the advancement of justice under the law." For many American families, divorce is a key entry point into the Judicial system. When divorce involves children, statute establishes rights and responsibilities for the divorcing parents and protects the best interests of children throughout the divorce process. Child protections during divorce are secured through the coordinated efforts of several state agencies, including Utah's district and juvenile courts, the Attorney General's Office, the Office of the Guardian ad Litem (GAL), and the Division of Child and Family Services (DCFS).

We were asked to examine the processes for protecting children involved in divorce cases that include allegations of abuse and neglect as well as visitation and custody disputes. We found that high-conflict, child-welfare-involved divorce cases are infrequent. However, statute requires protections for the children involved in these cases. To deliver these protections and reduce the harm inflicted on children by divorce, enhancing the efficiency of court operations while simultaneously improving outcomes for divorcing families is critical. Therefore, in addition to reviewing the adequacy of existing child protections, we also reviewed the need for enhanced efficiencies in case processing and validated court personnel training and oversight.

Chapter II
Child Protections Appear Reasonable, Triage May Further Improve Protections

Appropriate Child Welfare Controls Are in Place to Protect Children During Divorce. Divorce cases that involve children and include allegations of abuse and neglect are infrequent. In the past five years, only 1 percent of divorce cases involving children had a documented child welfare concern. Although these cases are infrequent, appropriate controls must be in place to protect the health and safety of the children involved. To document these controls, we reviewed ***Utah Code*** and Utah Court Rules and analyzed 10 cases to ensure appropriate controls and child protections were in place. We also interviewed many child welfare experts across many organizations to make sure that we had not overlooked any potential problems with Utah's existing child welfare system. Collectively, this review led us to conclude that the existing system has sufficient controls in place to protect children during divorce. Although to enhance controls, it may be beneficial to require a DCFS referral prior to filing a child protective order in district court.

Triage of Divorce Cases Could Further Enhance Child Protections. We were asked to compare divorce time frames for a typical divorce with those for a divorce involving child welfare concerns. We found that the presence of child disputes in divorce proceedings drastically increases the time to disposition. The courts have independently reported this concern and made recommendations for improvement, such as triaging cases for enhanced efficiencies. When cases are triaged, they are assigned to a particular track based on their complexity. Triage holds promise for allocating limited court resources across cases more efficiently and effectively, as demonstrated in other states. A form of triage was piloted by the Second Judicial District over a decade ago and was effective at reducing disposition times. An updated triage is currently being used in a pilot program in Utah's Fourth and Seventh Judicial Districts with preliminary data showing promising results. We recommend moving forward with triage to enhance efficiencies.

Chapter III
Training Requirements Vary by Expert, Special Masters' Role Needs Clarification

Child Welfare Experts Vary in Training Requirements and Court Oversight. We reviewed compliance with training requirements for experts involved in district and juvenile court proceedings and learned that the requirements and oversight body vary by specialist. Court-affiliated personnel such as judges, commissioners, and GALs have specific training requirements and court oversight. We were able to document with relative ease that judges and commissioners met their annual training requirement. While it was more difficult to validate if GALs were meeting their annual training requirements, we found they were in compliance after reviewing multiple documents. In addition, child welfare experts such as special masters, custody evaluators, parenting coordinators, and visitation supervisors have varied training requirements and oversight bodies depending on their professional affiliation. Therefore, we could not easily validate if these entities have met and are meeting their annual training requirements. Given the important role these entities play in child welfare and divorce proceedings, we recommend that the courts provide additional oversight of these entities.

Special Masters' Role Needs Clarification. Special masters are lacking in oversight, guidance, and training requirements. Specifically, we found the following: The use and powers of special masters are unclear. There are no specific training requirements or minimum qualifications to act as a special master. There is no detailed tracking of special masters. We reviewed court rules for special masters and found they do not include specific training requirements, nor do they provide adequate guidance for judicial use. This lack of clarity was evident in interviews with those familiar with special masters, who reported inconsistencies in their use. Collectively, these interviews revealed that there is no consensus surrounding special masters' appointment and use. We recommend the Judicial Council adopt, in full or in part, ABA Guidelines for use of special masters in domestic cases.

REPORT TO THE
UTAH LEGISLATURE

Report No. 2019-08

A Performance Audit of Child Welfare During Divorce Proceedings

August 2019

Audit Performed By:

Audit Manager	Darin Underwood, CIA
Audit Supervisor	Anndrea Parrish
Audit Staff	Brent Packer

Table of Contents

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Chapter I
Introduction

The mission of the Utah Judiciary is to "provide the people an open, fair, efficient, and independent system for the advancement of justice under the law." For many American families, divorce is a key entry point into the Judicial system. When divorce involves children, statute establishes rights and responsibilities for the divorcing parents and protects the best interests of children throughout the divorce process.[1] Child protections during divorce are secured through the coordinated efforts of several state agencies, including Utah's district and juvenile courts, the Attorney General's Office, the Office of the Guardian ad Litem (GAL), and the Division of Child and Family Services (DCFS).

We were asked to examine the processes for protecting children involved in divorce cases that include allegations of abuse and neglect as well as visitation and custody disputes. We found that high-conflict, child-welfare-involved divorce cases are infrequent. However, statute requires protections for the children involved in these cases. To deliver these protections and reduce the harm inflicted on children by divorce, enhancing the efficiency of court operations while simultaneously improving outcomes for divorcing families is critical. Therefore, in addition to reviewing the adequacy of existing child protections, we also reviewed the need for enhanced efficiencies in case processing and validated court personnel training and oversight.

We were asked to examine the processes for protecting children involved in divorce cases that include allegations of abuse and neglect.

High-Conflict, Child-Welfare-Involved Divorce Cases Are Rare

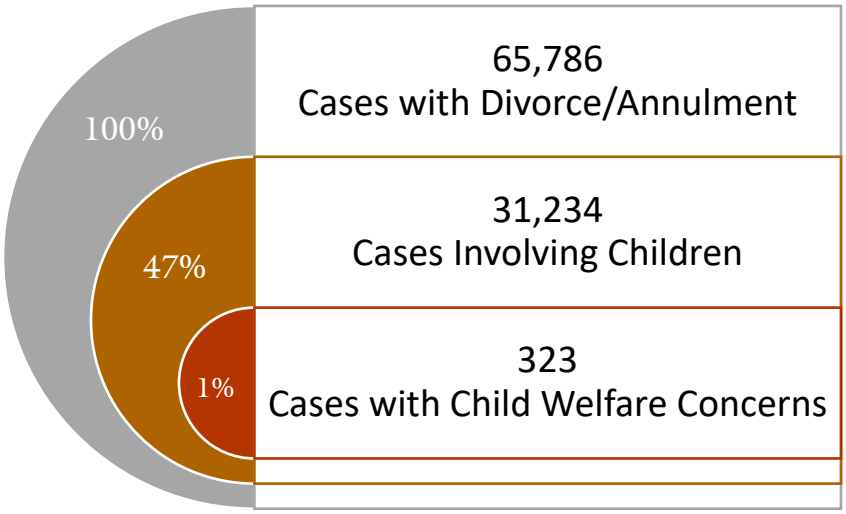
Cases involving divorcing parents with child welfare concerns are among the most complex and sensitive matters that courts hear. Cases involving child visitation disputes, custody disputes, and allegations of abuse and neglect require significant court resources in order to identify and protect the best interests of children and make appropriate

[1] According to the Children's Bureau, the term "best interests of the child," does not have a standard definition but, "generally refers to the deliberation that courts undertake when deciding what type of services, actions, and orders will best serve a child as well as who is best suited to take care of a child. . .with the child's ultimate safety and well-being the paramount concern."

information available to judicial decision makers. Fortunately, these cases are rare. We found relatively few divorce cases involving child welfare concerns, as shown in Figure 1.1.[2]

In district court, a GAL may be appointed to represent minors when allegations of abuse and neglect are present or when there are custody disputes. The presence of a GAL is one of the only ways we could track the presence of a child welfare concern in the courts' database system. Therefore, it is possible that additional high-conflict divorce cases involving children have not been captured in our data.

Figures 1.1 Few Divorce Cases Involve Child Welfare Concerns. During the last five years, only 1 percent of all divorce cases involving children also involved child welfare concerns.



Source: Administrative Office of the Courts data for all divorce cases from 2014 to 2018.

Although there are relatively few divorce cases involving child welfare concerns, statute requires protection of the children in these cases.

In the last five years, Utah courts processed nearly 66,000 divorce cases. Just under half of these cases involved children and only a small fraction of these cases—1 percent—included child welfare concerns.

Although there are relatively few divorce cases involving child welfare concerns, statute requires protection of the children in these cases. The "best interests of the child" is the definitive standard used to

[2] Divorce cases with child welfare concerns were identified by the presence of a GAL attorney, which is tracked in Utah Courts database, CORIS.

resolve child disputes in divorce and parenting proceedings.[3] This standard, in addition to other factors set forth in statute, is used by judicial decision makers in determining parent time and child custody arrangements. Because protecting children is paramount, we reviewed court data, documented statutory protections, reviewed case files for systematic concerns, interviewed many specialists within Utah's child welfare system, and reviewed best practices in other states. These activities helped us identify if existing child protections are adequate. This review, however, would not be complete without an understanding of changing needs of divorcing families and how this change is driving innovation across courtrooms.

Over the last few decades, the characteristics of divorce cases have changed rapidly. A variety of factors have led to increased case complexity, including a significant increase in the number of self-represented parties and more high-conflict and highly contested divorces. These changes have been met with new, innovative practices such as mandatory alternative dispute resolution (i.e., mediation), mandatory divorcing parent education, the Online Court Assistance Program (OCAP), and the Divorce Education for Children program, as well as a number of new court specialists available to aid judges in their decision-making processes. We credit the courts for responding to the changing needs of divorcing families with innovative practices and anticipate that they will continue to enhance child protections and improve court operations through additional efficiencies, as recommended in this audit.

A variety of factors have led to increased divorce case complexity including a significant increase in the number of self-represented parties.

Audit Scope and Objectives

We were asked in the audit request to review "possible systemic mishandling" of child welfare cases amid divorce proceedings. Specifically, the audit request asked us to determine if the institutions charged with protecting the interests of children whose parents are undergoing divorce are adequate. Based on the audit request, we focused our scope on both district court divorce proceedings and the

We were asked to determine if the institutions charged with protecting the interests of children whose parents are undergoing divorce are adequate.

[3] ***Utah Code*** 30-3-10 provides that the court will consider the best interests of the child without "preference for either parent solely because of the gender of the parent . . . ."

surrounding institutions that protect children whose parents are divorcing.

In addition to the overarching audit request, we were also asked nine questions that related specifically to child welfare. After performing a risk assessment, we determined that two questions could not be answered due to insufficient data. Two additional questions only received a limited review. We performed a more in-depth review on the remaining five questions, which are discussed in the following chapters:

- Chapter II reviews the courts' capacity to protect children involved in divorce proceedings and documents the need for enhanced efficiencies for divorce case processing.
- Chapter III reviews the adequacy of court staff training and the role of special masters in court proceedings.

The following section addresses the two limited-review questions. These questions appear here because they are largely informational and did not result in an audit recommendation but are important topics for discussion.

Parental Alienation and Domestic Violence Factor into Judicial Decision Making

Parental Alienation Is Sometimes Used in Court Decisions. The audit request asked us to review the extent to which Parental Alienation Syndrome (PAS) is used in determining abuse and neglect allegations. Parental Alienation Syndrome is a controversial term invoked in cases involving child custody disputes. The idea is that one parent falsely alleges domestic violence or child abuse in order to "alienate" the child from the other parent and obtain a child custody or visitation advantage. This parent may try to influence a child to believe untrue claims about the other parent. The main critique of PAS is that a child's behavior and attitude toward the "alienated" parent are based on false allegations, making allegations that are valid difficult to prove. Our literature review indicated that PAS has been rejected multiple times for inclusion in the Diagnostic and Statistical Manual of Mental Disorders by the American Psychiatric Association because it lacks a scientific basis. It has also been rejected by the legal community for not being evidence based and, therefore, is not

Parental Alienation Syndrome has been rejected by the legal community for not being evidence based.

admissible in court. While not admissible in court, we found, PAS is occasionally used in district court decisions.

We reached out to a limited sample of district court judges and commissioners to determine whether PAS is used in Utah's courts. The majority reported that they do not use PAS in weighing child abuse and neglect determinations, although some judges reported factoring PAS into their judicial decision making. We do not draw any conclusions from this finding, as our review was limited, but we discuss PAS and the following topic for informational purposes only.

Domestic Violence Co-Occurs with and Compounds Child Maltreatment. Exposure to domestic violence is a significant risk factor for child maltreatment, with co-occurrence rates ranging between 30 and 60 percent. Children exposed to domestic violence, for example, have higher rates of health problems owing in part to the impact that a stressful environment has on young, developing brains. A parent who is a victim of domestic violence is also faced with a number of challenges that impact a child's safety, such as where to find housing, money, child care, and access to legal services.

Domestic violence exposure is a significant risk factor for child maltreatment, with co-occurrence rates ranging between 30 and 60 percent.

We were asked to examine if a parent who is a victim of domestic violence has adequate resources to provide court-ordered parent time. Because this is an area of significant impact to parents and children alike that extends beyond the scope of our audit, we were unable to adequately address this question. We documented, however, that there are resources available to victims of domestic violence. According to the domestic violence program coordinator for the courts, free legal services are available to victims of domestic violence. There are also locations where children can be safely exchanged between parents. We also found that while training on domestic violence is available to court personnel, it is not mandatory (as discussed in Chapter III). Policy makers and child welfare experts may benefit from additional tools and resources on the National Center for State Courts website on domestic violence.[4]

We believe the courts could benefit from additional initiatives, such as triaging divorce cases by level of complexity and ensuring

[4] More information on domestic violence is available at: https://www.ncsc.org/Topics/Children-Families-and-Elders/Domestic-Violence/Resource-Guide.aspx

court specialists have clear guidance and oversight, as discussed in the remaining chapters of this report. These initiatives, and others, could help address new challenges facing the courts and maintain efficient and effective court operations.

Chapter II
Child Protections Appear Reasonable, Triage May Further Improve Protections

One concern raised in the audit request was whether the safeguards entrusted to protect children during the divorce process are sufficient. To address this concern, we performed the following tasks:

- A statute review, which revealed many controls designed to protect both the interests of children and the rights of parents.
- A limited analysis of 10 cases involving child abuse and neglect allegations, which demonstrated, in these cases, that the district courts are exercising these controls.
- Interviews of key child welfare experts from a variety of organizations to determine if additional child protections are needed. These experts reported that the existing system appears to be working effectively to protect children.

In a related review of divorce time frames, we found that cases with child welfare or custody disputes, which resulted in the appointment of a guardian ad litem (GAL) or custody evaluation, significantly delays divorce time frames. The courts have also documented this pattern; they recommend that custody evaluation be used judiciously and that all divorce cases be triaged in a way that allows for efficient and effective case processing. Triage is a form of case management that assigns cases to a particular track based on complexity. We support the courts' recommendation for both limited use of custody evaluations as well as the study and expansion of triage statewide.

Appropriate Controls Are in Place To Protect Children During Divorce

Divorce cases that involve children and include allegations of abuse and neglect are infrequent. In the past five years, only 1 percent of divorce cases involving children had a documented child welfare concern. Although these cases are infrequent, appropriate controls must be in place to protect the health and safety of the children involved. To document these controls, we reviewed ***Utah Code*** and Utah Court Rules and analyzed 10 cases to ensure appropriate

Only 1 percent of all divorce cases involving children in the last five years had a documented child welfare concern.

controls and child protections were in place. We also interviewed many child welfare experts across many organizations to make sure that we had not overlooked any potential problems with Utah's existing child welfare system. Collectively, this review led us to conclude that the existing system has sufficient controls in place to protect children during divorce. Although to enhance controls, it may be beneficial to require a DCFS referral prior to filing a child protective order in district court.

Statute Is Designed to Balance the Protections of Children with the Protections of Parental Rights

We documented a number of statutory child protections designed to protect children throughout the divorce process.

We documented several statutory provisions that protect children throughout the divorce process while also recognizing the fundamental constitutional rights of parents to care for and manage their children.[5] These provisions are designed to protect children in the least intrusive and least restrictive way possible. For example, one case we reviewed involved children removed from a home who were later reunited with their father after a safety plan was made and child protections were secured. Statutory protections include the following:

- Individuals have a duty to report child abuse and neglect to the Division of Child and Family Services (DCFS) when they observe abuse or neglect or have reason to believe these offenses are occurring.
- Once an allegation is received, it is DCFS' statutory responsibility to 1) receive the referral and 2) determine whether the allegations are supported after an investigation is performed.
- The district court may appoint a private GAL to represent the best interests of the minor. When families cannot afford to pay for this, a pro bono private GAL or a publicly funded GAL may be assigned.

Additionally, the Child Protection Division of the AG's office has a team of experienced child abuse prosecutors and assistants who strive to protect children in imminent danger of abuse and neglect. DCFS works with the AG to open a juvenile court case on behalf of a child

[5] ***Utah Code*** 62A-4a-201 states, "a parent possesses a fundamental liberty interest in the care, custody, and management of the parent's children."

when a DCFS referral is supported and court oversight is needed to protect the child.

Most supported referrals, however, never result in court involvement. There are a variety of reasons for this. Court oversight may be deemed unnecessary because it is determined that the child is protected, or sufficient evidence may be lacking. Moreover, the legal standard for DCFS to support an allegation is less than the legal standard of proof required of the AG's office to file a petition in the juvenile court. In situations where a juvenile court case is not opened, DCFS may provide alternative services, such as a referral to community programs or the development of a child safety plan.

Most supported DCFS referrals never result in court involvement.

Our review of statute and rule indicates that the child welfare system has been carefully designed to protect children. We were asked, however, to review whether district courts, specifically, are protecting children. We were given five cases to review that purportedly documented inadequate child protections. Our case file review findings are included in the following section.

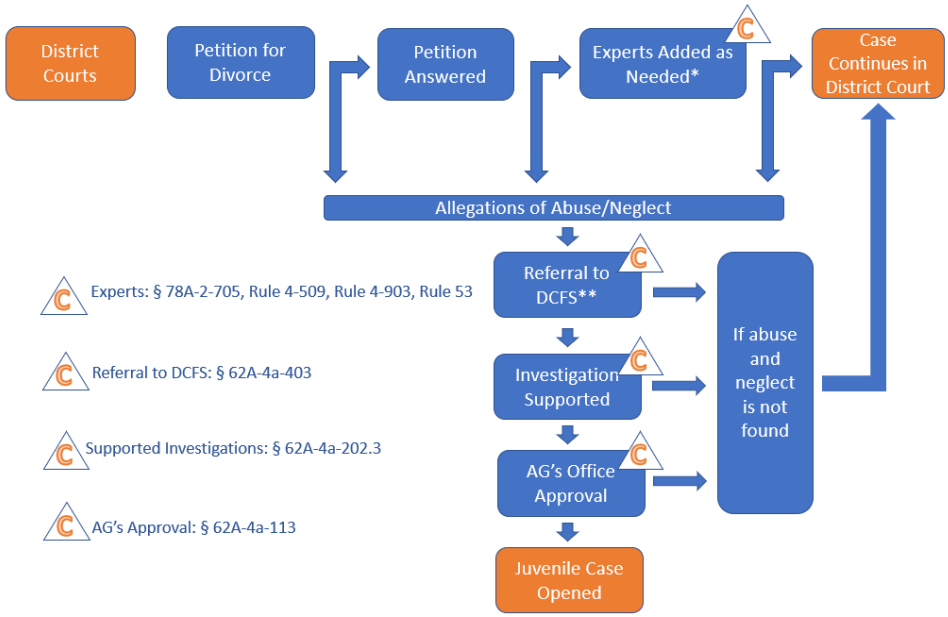
Our review of statute and rule indicates that the child welfare system has been carefully designed to protect children.

Reviewed Cases Indicate Child Welfare Agencies Are Following Appropriate Steps in Protecting Children

To review that appropriate child welfare controls are in place, we reviewed 10 divorce cases involving children with child welfare concerns. Because we do not typically audit outcomes of individual cases and do not want to second-guess judicial discretion, we focused our review on the court *process* which, according to relevant stakeholders, is designed to protect children.

Our sample included five cases provided to us, which were the impetus for this audit, and an additional five randomly selected cases involving divorce and child welfare concerns. We then validated these 10 cases against the courts' existing process, shown in Figure 2.1, to ensure each case had the appropriate controls and child protections in place.

Figure 2.1 Divorce Process from District Court to Juvenile Court When Abuse and Neglect Are Present. When allegations of abuse or neglect arise during the divorce process, controls are in place to protect the welfare of children as the divorce proceeds through district court. Statutory controls are indicated by the C.



Source: Office of the Legislative Auditor General, based on Administrative Office of the Courts interviews and statutory review.
**Experts include a guardian ad litem, a custody evaluator, a parent coordinator, and a special master.*
***Anyone who suspects that child abuse or neglect is occurring has a responsibility to contact the Division of Child and Family Services.*

Figure 2.1 illustrates the divorce process when allegations of abuse and neglect are present. This figure represents those cases that have supported findings of abuse and neglect, resulting in juvenile court involvement. Most district court cases will not move through the entire process.

All supported allegations must meet the statutory definition of abuse and neglect.

As the figure shows, an allegation is referred to DCFS, which responds with a child protective service investigation that determines if the allegation is supported. All supported allegations must meet the statutory definition of abuse and neglect. For a case as to be opened in juvenile court, the AG's office must establish that there is sufficient evidence. The juvenile courts are well prepared to address child welfare concerns, as they have judges and specialists who receive extensive

training and experience with child welfare. Safety plans, as well as child and family teaming are common practices in juvenile courts.[6]

Because the juvenile courts are very equipped to handle child welfare cases, our focus was on child protections at the district court level. After reviewing the 10 cases, we found that all cases followed the process outlined in Figure 2.1. While we could not definitively prove all children in these cases were protected, our review demonstrated that essential controls are in place and the system is designed to protect children.

Our review demonstrated that essential controls are in place and the system is designed to protect children.

Child Welfare Experts Report Existing Process Has Functioning Controls for Protecting Children

To supplement our case file review, we interviewed key child welfare experts across institutions to identify if there were control weaknesses in the existing system that we missed. We interviewed stakeholders from DCFS, the Administrative Office of the Courts (AOC), the juvenile courts, the Child Protection Division of the AG's office, and the GAL's office. Despite concerns raised that provided the basis for this audit, all key stakeholders reported that the current system has functioning controls to protect children.

The audit request letter raised the concern that children whose parents are divorcing are treated differently than their peers in the child welfare system who are not involved in the divorce process. The experts we spoke to did not report that this was a valid concern. In contrast, DCFS' director stated that all children, regardless of the presence of divorcing parents, are treated with the same child protective service protocols. There was, however, one discrepancy in practice between juvenile and district courts in instances of child protective orders that warrants AOC's review.

[6] Teaming includes children and their families who convene with child welfare experts staffed to their case to achieve the goal of safety, permanency, and well-being.

When a Protective Order Involves a Child in District Courts, a DCFS Referral Should Be Considered

A DCFS referral is not required when a standard protective order is requested in district court.

When a child is being abused or is in imminent danger of being abused, a **child protective order** may be filed on behalf of the child. To do so, a DCFS referral must first be made. A DCFS referral is not required when a **standard protective order** is requested in district court, even if the order involves children. This is because the document used in district courts refers to protective orders in general and not specifically to child protective orders. We recommend that DCFS work with the Court's Standing Committee on Children and Family Law and eventually the Judicial Council to review this difference in practice and determine if a change is warranted.

Long delays in case processing time frames were also raised as a concern by several experts. This particular concern is the focus of the following section.

Triage of Divorce Cases Could Further Enhance Child Protections

We found that the presence of child disputes in divorce proceedings drastically increases the time to disposition.

We were asked to compare divorce time frames for a typical divorce with those for a divorce involving child welfare concerns. We found that the presence of child disputes in divorce proceedings drastically increases the time to disposition. The courts have independently reported this concern and made recommendations for improvement, such as triaging cases for enhanced efficiencies. When cases are triaged, they are assigned to a particular track based on their complexity. Triage holds promise for allocating limited court resources across cases more efficiently and effectively, as demonstrated in other states. A form of triage was piloted by the Second Judicial District over a decade ago and was effective at reducing disposition times. An updated triage is currently being used in a pilot program in Utah's Fourth and Seventh Judicial Districts with preliminary data showing promising results. We recommend moving forward with triage to enhance efficiencies.

Disputes over Children Significantly Extend Divorce Time Frames

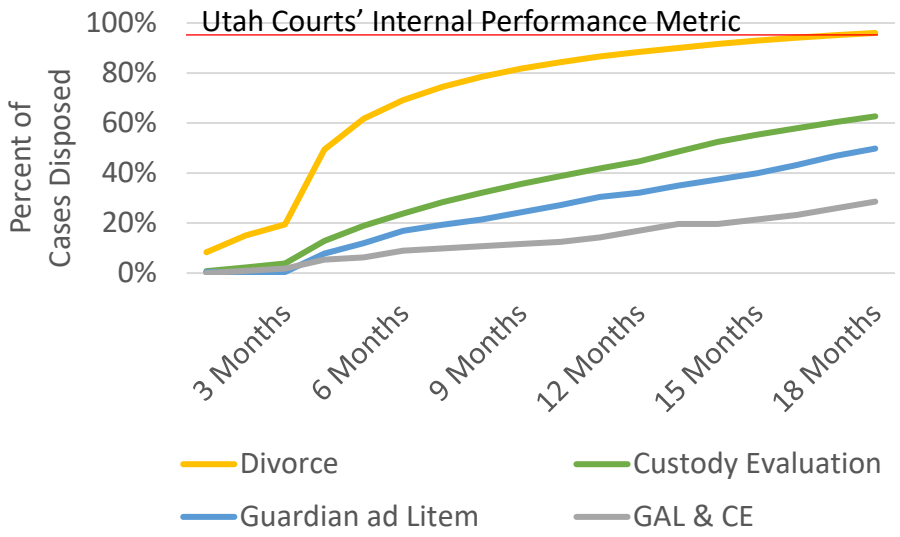
The average divorce in Utah takes six months from filing date to disposition. Not surprisingly, increased complexity extends time frames:

- A custody evaluation extends time to disposition by 10 months on average, for a total of 16 months.
- Involving a GAL, which indicates the presence of a child welfare concern, extends time to disposition on average by 16 months, for a total of 22 months.
- When both a GAL and a custody evaluation are present, the time to disposition is lengthened by 20 months, for a total of 26 months.

When both a GAL and a custody evaluation are present, which are indicators of case complexity, the time to disposition is lengthened by 20 months, for a total of 26 months.

Figure 2.2 demonstrates a significant increase in divorce time frames when there is a child welfare concern, as indicated by the appointment of a GAL or the ordering of a custody evaluation.

Figure 2.2 A Comparison of Divorce Time Frames with a Guardian ad Litem or Custody Evaluation (CE) over Five Years. In cases involving conflict over children, as indicated by the presence of a GAL or custody evaluation, time frames are significantly extended.



Source: Raw data from Administrative Office of the Courts, analysis performed and graphic generated by the Office of the Legislative Auditor General. Note: Data was used from 2014 to 2018.

The standard set by the courts is 95 percent of divorce cases disposed within 18 months, as shown by the red line.

As shown in Figure 2.2, divorce cases meet the standard set by the courts—95 percent of cases disposed within 18 months—as shown by the red line. Cases involving a GAL or custody evaluation are not included in this calculation. When a custody evaluation is ordered, only 63 percent of cases meet the standard. Only 50 percent of cases meet the standard when a GAL is assigned. The inclusion of both a custody evaluation and a GAL results in only 29 percent of cases being completed within 18 months.

The Courts Are Aware that Custody Evaluations Extend Divorce Time Frames

In 2017, Utah Courts released a report that found "cases in which custody is disputed take the longest and cost the most."

We discussed divorce time frames with court administrators, who were not surprised by our findings. In fact, in 2017, the Committee on Children and Family Law released a report to the Judicial Council regarding domestic case processing.[7] The report concluded that "The process of getting a final order in a domestic case takes too long, costs too much money, and is too complicated." In particular, the report found that "cases in which custody is disputed take the longest and cost the most."

We support the courts' recommendation to order custody evaluations at the request of the parties or when extraordinary circumstances warrant it.

One reason for this is that custody evaluations are ordered too frequently and are inappropriate in most circumstances. The report, which was adopted by the Judicial Council, recommended that custody disputes be triaged based on the nature of the dispute and occur only at the request of the parties or when warranted by extraordinary circumstances. Under the triage model, unrequested custody evaluation orders would become the rare exception rather than the rule. We support the courts' recommendation to limit custody evaluations. While helpful, this change alone will not achieve faster divorce resolutions and better outcomes. The courts need to expand the practice of triaging all cases statewide to improve case processing efficiencies and family outcomes.

Triage Could Help the Divorce Process Be More Efficient While Also Promoting Positive Family Outcomes

Utah's single-track case processing may not be optimizing courts' and parties' time and resources, since each case is subject to the same linear and tiered process. For example, in some districts, parties are

[7] Domestic Case Process Improvement Subcommittee. Jun 26, 2017.

required to see a commissioner before their case can be heard by a judge. In contrast, some states utilize triage, which is a way of more efficiently and effectively processing cases by assigning each case to the appropriate track based on its unique characteristics. These characteristics are identified early in the case based on validated factors such as length of marriage or separation, marital property and debt, and age of children. The case is then assigned to one of three tracks:

Track 1: Cases with straightforward issues (the majority of cases), which can be fast-tracked directly to trial

Track 2: Cases involving complex issues requiring extraordinary discovery, which will be sent to pretrial

Track 3: Cases involving custody disputes, which will be sent to pretrial or a custody evaluation settlement conference

Triage is a more efficient and effective way of processing cases by assigning each case to the appropriate track based on its unique characteristics.

While most cases are uncontested and can be fast-tracked and quickly resolved, heavily contested divorce cases involving custody disputes or child welfare concerns are understandably more complicated, requiring more experts and services and, consequently, more resolution time. The overarching goal of triage is to provide the best results for the family by assigning the appropriate amount and type of case management; the primary focus is not on achieving shorter disposition times. Our expectation, however, is that triage will cause a net decrease in the average divorce time frame.

Triage is beneficial to divorcing families with child welfare concerns because it can provide the appropriate resources at the right time, resulting in better outcomes and reduced family conflict. While research indicates that most divorcing couples will move beyond their conflict in two or three years, as many as one-third of divorcing couples will have heightened conflict over their children for many years. This conflict has significant implications for child outcomes, families, and court systems.

Numerous courts, including those in Alaska, Miami, Florida, Colorado, and Connecticut have developed domestic relations triage processes. Some of these courts have demonstrated efficiency gains since the adoption of triage. For example, Alaska's Early Resolution Program (ERP), which employs triage, found favorable outcomes for triaged cases when compared with traditional, single-track cases. These

Alaska's Early Resolution Program found favorable outcomes for triaged cases when compared with traditional, single-track cases.

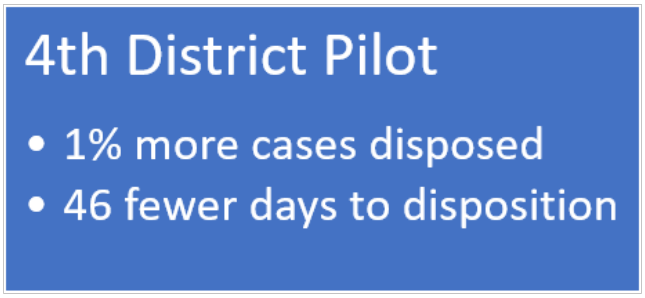
outcomes include faster times to disposition, lower cost per case, and fewer post-decree modifications.

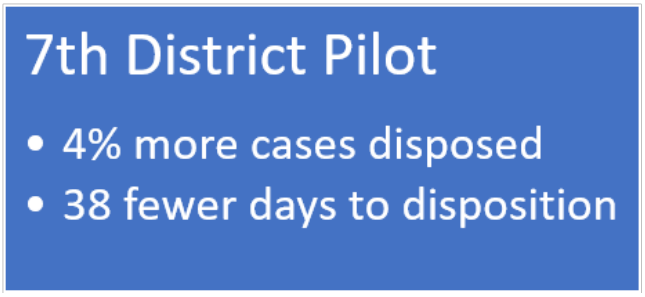
Utah's Second Judicial District has been utilizing a domestic case management program, which is a form of triage, for over a decade. This program has shown that triage has reduced disposition times by 47 days according to court reported data (from 2007 to 2018).

Preliminary data shows promising results in all three Utah triage study sites.

More recently, the Fourth and Seventh Judicial Districts have piloted an updated triage program, also called the Domestic Case Manager Program. Notably, these programs have case managers who move cases along efficiently. Preliminary data shows promising results in both sites.

Figure 2.3 Results of Triage Pilot Projects in the Fourth and Seventh Judicial Districts. Preliminary data shows promising results for both triage pilot sites.





Source: Data from Administrative Office of the Courts. Note: Comparison data was taken from July 1st, 2017 to December 31st, 2017 and July 1st, 2018 to December 31st, 2018.

Once the courts have had the opportunity to study the pilot program, we support the expansion of the program to additional districts if it proves beneficial at improving family outcomes and reducing divorce disposition lengths. To ensure efficiency gains are lasting and quality is not impacted, the courts may want to consider tracking the number of cases that are reopened (i.e., post-decree modifications) following a case closure as an added outcome metric to their pilot program. The courts may also want to consider measuring the age of active pending cases as Colorado does, to identify stalled cases in need of court intervention.

As an added outcome metric on their triage pilot program, the courts may want to consider tracking the number of cases that are reopened following a case closure.

In summary, the current child welfare system entrusted to protect children is working. By reviewing statute and rule, examining cases, and interviewing multiple child welfare experts, we believe appropriate controls are in place to protect children. However, we also found that divorce time frames are significantly extended by child welfare and/or custody concerns, as indicated by the presence of a GAL or a custody evaluation. To address this concern, we agree with the courts' own internal assessment that custody evaluations should be used sparingly and that each case should be assigned an appropriate track according to its unique characteristics. This will require the courts to expand the triage program in additional judicial districts.

Recommendations

1. We recommend that the Division of Child and Family Services work with the Court's Standing Committee on Children and Family Law and eventually the Judicial Council to review whether it would be beneficial to require a referral to the Division of Child and Family Services when a standard protective order involving children is requested in district court.

2. We recommend that the Judicial Council amend Utah Court Rule to allow for custody evaluations to be ordered only at the request of the parties or when extraordinary circumstances warrant it in accordance with the Domestic Case Processing Improvement Subcommittee's recommendation.

3. We recommend that the Administrative Office of the Courts in consultation with the Court's Standing Committee on Children and Family Law and eventually the Judicial Council study the

outcomes of their triage pilot sites and if the data demonstrates that triage is effective at reducing divorce disposition lengths and improving family outcomes, expand the program to other districts.

Chapter III
Training Requirements Vary by Expert, Special Masters' Role Needs Clarification

We were asked to determine if court personnel and child welfare experts in divorce cases receive adequate training, specifically on child abuse and neglect, as well as domestic violence. We found wide variation in training requirements based on the specialists used and their professional affiliations. Court personnel such as judges, commissioners and Guardians ad Litem (GALs) have specialized training requirements and court oversight. We were able to document that they comply with annual training requirements. Public and private GALs, as well as juvenile court judges, are the only court personnel required to have specific abuse and neglect training. While not mandatory, all court personnel and child welfare experts can choose to receive specific child abuse and neglect training as well as domestic violence training.

We were asked to determine if court personnel and child welfare experts in divorce cases receive adequate training.

In contrast, it was difficult for us to evaluate if child welfare experts who are added to cases when conflict between parents escalates, such as custody evaluators, parent coordinators, and special masters, are meeting their annual training requirements.

Because child welfare experts impact families undergoing divorce, especially when child abuse and neglect allegations are present, appropriate court oversight of these experts is critical. We found court oversight of experts inconsistent and recommend that it be enhanced for some child welfare specialists. We further recommend that the courts adopt guidelines for the use of special masters as recommended by the American Bar Association (ABA), to establish consistent procedures for their appointment and use.

Child Welfare Experts Vary in Training Requirements and Court Oversight

We reviewed compliance with training requirements for experts involved in district and juvenile court proceedings and learned that the requirements and oversight body vary by specialist. Court-affiliated personnel such as judges, commissioners, and GALs have specific training requirements and court oversight. We were able to document

We had difficulty determining if guardians ad litem are meeting their annual training requirement because it is unclear and not systematically tracked.

with relative ease that judges and commissioners met their annual training requirement. We initially had difficulty determining if GALs were meeting their annual training requirement because the requirement is unclear and is in need of being tracked more systematically. Ultimately, we were able to validate that their annual training requirements were met through compiling multiple documents. In addition, child welfare experts such as special masters, custody evaluators, parenting coordinators, and visitation supervisors have varied training requirements and oversight bodies depending on their professional affiliation. Therefore, we could not easily validate if these entities have met and are meeting their annual training requirements. Given the important role these entities play in child welfare and divorce proceedings, we recommend that the courts provide additional oversight of these entities.

Court Personnel Largely Comply with Annual Training Requirements

We validated that court judges and commissioners comply with annual training requirements.

All juvenile and district court judges and commissioners are required to receive at least 30 hours of annual training. These training hours include the Utah State Bar's biennial requirement of 24. We validated that court judges and commissioners satisfied their annual training requirements. While we received documentation on individual training events for GALs, we had difficulty determining if they are meeting their annual training requirements because the requirement is unclear and is in need of being tracked more systematically. However, annual training, specifically child welfare training, is occurring. Figure 3.1 shows an overview of compliance with annual continuing legal education (CLE) requirements of typical court staff.

Figure 3.1 Annual Continuing Legal Education Requirements for Typical Court Participants. While offered, specific training on child welfare and domestic violence is not required for judges and commissioners in district courts.

	Public Guardian ad Litem	Private Guardian ad Litem	District Court Judges & Commissioners	Juvenile Court Judges
Annual Training Requirement (Hours)	20	12	30	30
Annual Training Requirement Fulfilled?	Yes	Yes	Yes	Yes
Child Abuse and Neglect Training Required?	Yes	Yes	Offered/Not Required	Yes
Domestic Violence Training Required?	Offered/Not Required	Offered/Not Required	Offered/Not Required	Offered/Not Required

Source: Office of the Guardian ad Litem and Administrative Office of the Courts
Note: The Office of the Guardian ad Litem reported requiring approximately 20 hours of training annually for public GALs; private GALs are only required to fulfill their annual 12 hours of training to comply with Utah State Bar requirements, three of which must be child-welfare specific.

As child welfare specialists, juvenile court GALs and judges receive extensive child abuse and neglect training. We discussed training requirements with the courts' education director and found that the courts provide ongoing abuse and neglect training opportunities to all juvenile court judges. While training on topics related to child welfare is not mandatory for district court judges and commissioners, they too are offered this type of training. Interestingly, 62 percent of district court judges reported having three or more years of experience with family law prior to being appointed as a judge. In the next section, we review the training and oversight of child welfare experts.

While not mandatory in district court, child abuse and neglect training is provided to all judges and commissioners.

Child Welfare Experts Need Additional Court Oversight

When a divorce case involving children has an elevated level of complexity or conflict, child welfare experts are added to the case to help address the underlying concerns. Each of these experts plays an important role in bringing about resolution to complicated child welfare cases. Child welfare experts hold the following positions:

- **Public and Private Guardians ad Litem**—Attorneys appointed to represent the best interests of children and teens in cases of alleged abuse, neglect, and dependency.

- **Special Masters**—Quasi-judicial officers appointed by the courts who are given limited powers to manage parenting disputes such as child custody, visitation or parent time, and

Child welfare experts play an important role in bringing about resolution to complicated child welfare cases.

child support. Special masters will be discussed at greater length later in this chapter.

- **Parent Coordinators**—Licensed individuals appointed to assist parties in resolving conflicts about parenting issues.
- **Custody Evaluators**—Licensed individuals appointed to conduct an impartial evaluation of the respective parties.
- **Visitation Supervisors**—Volunteers or agencies that oversee parental visitation and/or transportation of children.

We reviewed the training requirements for these staff and found variation in their annual training requirements, as shown in Figure 3.2.

Figure 3.2 Annual Continuing Education Requirements of Child Welfare Experts by Professional License. Parent coordinators, custody evaluators, and special masters vary in training requirements based on their professional affiliations.

	Board Certified Psychiatrist	Licensed Marriage and Family Therapist	Licensed Clinical Social Worker
Annual CLE Requirement	20 Parent Coordinator Custody Evaluator	20 Parent Coordinator Custody Evaluator	20 Parent Coordinator Custody Evaluator
	Licensed Psychologist	**Attorney**	**Volunteer**
Annual CLE Requirement	24 Parent Coordinator Custody Evaluator Special Master*	12 Guardian ad Litem Special Master*	N/A Visitation Supervisor

** Special masters are not required to be attorneys or licensed psychologists. However, it was reported to us that the majority of special masters are attorneys or licensed psychologists.*

Child welfare experts vary in annual training requirements based on their professional affiliations.

Child welfare experts vary in annual training requirements based on their professional affiliations. For example, a parent coordinator who is a licensed psychologist requires 24 annual training hours, while a parent coordinator who is a licensed clinical social worker only needs 20 hours. Oversight for most of these professional affiliations is provided by the Division of Occupational and Professional Licensing.

Generally, these experts are brought onto a case as complexity increases. For example, a custody evaluation might be ordered when there is drug use in the home and the judge is unclear about proper placement of the child. A special master might be assigned when there is intense conflict between the divorcing parents and immediate temporary decisions are required. These experts are intended to provide an extra layer of protection to children. Consequently, their opinions are factored into judicial decisions, as indicated in the case files we reviewed. For example, one judge we interviewed reported greatly respecting the GAL's opinion and frequently supporting the GAL's recommendation in rendering a judgment. Because these experts' opinions factor into judicial decision making and impact the lives of children and their families, we believe it is reasonable to expect some court oversight of these individuals. We found, however, that some child welfare experts receive limited and variable court oversight depending on the position they serve in as well as their professional affiliations.

Child welfare experts are intended to provide an extra layer of protection to children.

Most Experts Are Not Part of a Vetted Roster Maintained by the Courts. Custody evaluators, parent coordinators, visitation supervisors, and special masters play an important role in the court process. One court administrator stated that these third-party professionals act as "tools that a judge can employ to ensure the best interests of the child are being represented." Despite this important role, the courts do not maintain a vetted roster demonstrating professional standards. This is surprising given that the courts maintain a vetted roster for mediators as well as public and private GAL attorneys through the Office of GAL. For example, in reference to the private GAL program, Utah Courts state:

> Because children are involved, it is necessary for the Office to screen [private GAL] applicants who demonstrate the requisite ability and proficiency to represent them . . . .

Given the precedent that exists for other child welfare experts regarding training and oversight, as well as the weight of child welfare matters, we believe training and oversight should extend to all experts who play a critical role in cases involving children. This would add consistency across various roles. It would also improve the Administrative Office of the Courts' (AOC) ability to enhance child protections and high-quality services to the public for these child welfare experts. Further, should complaints against an expert arise and

Guardians ad litem, custody evaluators, and parent coordinators must have specific child development training and maintain professional licensure.

the complaint be assessed and deemed valid, the AOC can exercise its authority in removing the expert from the roster. This gives the AOC the capacity to vet individuals and strengthens the competencies required of all experts. We recommend that the AOC determine an implementation strategy, an appropriate oversight body, and identify the additional resources necessary to implement this recommendation. Moreover, the Judicial Council will need to enact a rule enabling the AOC this authority.

Court Administrative Rules Outline Minimal Training Requirements for Most Experts. Public and private GALs, custody evaluators, and parent coordinators must have specific child development training and maintain professional licensure. For example, according to *Court Rule* 4-509, parenting coordinators must have, "completed graduate level coursework in child development . . . , at least 3 years of post-licensure clinical practice substantially focused on child/marital/family therapy; and a working familiarity with child custody/parent-time law . . . ."

Notably, no similar requirements for visitation supervisors and special masters exist. Since supervised visits are often provided free of charge by volunteers, it may be unnecessarily cumbersome to require minimum qualifications for them. Special masters, however, should be held to a higher standard as they become increasingly used in high-conflict divorce cases, as discussed in this final section.

Special Masters' Role Needs Clarification

Special masters are lacking in oversight, guidance, and training requirements. Specifically, we found the following:

There are no specific training requirements or minimum qualifications to act as a special master.

- The use and powers of special masters are unclear.
- There are no specific training requirements or minimum qualifications to act as a special master.
- There is no detailed tracking of special masters.

We reviewed court rules for special masters and found they do not include specific training requirements, nor do they provide adequate guidance for judicial use. This lack of clarity was evident in interviews with those familiar with special masters, who reported inconsistencies in their use. Collectively, these interviews revealed that there is no consensus surrounding special masters' appointment and use.

There are no specific training requirements or minimum qualifications to act as a special master.

This is not a concern unique to Utah. In fact, the ABA, recognizing the "lack of methodical and consistent approach to the appointment and use of special masters," developed and adopted guidelines in January 2019.

Use and Powers of Special Masters Are Unclear

The special master, in the context of a divorce proceeding, is a person appointed by the courts to manage parenting disputes when parents are having difficulty cooperating or co-parenting. Special masters' authority is derived from the *Federal Rules of Civil Procedure*, Rule 53 and *Utah Rules of Civil Procedure*, Rule 53, wherein "master" is defined as "a referee, an auditor, and an examiner." Such vague language does not provide clear guidance for judicial use.

The special master, in the context of a divorce proceeding, is a person appointed by the courts to manage parenting disputes.

With Limited Guidance, Judges are Unclear About the Appropriate Use of Special Masters. We performed a small, informal survey of eight judges, three commissioners, and three special masters in the Second, Third, and Fourth Judicial Districts to better understand how special masters are used.

Rule 53 states that the referral for services by a special master "shall, in the absence of the written consent of the parties, be made only upon showing that *some exceptional condition requires it*" (emphasis added). Not surprisingly, there are discrepancies in how judges and commissioners use special masters. Some reported that both the petitioner and the respondent had to consent before the appointment of a special master, while others viewed special masters' authority as statutorily sanctioned, allowing their use without the parties' consent. For example, one special masters told us she has been appointed "even when the parties don't stipulate." In contrast, a commissioner reported that "appointment may only occur if stipulated to by both parties." There are also discrepancies in special masters' power.

Special Masters' Powers Are Unclear. Rule 53 is directed toward "masters" generally and is silent on the topic of divorce or

custody. Therefore, some judges we interviewed interpreted this to mean special masters do not have authority in custody matters, while others viewed special masters as quasi-judicial. For example, one case we reviewed had an order describing the position as a "quasi-judicial officer." This same order stated that "Special Master decisions are effective as orders . . . ." and as such are protected by quasi-judicial immunity. Such discrepancies regarding the power of special masters signal the need for additional clarification.

In sum, judges may not be fully utilizing special masters as a resource in a time of rising district court caseloads and more self-represented parties. As the ABA report states:

> Today, there is an underutilized dispute resolution tool that could aid in the "just, speedy and inexpensive" resolution of cases: appointment of special masters.

Ambiguity surrounding the use and powers of special masters appears to discourage judges from utilizing them as a resource.

Complex cases can strain judicial resources and divert time to some cases at the expense of others. The courts report that alternative dispute resolution tools such as mediation have already been used effectively in Utah's courts. But special masters can further aid in freeing up valuable judicial time. In order to enhance the benefits of special masters in domestic cases, we recommend that the Judicial Council or Supreme Court increase guidance through full or partial implementation of the ABA guidelines.[8] At a minimum, such guidelines should include training requirements, a vetting process, and a post-evaluation process.

There Are No Specific Training Requirements or Minimum Qualifications for Special Masters

We could not identify any standard in statute or rule to establish special master training requirements.

Special masters do not have minimum training requirements or qualifications. In fact, nowhere in statute or court rule could we find any standard to establish special master training requirements. Additionally, since a roster has not been developed for eligible practitioners, unqualified individuals may be eligible to participate as a special master. Given the impact special masters have on judicial decision making, we question why a roster with minimum training requirements and qualification has not been established.

[8] *ABA Guidelines for the Appointment and Use of Special Masters in Federal and State Civil Litigation*, adopted January 28, 2019.

We recognize that most, if not all, practicing special masters possess some sort of certification, typically a juris doctorate or psychology license. Without clear guidance, however, the position may be susceptible to the appointment of unqualified individuals.

One likely reason for the absence of regulation surrounding special masters is the variety of functions they perform. A special master can be appointed in any civil case, not just domestic cases. As such, special masters can have a background in engineering, accounting, law, or psychology, to name a few. They draw upon their unique backgrounds to perform the functions of a special master.

ABA guidelines suggest that the selection of special masters ought to be done in a manner that ensures "qualified and appropriately skilled and experienced candidates are identified and chosen." According to the ABA, this may be accomplished through the development of "local rules and practices for selecting, training, and evaluating special masters, including rules designed to facilitate the selection of special masters from a diverse pool of potential candidates." Consequently, we recommend that the AOC clarify the minimum qualifications in rule.

We recommend that the courts implement the special master guidelines set forth by the American Bar Association.

Detailed Tracking Is Not Available for Special Masters

Despite special masters' ability to make decisions and orders in a case, they are not tracked in the court database system (CORIS). Since they are not tracked, neither their performance as individuals nor their impact as a whole can be evaluated.

In contrast, private GALs and custody evaluators are flagged in the system in such a way as to be able to isolate the frequency of their use. This practice enables insights as to when and how the positions are being used. We recommend that special masters be tracked in the CORIS system so that performance can be evaluated.

Special masters are not tracked in the court database systems.

It is important to note that the use of special masters in Utah is relatively uncommon, occurring mostly in the Fourth District. However, special masters were consistently involved in the high-conflict divorce cases we reviewed and were present in multiple districts. If the use of special masters increases, as is anticipated in the ABA guidelines, the courts need to be ahead of this trend and institute clear guidance and training requirements. The courts will also need to

track special masters to monitor their frequency as well as their impact on the cases they serve.

Recommendations

1. We recommend that the Judicial Council enact a rule enabling the Administrative Office of the Courts oversight of custody evaluators, parent coordinators, and special masters.

2. Following Judicial Councils' rule, we recommend that the Administrative Office of the Courts implement a roster of vetted custody evaluators, parent coordinators, and special masters.

3. We recommend that the Judicial Council or Supreme Court adopt guidelines in Court Administrative Rule for the use of special masters in domestic cases. These guidelines, at a minimum, should include training requirements, a vetting process, and a post-evaluation process.

4. We recommend that the Administrative Office of the Courts track special masters in the court database system (CORIS).

Tab 9

Rule 26. General provisions governing disclosure and discovery.

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

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

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

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

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

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

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

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

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

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

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

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

(3) Exemptions.

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

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

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

(iii) to enforce an arbitration award;

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

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

(4) Expert testimony.

(A) Disclosure of retained expert testimony. A party must, without waiting for a discovery request, serve on the other parties the following information regarding any person who may be used at trial to present evidence under Rule 702 of the Utah Rules of Evidence and who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony: (i) the expert's name and qualifications, including a list of all publications authored within the preceding 10 years, and a list of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years, (ii) a brief summary of the opinions to which the witness is expected to testify, (iii) the facts,

data, and other information specific to the case that will be relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for the witness's study and testimony.

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

(C) Timing for expert discovery.

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

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

paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition must occur, or the report must be served on the other parties, within 42 days after the election is served on the other parties. If no election is served on the other parties, then no further discovery of the expert must be permitted.

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

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

(E) Summary of non-retained expert testimony. If a party intends to present evidence at trial under Rule 702 of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party must serve on the other parties a written summary of the facts and opinions to which the witness is

expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). Such a witness cannot be required to provide a report pursuant to paragraph (a)(4)(B). A deposition of such a witness may not exceed four hoursand, unless manifest injustice would result, the party taking the deposition must pay the expert's reasonable hourly fees for attendance at the deposition.

(5) Pretrial disclosures.

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

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

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

(iii) designations of the proposed deposition testimony; and

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

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

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

(b) Discovery scope.

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

(2) Privileged matters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) Trial preparation materials. A party may obtain otherwise discoverable documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain substantially equivalent materials by

other means. In ordering discovery of such materials, the court must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(7) Statement previously made about the action. A party may obtain without the showing required in paragraph (b)(5) a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement about the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order under Rule 37. A statement previously made is (A) a written statement signed or approved by the person making it, or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(8) Trial preparation; experts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
1	$50,000 or less	3	0	5	5	120
2	More than $50,000 and less than $300,000 or non-monetary relief	15	10	10	10	180
3	$300,00 or more	30	20	20	20	210
4	Domestic relations actions	4	10	10	10	90

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

(A) before the close of standard discovery and after reaching the limits of standard discovery imposed by these rules, file a stipulated statement that extraordinary discovery is necessary and proportional under paragraph (b)(2)

and, for each party represented by an attorney, a statement that the attorney consulted with the client about the request for extraordinary discovery;

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

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

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

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

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

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

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

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

supplemental disclosure or response must state why the additional or correct information was not previously provided.

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

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

Effective: 5/4/2022

Advisory Committee Notes

Note Adopted 2011

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

Not all information will be known at the outset of a case. If discovery is serving its proper purpose, additional witnesses, documents, and other information will be identified. The scope and the level of detail required in the initial Rule 26(a)(1) disclosures should be viewed in light of this reality. A party is not required to interview every witness it ultimately may call at trial in order to provide a summary of the witness's expected testimony. As the information becomes known, it should be

disclosed. No summaries are required for adverse parties, including management level employees of business entities, because opposing lawyers are unable to interview them and their testimony is available to their own counsel. For uncooperative or hostile witnesses any summary of expected testimony would necessarily be limited to the subject areas the witness is reasonably expected to testify about. For example, defense counsel may be unable to interview a treating physician, so the initial summary may only disclose that the witness will be questioned concerning the plaintiff's diagnosis, treatment and prognosis. After medical records have been obtained, the summary may be expanded or refined.

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

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

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

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

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

Expert disclosures and timing. Rule 26(a)(4~~3~~). Disclosure of the identity and subjects of expert opinions and testimony is automatic under Rule 26(a)(4~~3~~) and parties are not required to serve interrogatories or use other discovery devices to obtain this information.

Experts frequently will prepare demonstrative exhibits or other aids to illustrate the expert's testimony at trial, and the costs for preparing these materials can be substantial. For that reason, these types of demonstrative aids may be prepared and disclosed later, as part of the Rule 26(a)~~(4)~~(5)(iv) pretrial disclosures when trial is imminent.

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

There are a number of difficulties inherent in disclosing expert testimony that may be offered from fact witnesses. First, there is often not a clear line between fact and expert testimony. Many fact witnesses have scientific, technical or other specialized knowledge, and their testimony about the events in question often will cross into the area of expert testimony. The rules are not intended to erect artificial barriers to the admissibility of such testimony. Second, many of these fact witnesses will not be within the control of the party who plans to call them at trial. These witnesses may not be cooperative, and may not be willing to discuss opinions they have with counsel. Where this is the case, disclosures will necessarily be more limited. On the other hand, consistent with the overall purpose of the 2011 amendments, a party should receive advance notice if their opponent will solicit expert opinions from a particular witness so they can plan their case accordingly. In an effort to strike an appropriate balance, the rules require that such witnesses be identified and the information about their anticipated testimony should include that which is required under Rule 26(a)(1)(A)(ii), which should include any opinion testimony that a party expects to elicit from them at trial. If a party has disclosed possible opinion testimony in its Rule 26(a)(1)(A)(ii)

disclosures, that party is not required to prepare a separate Rule 26 (a)(4)(E) disclosure for the witness. And if that disclosure is made in advance of the witness's deposition, those opinions should be explored in the deposition and not in a separate expert deposition. Otherwise, the timing for disclosure of non-retained expert opinions is the same as that for retained experts under Rule 26(a)(4)(C) and depends on whether the party has the burden of proof or is responding to another expert.

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

In the past, the scope of discovery was governed by "relevance" or the "likelihood to lead to discovery of admissible evidence." These broad standards may have secured just results by allowing a party to discover all facts relevant to the litigation. However, they did little to advance two equally important objectives of the rules of civil procedure—the speedy and inexpensive resolution of every action. Accordingly, the former standards governing the scope of discovery have been replaced with the proportionality standards in subpart (b)(~~1~~3).

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

Any system of rules which permits the facts and circumstances of each case to inform procedure cannot eliminate uncertainty. Ultimately, the trial court has broad discretion in deciding whether a discovery request is proportional. The proportionality standards in subpart (b)(~~2~~3) and the discovery tiers in subpart (c) mitigate uncertainty by guiding that discretion. The proper application of the proportionality standards will be defined over time by trial and appellate courts.

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

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

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

Legislative Note

Note adopted 2012

S.J.R. 15

(1) The ~~amended~~ language in paragraph (b)(~~1~~2) is intended to incorporate long-standing protections against discovery and admission into evidence of privileged matters connected to medical care review and peer review into the Utah Rules of Civil Procedure, which protections were placed in part (b) pursuant to Senate Joint Resolution 15 upon approval by a constitutional two-thirds vote of all members elected to each house on March 6, 2012. These privileges, found in both Utah common law and statute, include Sections 26-25-3, 58-13-4, and 58-13-5, UCA, 1953. The language is intended to ensure the confidentiality of peer review, care review, and quality assurance processes and to ensure that the privilege is limited only to documents and information created specifically as part of the processes. It does not extend to knowledge gained or documents created outside or independent of the processes. The language is not intended to limit the court's existing ability, if it chooses, to review contested documents in camera in order to determine whether the documents fall within the privilege. The language is not intended to alter any existing law, rule, or regulation relating to the confidentiality, admissibility, or disclosure of proceedings before the Utah Division of Occupational and Professional Licensing. The Legislature intends that these privileges apply to all pending and future proceedings governed by court rules, including administrative proceedings regarding licensing and reimbursement.

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

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

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

Enrolled Copy **S.J.R. 15**

JOINT RESOLUTION AMENDING RULES OF CIVIL PROCEDURE ON PEER REVIEW

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jerry W. Stevenson

House Sponsor: Paul Ray

LONG TITLE

General Description:

This joint resolution amends the Rules of Civil Procedure to include protections against discovery and admission into evidence for privileged matters connected to medical care and peer review.

Highlighted Provisions:

This resolution:

- amends Rule 26 of the Utah Rules of Civil Procedure; and
- establishes additional privileges that protect matters connected to medical care and peer review against discovery and admission into evidence.

Special Clauses:

This resolution provides an immediate effective date.

Utah Rules of Civil Procedure Affected:

AMENDS:

Rule 26, Utah Rules of Civil Procedure

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

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

Section 1. **Rule 26**, Utah Rules of Civil Procedure is amended to read:

Rule 26. General provisions governing disclosure and discovery.

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

(a) (1) Initial disclosures. Except in cases exempt under paragraph (a)(3), a party shall, without waiting for a discovery request, provide to other parties:

(a) (1) (A) the name and, if known, the address and telephone number of:

(a) (1) (A) (i) each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information; and

(a) (1) (A) (ii) each fact witness the party may call in its case-in-chief and, except for an adverse party, a summary of the expected testimony;

(a) (1) (B) a copy of all documents, data compilations, electronically stored information, and tangible things in the possession or control of the party that the party may offer in its case-in-chief, except charts, summaries and demonstrative exhibits that have not yet been prepared and must be disclosed in accordance with paragraph (a)(5);

(a) (1) (C) a computation of any damages claimed and a copy of all discoverable documents or evidentiary material on which such computation is based, including materials about the nature and extent of injuries suffered;

(a) (1) (D) a copy of any agreement under which any person may be liable to satisfy part or all of a judgment or to indemnify or reimburse for payments made to satisfy the judgment; and

(a) (1) (E) a copy of all documents to which a party refers in its pleadings.

(a) (2) Timing of initial disclosures. The disclosures required by paragraph (a)(1) shall be made:

(a) (2) (A) by the plaintiff within 14 days after service of the first answer to the complaint; and

(a) (2) (B) by the defendant within 28 days after the plaintiff's first disclosure or after that defendant's appearance, whichever is later.

(a) (3) Exemptions.

(a) (3) (A) Unless otherwise ordered by the court or agreed to by the parties, the requirements of paragraph (a)(1) do not apply to actions:

(a) (3) (A) (i) for judicial review of adjudicative proceedings or rule making proceedings of an administrative agency;

(a) (3) (A) (ii) governed by Rule 65B or Rule 65C;

(a) (3) (A) (iii) to enforce an arbitration award;

(a) (3) (A) (iv) for water rights general adjudication under Title 73, Chapter 4, Determination of Water Rights.

(a) (3) (B) In an exempt action, the matters subject to disclosure under paragraph (a)(1) are subject to discovery under paragraph (b).

(a) (4) Expert testimony. .

(a) (4) (A) Disclosure of expert testimony. A party shall, without waiting for a discovery request, provide to the other parties the following information regarding any person who may be used at trial to present evidence under Rules 702, 703, or of the Utah Rules of Evidence and who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony: (i) the expert's name and qualifications, including a list of all publications authored within the preceding 10 years, and a list of any other cases in which the expert has testified as an expert at trial or by deposition within the preceding four years, (ii) a brief summary of the opinions to which the witness is expected to testify, (iii) all data and other information that will be relied upon by the witness in forming those opinions, and (iv) the compensation to be paid for the witness's study and testimony.

(a) (4) (B) Limits on expert discovery. Further discovery may be obtained from an expert witness either by deposition or by written report. A deposition shall not exceed four hours and the party taking the deposition shall pay the expert's reasonable hourly fees for attendance at the deposition. A report shall be signed by the expert and shall contain a complete statement of all opinions the expert will offer at trial and the basis and reasons for

them. Such an expert may not testify in a party's case-in-chief concerning any matter not fairly disclosed in the report. The party offering the expert shall pay the costs for the report.

(a) (4) (C) Timing for expert discovery.

(a) (4) (C) (i) The party who bears the burden of proof on the issue for which expert testimony is offered shall provide the information required by paragraph (a)(4)(A) within seven days after the close of fact discovery. Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be provided, within 28 days after the election is made. If no election is made, then no further discovery of the expert shall be permitted.

(a) (4) (C) (ii) The party who does not bear the burden of proof on the issue for which expert testimony is offered shall provide the information required by paragraph (a)(4)(A) within seven days after the later of (i) the date on which the election under paragraph (a)(4)(C)(i) is due, or (ii) receipt of the written report or the taking of the expert's deposition pursuant to paragraph (a)(4)(C)(i). Within seven days thereafter, the party opposing the expert may serve notice electing either a deposition of the expert pursuant to paragraph (a)(4)(B) and Rule 30, or a written report pursuant to paragraph (a)(4)(B). The deposition shall occur, or the report shall be provided, within 28 days after the election is made. If no election is made, then no further discovery of the expert shall be permitted.

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

(a) (4) (E) Summary of non-retained expert testimony. If a party intends to present evidence at trial under Rules 702, 703, or of the Utah Rules of Evidence from any person other than an expert witness who is retained or specially employed to provide testimony in the case or a person whose duties as an employee of the party regularly involve giving expert testimony, that party must provide a written summary of the facts and opinions to which the witness is

expected to testify in accordance with the deadlines set forth in paragraph (a)(4)(C). A deposition of such a witness may not exceed four hours.

(a) (5) Pretrial disclosures.

(a) (5) (A) A party shall, without waiting for a discovery request, provide to other parties:

(a) (5) (A) (i) the name and, if not previously provided, the address and telephone number of each witness, unless solely for impeachment, separately identifying witnesses the party will call and witnesses the party may call;

(a) (5) (A) (ii) the name of witnesses whose testimony is expected to be presented by transcript of a deposition and a copy of the transcript with the proposed testimony designated; and

(a) (5) (A) (iii) a copy of each exhibit, including charts, summaries and demonstrative exhibits, unless solely for impeachment, separately identifying those which the party will offer and those which the party may offer.

(a) (5) (B) Disclosure required by paragraph (a)(5) shall be made at least 28 days before trial. At least 14 days before trial, a party shall serve and file counter designations of deposition testimony, objections and grounds for the objections to the use of a deposition and to the admissibility of exhibits. Other than objections under Rules 402 and 403 of the Utah Rules of Evidence, objections not listed are waived unless excused by the court for good cause.

(b) Discovery scope.

(b) (1) In general. Parties may discover any matter, not privileged, which is relevant to the claim or defense of any party if the discovery satisfies the standards of proportionality set forth below. Privileged matters that are not discoverable or admissible in any proceeding of any kind or character include all information in any form provided during and created specifically as part of a request for an investigation, the investigation, findings, or conclusions of peer review, care review, or quality assurance processes of any organization of health care providers as defined in the Utah Health Care Malpractice Act for the purpose of evaluating care provided to reduce morbidity and mortality or to improve the quality of medical care, or for the

purpose of peer review of the ethics, competence, or professional conduct of any health care provider.

(b) (2) Proportionality. Discovery and discovery requests are proportional if:

(b) (2) (A) the discovery is reasonable, considering the needs of the case, the amount in controversy, the complexity of the case, the parties' resources, the importance of the issues, and the importance of the discovery in resolving the issues;

(b) (2) (B) the likely benefits of the proposed discovery outweigh the burden or expense;

(b) (2) (C) the discovery is consistent with the overall case management and will further the just, speedy and inexpensive determination of the case;

(b) (2) (D) the discovery is not unreasonably cumulative or duplicative;

(b) (2) (E) the information cannot be obtained from another source that is more convenient, less burdensome or less expensive; and

(b) (2) (F) the party seeking discovery has not had sufficient opportunity to obtain the information by discovery or otherwise, taking into account the parties' relative access to the information.

(b) (3) Burden. The party seeking discovery always has the burden of showing proportionality and relevance. To ensure proportionality, the court may enter orders under Rule 37.

(b) (4) Electronically stored information. A party claiming that electronically stored information is not reasonably accessible because of undue burden or cost shall describe the source of the electronically stored information, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to evaluate the claim.

(b) (5) Trial preparation materials. A party may obtain otherwise discoverable documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has

substantial need of the materials and that the party is unable without undue hardship to obtain substantially equivalent materials by other means. In ordering discovery of such materials, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party.

(b) (6) Statement previously made about the action. A party may obtain without the showing required in paragraph (b)(5) a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement about the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order under Rule 37. A statement previously made is (A) a written statement signed or approved by the person making it, or (B) a stenographic, mechanical, electronic, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

(b) (7) Trial preparation; experts.

(b) (7) (A) Trial-preparation protection for draft reports or disclosures. Paragraph (b)(5) protects drafts of any report or disclosure required under paragraph (a)(4), regardless of the form in which the draft is recorded.

(b) (7) (B) Trial-preparation protection for communications between a party's attorney and expert witnesses. Paragraph (b)(5) protects communications between the party's attorney and any witness required to provide disclosures under paragraph (a)(4), regardless of the form of the communications, except to the extent that the communications:

(b) (7) (B) (i) relate to compensation for the expert's study or testimony;

(b) (7) (B) (ii) identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed; or

(b) (7) (B) (iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(b) (7) (C) Expert employed only for trial preparation. Ordinarily, a party may not, by interrogatories or otherwise, discover facts known or opinions held by an expert who has been

retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. A party may do so only:

(b) (7) (C) (i) as provided in Rule 35(b); or

(b) (7) (C) (ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(b) (8) Claims of privilege or protection of trial preparation materials.

(b) (8) (A) Information withheld. If a party withholds discoverable information by claiming that it is privileged or prepared in anticipation of litigation or for trial, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced in a manner that, without revealing the information itself, will enable other parties to evaluate the claim.

(b) (8) (B) Information produced. If a party produces information that the party claims is privileged or prepared in anticipation of litigation or for trial, the producing party may notify any receiving party of the claim and the basis for it. After being notified, a receiving party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

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

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

(c) (2) Sequence and timing of discovery. Methods of discovery may be used in any sequence, and the fact that a party is conducting discovery shall not delay any other party's

discovery. Except for cases exempt under paragraph (a)(3), a party may not seek discovery from any source before that party's initial disclosure obligations are satisfied.

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

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

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

Tier	Amount of Damages	Total Fact Deposition Hours	Rule 33 Interrogatories including all discrete subparts	Rule 34 Requests for Production	Rule 36 Requests for Admission	Days to Complete Standard Fact Discovery
1	$50,000 or less	3	0	5	5	120

244	2	More than $50,000 and less than $300,000 or non-monetary relief	15	10	10	10	180
245	3	$300,000 or more	30	20	20	20	210

246 (c) (6) Extraordinary discovery. To obtain discovery beyond the limits established in
247 paragraph (c)(5), a party shall file:
248 (c) (6) (A) before the close of standard discovery and after reaching the limits of
249 standard discovery imposed by these rules, a stipulated statement that extraordinary discovery
250 is necessary and proportional under paragraph (b)(2) and that each party has reviewed and
251 approved a discovery budget; or
252 (c) (6) (B) before the close of standard discovery and after reaching the limits of
253 standard discovery imposed by these rules, a motion for extraordinary discovery setting forth
254 the reasons why the extraordinary discovery is necessary and proportional under paragraph
255 (b)(2) and certifying that the party has reviewed and approved a discovery budget and
256 certifying that the party has in good faith conferred or attempted to confer with the other party
257 in an effort to achieve a stipulation.
258 (d) Requirements for disclosure or response; disclosure or response by an organization;
259 failure to disclose; initial and supplemental disclosures and responses.
260 (d) (1) A party shall make disclosures and responses to discovery based on the
261 information then known or reasonably available to the party.
262 (d) (2) If the party providing disclosure or responding to discovery is a corporation,
263 partnership, association, or governmental agency, the party shall act through one or more

officers, directors, managing agents, or other persons, who shall make disclosures and responses to discovery based on the information then known or reasonably available to the party.

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

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

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

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

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

Section 2. **Legislative note.**

It is the intent of the Legislature that when the Court Rules are compiled and printed, the following language be added as a Legislative Note.

"**Legislative Note.**

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

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

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

Section 3. **Effective date.**

This resolution takes effect upon approval by a constitutional two-thirds vote of all members elected to each house.