



Utah Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

Meeting Agenda

David W. Fureigh, Chair

Location: Webex Meeting:
<https://utcourts.webex.com/utcourts/j.php?MTID=m2f9d3f32d3c5a5a1f32db9e8b4850c03>

Date: December 4, 2020

Time: 12:00 pm – 2:00 pm

12:00 – 12:10	Action: Welcome and approve November 6, 2020 Meeting minutes	Tab 1	David Fureigh
12:10 – 12:30	Discussion: Juvenile Interrogation and Rule 27A	Tab 2	Rep. Marsha Judkins
12:30 – 12:45	Discussion: Service by publication and Rule 18	Tab 3	Judge Elizabeth Lindsley Meg Sternitzky Xen Fedison
12:45 – 1:00	Action: Venue Transfer and Rule 16	Tab 4	Janette White Chris Yanelli
1:00 – 1:15	Action: Petition contents and Rule 17	Tab 5	Bridget Koza
1:15 – 1:30	Action: Rights of minors in delinquency proceedings and Rule 26	Tab 6	Bridget Koza
1:30 – 1:50	Discussion: Rule 45 and 46 – Disposition Reports	Tab 7	Bridget Koza Carol Verdoia
1:50 – 2:00	Discussion: Old business/new business		All

<https://www.utcourts.gov/utc/juvenile-procedure/>

Meeting Schedule:

January 8, 2021
April 2, 2021

February 5, 2021
May 7, 2021

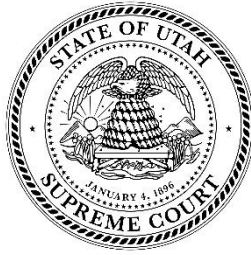
March 5, 2021
June 4, 2021

August 6, 2021
November 5, 2021

September 3, 2021
December 3, 2021

October 1, 2021

TAB 1



Utah Supreme Court's Advisory Committee on the Rules of Juvenile Procedure

Draft Meeting Minutes

November 6, 2020

Webex Meeting:

<https://utcourts.webex.com/utcourts/j.php?MTID=m6f8e8597a6437ca5b0a09cab46676596>

12:00 pm – 2:00 pm

David Fureigh, Chair

<u>Attendees:</u>	<u>Staff:</u>
David Fureigh, Chair	Bridget Koza
Judge Mary Manley	Meg Sternitzky, Juvenile Court Law Clerk
Judge Elizabeth Lindsley	Xen Fedison, Juvenile Court Law Clerk
Monica Diaz	
Michelle Jeffs	<u>Guests:</u>
Matthew Johnson	Jacqueline Carlton, Office of Legislative Research and General Counsel
Mikelle Ostler	
Jordan Putnam	
Janette White	
Chris Yannelli	
Carol Verdoia, Emeritus	

1. Welcome and approval of the October 2, 2020 meeting minutes: (David Fureigh)

David Fureigh welcomed everyone to the meeting and asked for approval of the minutes.

Judge Manley moved to approve the October 2, 2020 meeting minutes. Matthew Johnson seconded the motion, and it passed unanimously.

2. Action – Rule 48 Post-Judgment Motions: (David Fureigh)

David Fureigh updated with the committee regarding the Supreme Court reviewing the proposed amendment to reference Utah Code § 78A-6-1108 in Rule 48 at their conference on October 19, 2020. The justices did not approve the proposed amendment

to be published for comment since the Juvenile Court Act will be re-codified in the upcoming legislative session. The committee discussed leaving Rule 48 as is until it is clear what will happen to § 78A-6-1108 with the Juvenile Court Act recodification.

Monica Diaz moved pause on updating Rule 48 until the Juvenile Court Recodification Act is passed by the Legislature. Judge Lindsley seconded the motion, and it passed unanimously.

3. Discussion: Service by publication and Rule 18: (Judge Lindsley & Bridget Koza)

Judge Lindsley discussed with the committee a recommendation from another juvenile judge to amend Rule 18, because the rule can be interpreted to only allow service by publication as the method of service when the parents cannot be located in termination of parental rights proceedings. Judge Lindsley took notice that Utah Code § 78A-6-109 addresses service by publication and asked the committee if this is something that needs to be changed or clarified. The committee discussed that very few people pick up newspapers anymore and that alternatives to service by publication, like Facebook messaging and emailing, have been requested. Matthew Johnson and Judge Lindsley noted that a website, Utahlegal.com, allows people to view notices by publication online. Matthew Johnson also stated that he has used the Utah Rules of Civil Procedure to argue for alternative methods of service in juvenile court when he could not locate the parents.

Judge Lindsley further discussed that with losing the Salt Lake Tribune and Deseret News as daily newspapers this is an issue the committee should be looking into but does not know whether there needs to be a statutory change to allow for alternative methods of service, like emails. Carol Verdoia discussed how § 78A-6-109 cross references § 45-1-101 and recommended that that more research should be done to figure out whether Rule 18 needs to be modified or if the statutes need to be modified.

Judge Lindlsey requested that Meg Sternitzky and Xen Fedison research the issue of having service by publication through another manner than newspaper and David Fureigh requested that Bridget Koza add this issue to the agenda for the December 4, 2020 meeting.

4. Action: Venue Transfer and Rule 16: (Janette White)

Janette White discussed with the committee recommendations to amend Rule 16 to reflect the statute being amended as part of the Juvenile Court Act recodification. The committee also discussed whether there should be one rule or separate rules to address venue transfer for delinquency and child welfare cases. The committee agreed Rule 16 should address venue transfer in delinquency cases, and there should be a Rule 16A added that will address venue transfers in child welfare cases. The committee then proceeded to discuss what districts are currently doing in practice regarding when and how cases are transferred. The committee also discussed possibly language to provide guidance on when the case should be transferred as well as allow for discretion.

Janette White agreed to redraft Rule 16 to focus on child welfare cases and present at the December 4, 2020 meeting and Chris Yanelli agreed to redraft Rule 16 to focus on delinquency cases. Bridget Koza will also confirm with Larissa Lee, the Appellate Court Administrator, on what needs to be submitted for public comment. The committee agreed to put this on agenda at the December 4, 2020 meeting.

5. Discussion: Contempt of court and Rule 39: (Bridget Koza)

Bridget Koza discussed with the committee whether they need to update Rule 39 to capture what is being repealed in § 78A-6-111(1) and §78A-6-1101(1) per the juvenile court recodification. Matthew Johnson proposed that the language in Rule 39 needs to reflect the language used in the statute; the statute refers to “any order of the court” while the current rule just references “the order.” Monica Diaz agreed that §78A-6-1101(1) refers to “any order,” which should be included in Rule 39. Carol Verdoia noted that § 78A-6-111(1) and §78A-6-1101(1) are being renumbered and that the language is being included elsewhere. § 80-1-105 and § 80-1-106 of the recodification have provisions about contempt.

Bridget agreed to confirm whether the statutory provisions are going to be repealed before further discussion at the December 4, 2020 meeting.

6. Discussion: Petition contents and Rule 17: (Bridget Koza)

Bridget Koza discussed with the committee whether they need to update Rule 17 to capture the parts that will be repealed as part of the Juvenile Court Act recodification. Carol Verdoia mentioned that the recodification is seeking to strike contents of petitions which is referenced in the rules.

Bridget Koza proposed reviewing the proposed Juvenile Court Act recodification and updating the committee at the December 4, 2020 meeting. David proposed waiting to review Rule 17 until the Juvenile Court Act recodification is released, since it is difficult to proceed without every member having a copy of it. Bridget Koza will talk with Michael Dreschel to see whether the recodification can be sent to committee members.

7. Old business/new business: (All)

The Committee discussed potential future agenda items:

- Monica Diaz moved to schedule the committee’s meetings in 2021. David Fureigh proposed continuing to hold the meetings on the first Friday of every month from 12 pm-2 pm with the exception of January and July – the January meeting will be held the second Friday of the month, January 8, and there will be no meeting held in July. The committee unanimously agreed to the schedule and Bridget Koza will send out email invitations.
- Bridget Koza also discussed with the committee Rule 26 and asked if the Rule needed to be updated since all minors are considered indigent. Monica Diaz

proposed the language “appointed counsel at all stages of the proceeding.”
David Fureigh requested this item be put on the December agenda.

The meeting adjourned at 1:33 pm. The next meeting will be held on December 4, 2020, at 12:00 pm via Webex.

TAB 2

West's Utah Code Annotated
State Court Rules
Rules of Juvenile Procedure (Refs & Annos)
Section VII. Proceedings Relating to Delinquency Matters

Utah R. Juv. P. Rule 27A

Rule 27A. Admissibility of Statements Given by Minors

Effective: May 1, 2020

[Currentness](#)

(a) If a minor is in custody for the alleged commission of an offense that would be a crime if committed by an adult, any statement given by a minor in response to questions asked by a police officer is inadmissible unless the police officer informed the minor of the minor's rights before questioning begins.

(b) If the child is under 14 years of age, the child is presumed not adequately mature and experienced to knowingly and voluntarily waive or understand a child's rights unless a parent, guardian, or legal custodian is present during waiver.

(c) The presumption outlined in paragraph (b) may be overcome by a preponderance of the evidence showing the ability of a child to comprehend and waive the child's rights.

(d) The state shall retain the burden of proving that the waiver of the minor's rights was knowing and voluntary regardless of the age of the child or minor.

Credits

[Adopted effective November 1, 2000. Amended effective November 1, 2002; April 1, 2008; May 1, 2020.]

Utah Rules of Juvenile Procedure Rule 27A, UT R JUV Rule 27A

Current with amendments received through September 15, 2020

End of Document

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TAB 3

West's Utah Code Annotated
State Court Rules
Rules of Juvenile Procedure (Refs & Annos)
Section V. Petition; Service; Pre-Trial Pleadings; Discovery

Utah R. Juv. P. Rule 18

Rule 18. Summons; Service of Process; Notice

Effective: May 1, 2019

[Currentness](#)

(a) Summons. Upon the filing of a petition, the clerk, unless otherwise directed by the court, shall schedule an initial hearing in the case.

(1) *Summons May be Issued by the Petitioning Attorney.* If the petitioning attorney does not issue a summons, summons shall be issued by the clerk in accordance with Section 78A-6-109. The summons shall conform to the format prescribed by these rules.

(2) *Content of the Summons.*

(A) Abuse, Neglect, and Dependency Cases. The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall state the time within which the respondent is required to answer the petition, and shall notify the respondent that in the case of the failure to do so, judgment by default may be rendered against the respondent. It shall also contain an abbreviated reference to the substance of the petition.

(B) Other Cases. The summons shall contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It shall also contain an abbreviated reference to the substance of the petition. In proceedings against an adult pursuant to Section 78A-6-1001, the summons shall conform to the Utah Rules of Criminal Procedure and be issued by the prosecuting attorney.

(3) The summons shall be directed to the person or persons who have physical care, control or custody of the minor and require them to appear and bring the minor before the court. If the person so summoned is not the parent, guardian or custodian of the minor, a summons shall also be issued to the parent, parents, guardian or custodian. If the minor or person who is the subject of the petition has been emancipated by marriage or is 18 years of age or older at the time the petition is filed, the summons may require the appearance of the minor only, unless otherwise ordered by the court. In neglect, abuse and dependency cases, unless otherwise directed by the court, the summons shall not require the appearance of the subject minor.

(4) No summons shall be necessary as to any party who appears voluntarily or who files a written waiver of service with the clerk prior to or upon appearance at the hearing.

(b) Service.

(1) Except as otherwise provided by these rules or by statute, service of process and proof of service shall be made by the methods provided in [Utah Rule of Civil Procedure 4](#). Service of process shall be made by the sheriff of the county where the service is to be made, by a deputy, by a process server, or by any other suitable person appointed by the court. However, when the court so directs, an agent of the Department of Human Services may serve process in a case in which the Department is a party. A party or party's attorney may serve another party at a court hearing. The record of the proceeding shall reflect the service of the document and shall constitute the proof of service.

(2) Personal service may be made upon a parent, parents, guardian or custodian and upon a minor in that person's legal custody by delivering to a parent, parents, guardian or custodian a copy of the summons with a copy of the petition attached. If a minor is in the legal custody or guardianship of an agency or person other than a parent, service shall also be made by delivering to the legal custodian a copy of the summons with a copy of the petition attached and notice shall be given to the parent as provided in paragraph (d). Service upon a minor who has attained majority by marriage as provided in [Utah Code Ann. Section 15-2-1](#) or upon court order shall be made in the manner provided in the Utah Rules of Civil Procedure.

(3)(A) Service may be made by any form of mail requiring a signed receipt by the addressee. Service is complete upon return to court of the signed receipt.

(B) Service of process may be made by depositing a copy thereof in the United States mail addressed to the last known address of the person to be served. Any person who appears in court in response to mailed service shall be considered to have been legally served.

(4) In any proceeding wherein the parent, parents, guardian or custodian cannot after the exercise of reasonable diligence be located for personal service, the court may proceed to adjudicate the matter subject to the right of the parent, parents, guardian or custodian to a rehearing, except that in certification proceedings brought pursuant to Section 78A-6-703 and in proceedings seeking permanent termination of parental rights, the court shall order service upon the parent, parents, guardian or custodian by publication. Any rehearing shall be requested by written motion.

(5) Service shall be completed at least 48 hours prior to the adjudicatory hearing. If the summons is for the permanent termination of parental rights, service shall be completed at least ten days before the adjudicatory hearing. If the summons is for a substantiation proceeding, service shall be completed at least forty-five days before the adjudicatory hearing.

(c) Service by Publication. Service by publication shall be authorized by the procedure and in the form provided by the Juvenile Court Act and [Utah Rule of Civil Procedure 4](#) except that within the caption and the body of any published document, children shall be identified by their initials and respective birth dates, and not by their names. The parents, parent, or guardian of each child shall be identified as such using their full names within the caption of any published document.

(d) Notice.

(1) Notice of the time, date and place of any further proceedings, after an initial appearance or service of summons, may be given in open court or by mail to any party. Notice shall be sufficient if the clerk deposits the notice in the United States mail, postage pre-paid, to the address provided by the party in court or the address at which the party was initially served, or, if the party has agreed to accept service by email, sends notice to the email address provided by the party.

(2) Notice for any party represented by counsel shall be given to counsel for the party through either mail, notice given in open court, or by email to the email address on file with the Utah State Bar.

(e) Additional Parties. Whenever it appears to the court that a person who is not the parent, guardian or custodian should be made subject to the jurisdiction and authority of the court in a minor's case, upon the motion of any party or the court's own motion, the court may issue a summons ordering such person to appear. Upon the appearance of such person, the court may enter an order making such person a party to the proceeding and may order such person to comply with reasonable conditions as a part of the disposition in the minor's case. Upon the request of such person, the court shall conduct a hearing upon the issue of whether such person should be made a party.

(f) Service of Pleadings and Other Papers. Except as otherwise provided by these rules or by statute, service of pleadings and other papers not requiring a summons shall be made by the methods provided in [Utah Rule of Civil Procedure 5](#), except that service to the email address on file with the Utah State Bar is sufficient service to an attorney under this rule, whether or not an attorney agrees to accept service by email.

(g) Access to the Juvenile Court's Court and Agency Records Exchange (C.A.R.E.) for eFiling documents does not constitute an electronic filing account as referenced in the Rules of Civil Procedure. eFiling in C.A.R.E. does not constitute service upon a party.

Credits

[Adopted effective January 1, 1995. Amended effective April 1, 1996; April 1, 1997; November 1, 2000; August 22, 2002; November 1, 2002; January 1, 2009; November 1, 2010; November 1, 2017; November 1, 2018. Advisory committee notes deleted effective May 1, 2019.]

Utah Rules of Juvenile Procedure Rule 18, UT R JUV Rule 18
Current with amendments received through September 15, 2020

West's Utah Code Annotated

Title 78a. Judiciary and Judicial Administration (Refs & Annos)

Chapter 6. Juvenile Court Act (Refs & Annos)

Part 1. General Provisions (Refs & Annos)

U.C.A. 1953 § 78A-6-109

Formerly cited as UT ST § 78-3a-110

§ 78A-6-109. Summons--Service and process--Issuance and contents--
Notice to absent parent or guardian--Emergency medical or surgical
treatment--Compulsory process for attendance of witnesses when authorized

[Currentness](#)

(1) After a petition is filed the court shall promptly issue a summons, unless the judge directs that a further investigation is needed. No summons is required as to any person who appears voluntarily or who files a written waiver of service with the clerk of the court at or before the hearing.

(2) The summons shall contain:

(a) the name of the court;

(b) the title of the proceedings; and

(c) except for a published summons, a brief statement of the substance of the allegations in the petition.

(3) A published summons shall state:

(a) that a proceeding concerning the minor is pending in the court; and

(b) an adjudication will be made.

(4) The summons shall require the person or persons who have physical custody of the minor to appear personally and bring the minor before the court at a time and place stated. If the person or persons summoned are not the parent, parents, or guardian of the minor, the summons shall also be issued to the parent, parents, or guardian, as the case may be, notifying them of the pendency of the case and of the time and place set for the hearing.

(5) Summons may be issued requiring the appearance of any other person whose presence the court finds necessary.

(6) If it appears to the court that the welfare of the minor or of the public requires that the minor be taken into custody, and it does not conflict with [Section 78A-6-106.5](#), the court may by endorsement upon the summons direct that the person serving the summons take the minor into custody at once.

(7) Subject to Subsection 78A-6-117(2), upon the sworn testimony of one or more reputable physicians, the court may order emergency medical or surgical treatment that is immediately necessary for a minor concerning whom a petition has been filed pending the service of summons upon the minor's parents, guardian, or custodian.

(8) A parent or guardian is entitled to the issuance of compulsory process for the attendance of witnesses on the parent's or guardian's own behalf or on behalf of the minor. A guardian ad litem or a probation officer is entitled to compulsory process for the attendance of witnesses on behalf of the minor.

(9) Service of summons and process and proof of service shall be made in the manner provided in the Utah Rules of Civil Procedure.

(10)(a) Service of summons or process shall be made by the sheriff of the county where the service is to be made, or by the sheriff's deputy.

(b) Notwithstanding Subsection (10)(a), upon request of the court, service shall be made by any other peace officer, or by another suitable person selected by the court.

(11) Service of summons in the state shall be made personally, by delivering a copy to the person summoned; provided, however, that parents of a minor living together at their usual place of abode may both be served by personal delivery to either parent of copies of the summons, one copy for each parent.

(12) If the judge makes a written finding that the judge has reason to believe that personal service of the summons will be unsuccessful, or will not accomplish notification within a reasonable time after issuance of the summons, the judge may order service by registered mail, with a return receipt to be signed by the addressee only, to be addressed to the last-known address of the person to be served in the state. Service shall be complete upon return to the court of the signed receipt.

(13) If the parents, parent, or guardian required to be summoned under Subsection (4) cannot be found within the state, the fact of their minor's presence within the state shall confer jurisdiction on the court in proceedings in a minor's case under this chapter as to any absent parent or guardian, provided that due notice has been given in the following manner:

(a) If the address of the parent or guardian is known, due notice is given by sending the parent or guardian a copy of the summons by registered mail with a return receipt to be signed by the addressee only, or by personal service outside the state, as provided in the Utah Rules of Civil Procedure. Service by registered mail shall be complete upon return to the court of the signed receipt.

(b)(i) If the address or whereabouts of the parent or guardian outside the state cannot after diligent inquiry be ascertained, due notice is given by publishing a summons:

(A) in a newspaper having general circulation in the county in which the proceeding is pending once a week for four successive weeks; and

(B) in accordance with [Section 45-1-101](#) for four weeks.

(ii) Service shall be complete on the day of the last publication.

(c) Service of summons as provided in this subsection shall vest the court with jurisdiction over the parent or guardian served in the same manner and to the same extent as if the person served was served personally within the state.

(14) In the case of service in the state, service completed not less than 48 hours before the time set in the summons for the appearance of the person served, shall be sufficient to confer jurisdiction. In the case of service outside the state, service completed not less than five days before the time set in the summons for appearance of the person served, shall be sufficient to confer jurisdiction.

(15) Computation of periods of time under this chapter shall be made in accordance with the Utah Rules of Civil Procedure.

Credits

[Laws 2008, c. 3, § 375, eff. Feb. 7, 2008; Laws 2009, c. 388, § 227, eff. May 12, 2009; Laws 2017, c. 330, § 48, eff. Aug. 1, 2017.](#)

[Notes of Decisions \(7\)](#)

U.C.A. 1953 § 78A-6-109, UT ST § 78A-6-109

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.



Administrative Office of the Courts

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

November 17, 2020

Hon. Mary T. Noonan
State Court Administrator
Catherine J. Dupont
Deputy Court Administrator

TO: Utah Rules of Juvenile Procedure Committee

FROM: Meg Sternitzky & Xen Fedison, Juvenile Law Clerks

RE: Alternative Methods of Service

This memorandum seeks to clarify whether the Juvenile Court Act and Utah Rules of Juvenile Procedure can be interpreted to allow for alternative methods of service, such as e-mail or Facebook messaging, or whether the statute and rules have to be amended to allow for such alternative service. This memorandum specifically examines whether an alternative method of service, other than service by publication, can be used in termination of parental rights proceedings when the parents cannot be located by personal service.

ISSUES:

1. Can the Juvenile Rules of Procedure and Juvenile Court Act be interpreted to allow for alternative methods of service, such as e-mail or Facebook messaging, or do the statute and rules have to be amended to allow for alternative methods of service, such as e-mail or Facebook messaging?
2. Can an alternative method of service, other than service by publication, be used in termination of parental rights proceedings when the parents cannot be located by personal service?

BRIEF ANSWERS:

1. The Juvenile Court Act and Utah Rules of Juvenile Procedure require service by publication if: (1) the parent or guardian is not in the state and cannot be located outside of the state; and (2) in termination of parental rights and certification proceedings when the parent cannot be located for personal service within the state. However, Utah Rule of Civil Procedure 4(d)(5)(A) allows the court broad discretion in fashioning an alternative method of service, such as e-mail and Facebook messaging. The Juvenile Court Act and Utah Rules of Juvenile Procedure must be amended to conform with Utah Rule of Civil Procedure

4(d)(5)(A), which will allow the juvenile court more discretion in fashioning alternative methods of service for the above mentioned circumstances.

2. Only service by publication is permitted under the current rule in termination of parental rights proceedings when the parents cannot be located by personal service. However, nothing prevents the rule from being amended to allow for other methods of service as long as the process meets the constitutional requirements.

ANALYSIS:

The first part of the memorandum examines whether the Utah Rules of Civil Procedure allow for alternative methods of service, such as e-mail or Facebook messaging. The second part of this memorandum examines whether the Utah Rules of Juvenile Procedure and the Juvenile Court Act allow for alternative methods of service, such as e-mail or Facebook messaging, or whether the statute and rules have to be amended to allow for alternative methods of service.

I. THE UTAH CIVIL RULES OF PROCEDURE ALLOW FOR ALTERNATIVE METHODS OF SERVICE, SUCH AS E-MAIL OR FACEBOOK MESSAGING.

The Utah Rules of Civil Procedure permit alternative methods of service other than service by publication. Rule 4(d)(5)(A) states:

If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the *party seeking service may file a motion to allow service by some other means* . . . Utah R. Civ. P. 4(d)(5)(A) (emphasis supplied)

Utah Courts have held that this subsection affords “the court . . . discretion to order the *type* of process, so long as the process it chooses meets the constitutional requirement.” *C504750P LLC v. Baker*, 2017 UT App 36, ¶ 9, 397 P.3d 599 (quoting *Bonneville Billing v. Whatley*, 949 P.2d 768, 772 (Utah Ct. App. 1997) (emphasis in original)). Alternative service is constitutionally sufficient if the court finds that the “litigants . . . first [undertook] *reasonably diligent* efforts to locate the party to be served.” *Id.* ¶ 10 (emphasis supplied) (quoting *Jackson Constr. Co. v. Marrs*, 2004 UT 89, ¶ 11, 100 P.3d 1211). The Advisory Committee also notes that this subsection “permits the court to fashion means of service reasonably calculated to apprise the parties of the pendency of the action.” Utah R. Civ. P. 4 (West 2020) (Editors’ Notes). Therefore, discretion afforded to courts under Rule 4(d)(5)(A) is broad. Additionally, courts have found that “service by other means” can include service by e-mail or Facebook messaging.

For instance, the U.S. District Court for the District of Utah applied the Utah Rules of Civil Procedure and found that alternative service under Rule 4(d)(5)(A) could be constitutionally satisfied “by sending the complaint, summons, and copy of [the] order to Defendants (1) nine email addresses, (2) Twitter account via private message, and (3) website via the contact submission

page” when the “Plaintiff ha[d] exercised reasonable due diligence to locate and serve Defendants and that good cause exist[ed] to believe Defendants [were] avoiding service of process.” *Maverick Trading, Inc. v. Moore*, No.2:19-cv-00303-TC-PMW, 2019 U.S. Dist. LEXIS 134340, at *4 (D. Utah Aug. 7, 2019). In another case where the U.S. District Court for the District of Utah applied Utah Rules of Civil Procedure, the court found “that service by both publication and [Facebook’s private] email is reasonably calculated to give actual notice of the action to the Defendant” where the plaintiff undertook multiple attempts to serve the defendant but all attempts proved futile. *Ooida Risk Retention Group, Inc. v. Bhangal*, No. 2:14-cv-168 TC, 2016 WL 2596026, at *2 (D. Utah May 5, 2016).

Although these cases are persuasive in nature, Utah state courts have also recognized that e-mail and other avenues of communication can be sufficient methods of alternative service. *Silva v. Silva*, 2017 UT App 125, 402 P.3d 36 (finding husband did not undertake reasonably diligent efforts to serve wife where he knew wife’s two active email addresses, her telephone number, and other avenues of communication) (2017), *remanded by Silva v. Silva*, 2018 UT App 2010 (2018). As a result, the Utah Rules of Civil Procedure allow the court broad discretion in fashioning an alternative method of service. However, the Utah Rules of Juvenile Procedure and the Juvenile Court Act limit alternative methods of service to service by publication in certain circumstances.

II. THE UTAH RULES OF JUVENILE PROCEDURE AND THE JUVENILE COURT ACT LIMIT ALTERNATIVE METHODS OF SERVICE TO SERVICE BY PUBLICATION.

This section examines whether the Utah Rules of Juvenile Procedure (“URJP”) and the Juvenile Court Act (“JCA”) allow the juvenile court broad discretion in fashioning alternative methods of service like Rule 4(d)(5)(A) of the Utah Rules of Civil Procedure. First, the JCA requires the summons to be issued to the “parent, parents, or guardian . . . notifying them of the pendency of the case and of the time and place set for the [minor’s] hearing.” Utah Code § 78A-6-109(4). The JCA additionally states that “[i]f the address or whereabouts of the parent or guardian outside of the state cannot after diligent inquiry be ascertained, due notice is given by publishing a summons in a newspaper having general circulation in the county in which the proceeding is pending once a week for four successive weeks; and in accordance with Section 45-1-101 for four weeks.” *Id.* § 78A-6-109(13)(b). Section 45-1-101 also requires that the newspaper “publish the legal notice on the public legal notice website . . .” if legal notice is required by law. *Id.* § 45-1-101(5)(b). As a result, the plain meaning of § 78A-6-109 and § 45-1-101, read together, explains that due notice is given by publication in a newspaper for four successive weeks and on a public legal notice website for four weeks when the parent or guardian cannot be found in the state and their address or whereabouts **outside the state** cannot be ascertained (emphasis supplied).

Continuing, the URJP mandates the court “order service upon the parent, parents, guardian or custodian by publication” in certification proceedings brought under Section 78A-6-703 and in proceedings seeking permanent termination of parental rights if the parent, parents, or guardian

cannot be located for personal service. Utah R. Juv. P. 18(4). Rule 18 can be interpreted as requiring service by publication for certification proceedings and termination of parental rights proceedings if the parent or guardian is **within the state** but cannot be located for personal service (emphasis supplied). *See* § 78A-6-109(11) (stating that service within the state shall be made personally). Taken together, the JCA and URJP require service by publication if: (1) the parent or guardian is not in the state and cannot be located outside of the state; and (2) in termination of parental rights and certification proceedings when the parent cannot be located for personal service within the state. Whether the URJP and JCA limit the method of service to publication in a newspaper under the above-mentioned circumstances requires statutory interpretation.

“When interpreting a statute, this court looks first to the statute’s plain language to determine the Legislature’s intent and purpose.” *Alt. Options & Servs. for Child. v. Chapman*, 2004 UT App 488, ¶ 31, 106 P.3d 744 (quoting *Miller v. Weaver*, 2003 UT 12, ¶ 17, 66 P.3d 592). No room is left for construction “when the language is clear and unambiguous.” *Id.* (quoting *Salt Lake Child & Fam. Therapy Clinic, Inc. v. Frederick*, 890 P.2d 1017, 1020 (Utah 1995) (citation omitted)). This court follows “the cardinal rule that the general purpose, intent or purport of the whole act shall control, and that all the parts be interpreted as subsidiary and harmonious to its manifest object. *Id.* (quoting *Faux v. Michelsen*, 725 P.2d 1372, 1375 (Utah 1986) (citation omitted in original)). Using canons of construction, where certain terms have been explicitly outlined in a statute, that statute may be interpreted **not** to apply to terms that have been excluded from the statute.¹ Neither the URJP nor JCA explicitly provide for alternative methods of service, other than service by publication, for either of the above-mentioned circumstances. Moreover, Rule 4 of the Utah Rules of Civil Procedure provides that “[i]f the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.” Utah R. Civ. P. 4(d)(5)(C). Therefore, although the URJP and JCA follow the Utah Rules of Civil Procedure unless otherwise specified, the Utah Rules of Civil Procedure limit alternative means of service to service by publication where a statute or rule explicitly requires publication. *See* Utah § 78A-6-109(9); Utah R. Juv. P. 4(b)(1).

Consequently, the URJP and JCA must be amended to allow the court more discretion in fashioning an alternative method of service, such as e-mail or Facebook messaging. The URJP and JCA only permit service by publication when the parent or guardian is not in the state and cannot be located outside of the state and in termination of parental rights and certification proceedings when the parent cannot be located for personal service, because neither the URJP nor the JCA explicitly provide for other methods of service and the Utah Rules of Civil Procedure limit alternative methods of service to service by publication where a statute or rule requires publication.

¹ *A Guide to Reading, Interpreting and Applying Statutes*, THE WRITING CENTER AT GULC (2017), <https://www.law.georgetown.edu/wp-content/uploads/2018/12/A-Guide-to-Reading-Interpreting-and-Appling-Statutes-1.pdf>.

III. SERVICE BY PUBLICATION MUST BE USED IN TERMINATION OF PARENTAL RIGHTS PROCEEDINGS WHEN THE PARENTS CANNOT BE LOCATED.

This section further analyzes whether alternative methods of service can be used in termination of parental rights proceedings. As examined above, Rule 18 mandates the court “order service upon the parent, parents, guardian or custodian by publication” in proceedings seeking permanent termination of parental rights if the parent, parents, or guardian cannot be located for personal service. Utah R. Juv. P. 18(4). This is the only alternative method of service permitted in proceedings seeking permanent termination of parental rights proceedings, because the URJP does not explicitly provide for alternative methods of service other than service by publication. The Utah Rules of Civil Procedure also limit alternative methods of service to service by publication when a statute or rule requires publication. Utah R. Civ. P. 4(d)(5)(C). However, there is nothing preventing Rule 18 from being amended.

As described in Section I of this memorandum, Rule 4(d)(5)(A) of the Utah Rules of Civil Procedure allows service by other means when the identity or whereabouts of the person to be served cannot be ascertained. Utah Courts have held that this subsection affords “the court . . . discretion to order the *type* of process, so long as the process it chooses meets the constitutional requirement.” *C504750P LLC v. Baker*, 2017 UT App 36, ¶ 9, 397 P.3d 599 (quoting *Bonneville Billing v. Whatley*, 949 P.2d 768, 772 (Utah Ct. App. 1997) (emphasis in original)). Alternative service is constitutionally sufficient if the court finds that the “litigants . . . first [undertook] *reasonably diligent* efforts to locate the party to be served.” *Id.* ¶ 10 (emphasis supplied) (quoting *Jackson Constr. Co. v. Marrs*, 2004 UT 89, ¶ 11, 100 P.3d 1211). As a result, Rule 18 can be amended to provide more judicial discretion in fashioning alternative methods of service, like Rule 4(d)(5)(A).

CONCLUSION:

The Juvenile Court Act and Utah Rules of Juvenile Procedure must be amended to conform with Utah Rule of Civil Procedure 4(d)(5)(A), which will allow the juvenile court more discretion in fashioning alternative methods of service for the above mentioned circumstances.

TAB 4

Rule 16. Transfer of delinquency case

(a) Transfer of delinquency case for preliminary inquiry.

(a)(1) When a minor resides in a county within the state other than the county in which the alleged delinquency occurred, and it appears that the minor qualifies for a nonjudicial adjustment pursuant to statute, the intake probation officer of the county of occurrence shall, unless otherwise directed by court order, transfer the referral to the county of residence for a preliminary inquiry to be conducted in accordance with Rule 15. If any of the following circumstances are found to exist at the time of preliminary inquiry, the referral shall be transferred back to the county of occurrence for filing of a petition and further proceedings:

(a)(1)(A) if a minor, the child or the child's parent, guardian or custodian cannot be located or failed to appear after notice for the preliminary inquiry;

(a)(1)(B) if a minor, the child or the child's parent, guardian or custodian declines an offer for a nonjudicial adjustment;

(a)(1)(C) if a minor or the minor's custodian cannot be located or fails to appear after notice for the preliminary inquiry or the minor declines an offer for a nonjudicial adjustment;

(a)(1)(D) there are circumstances in the case that require adjudication in the county of

occurrence in the interest of justice; or

(a)(1)(E) there are multiple minors involved who live in different counties.

(b) If the referral is not returned to the county of occurrence, a petition may be filed in the county of residence, and the arraignment and all further proceedings may be conducted in that county if the petition is admitted.

(c) After the filing of a petition alleging a delinquency or criminal action, the court may transfer the case to the district where the minor resides or the district where the violation of

28 law or ordinance is alleged to have occurred. The court may, in its discretion, after
29 adjudication certify the case for disposition to the court of the district in which the minor
30 resides.

31 (d) The transferring or certifying court shall transmit all documents and legal and social
32 records, or certified copies to the receiving court, and the receiving court shall proceed with
33 the case as if the petition had been originally filed or the adjudication had been originally
34 made in that court.

35 (e) The dismissal of a petition in one district where the dismissal is without prejudice and
36 where there has been no adjudication upon the merits shall not preclude refiling within the
37 same district or another district where there is venue of the case.

Rule 16A. Transfer of a non-delinquency proceeding.

(a) After the adjudication of a petition in a non-delinquency proceeding, the court may transfer the case to the district where the minor resides.

(b) A case may not be transferred prior to adjudication unless the Court finds good cause to transfer the matter to another district.

(c) The court may transfer the case to the district where the parents reside so long as the Court finds it is in the best interest of the minor.

(d) The court may not transfer the case to another district after the initial permanency hearing unless the transferring court first communicates and consults with the receiving court.

(e) The receiving court shall schedule a hearing within 30 days of receiving notice of the transfer.

West's Utah Code Annotated

Title 78a. Judiciary and Judicial Administration (Refs & Annos)

Chapter 6. Juvenile Court Act (Refs & Annos)

Part 1. General Provisions (Refs & Annos)

U.C.A. 1953 § 78A-6-110

Formerly cited as UT ST § 78-3a-111

§ 78A-6-110. Venue--Transfer or certification to other districts--Dismissal without adjudication on merits

Currentness

(1) Proceedings in minor's cases shall be commenced in the court of the district in which the minor is living or is found, or in which an alleged violation of law or ordinance occurred.

(2) After the filing of a petition, the court may transfer the case to the district where the minor resides or to the district where the violation of law or ordinance is alleged to have occurred. The court may, in its discretion, after adjudication certify the case for disposition to the court of the district in which the minor resides.

(3) The transferring or certifying court shall transmit all documents and legal and social records, or certified copies to the receiving court, and the receiving court shall proceed with the case as if the petition had been originally filed or the adjudication had been originally made in that court.

(4) The dismissal of a petition in one district where the dismissal is without prejudice and where there has been no adjudication upon the merits shall not preclude refiling within the same district or another district where there is venue of the case.

Credits

Laws 2008, c. 3, § 376, eff. Feb. 7, 2008.

U.C.A. 1953 § 78A-6-110, UT ST § 78A-6-110

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

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TAB 5

2 **Rule 17. The petition.**

3 **(a) Delinquency cases.**

4 (a)(1) The petition shall allege the offense as it is designated by statute or
5 ordinance, and shall state: in concise terms, the definition of the offense together
6 with a designation of the section or provision of law allegedly violated; the name,
7 age and date of birth of the minor; the name and residence address of the minor's
8 parents, guardian or custodian; the date and place of the offense; and the name or
9 identity of the victim, if known.

10 (a)(2) The petition shall be verified and filed by the prosecuting attorney upon
11 information and belief.

12 **(b) Neglect, abuse, dependency, permanent termination and ungovernability cases.**

13 (b)(1) The petition shall set forth in plain and concise language the jurisdictional
14 basis as designated by statute, the facts supporting the court's jurisdiction, and the
15 relief sought. The petition shall state: the name, age and residence of the minor;
16 the name and residence of the minor's parent, guardian or custodian; and if the
17 parent, guardian or custodian is unknown, the name and residence of the nearest
18 known relative or the person or agency exercising physical or legal custody of the
19 minor.

20 (b)(2) The petition must be verified and statements made therein may be made on
21 information and belief.

22 (b)(3) A petition filed by a state human services agency shall either be prepared or
23 approved by the office of the attorney general. When the petitioner is an employee
24 or agent of a state agency acting in his or her official capacity, the name of the
25 agency shall be set forth and the petitioner shall designate his or her title.

(b)(4) A petition for termination of parental rights shall also include, to the best information or belief of the petitioner: the name and residence of the petitioner; the sex and place of birth of the minor; the relationship of the petitioner to the minor; the dates of the birth of the minor's parents, if known; and the name and address of the person having legal custody or guardianship, or acting in loco parentis to the minor, or the organization or agency having legal custody or providing care for the minor.

(c) Other cases.

(c)(1) Protective orders. Petitions may be filed on forms available from the court clerk and must conform to the format and arrangement of such forms.

(c)(2) Petitions for adjudication expungements must meet all of the criteria of Utah Code section 78A-6-1503 and petitioner. Petitions for expungement must be accompanied by an original criminal history report obtained from the Bureau of Criminal Identification and proof of service upon the County Attorney, or within a prosecution district, the District Attorney for each jurisdiction in which an adjudication occurred prior to being filed with the Clerk of Court.

(c)(3) Petitions for expungement of nonjudicial adjustments must meet all of the criteria of Utah Code section 78A-6-1504 and shall state: the name, age, and residence of the petitioner. Petition for nonjudicial expungement must be served upon the County Attorney, or within a prosecution district, the District Attorney for each jurisdiction in which a nonjudicial adjustment occurred.

(c)(4) Petitions for vacatur must meet all of the criteria of Utah Code section 78A-6-1114 and shall state any agency known or alleged to have documents related to the offense for which vacatur is sought. Petitions for vacatur must be accompanied by an original criminal history report obtained from the Bureau of Criminal Identification and proof of service upon the County Attorney, or within a

prosecution district, the District Attorney for each jurisdiction in which an adjudication occurred prior.

(c)(5) Petitions in other proceedings shall conform to Rule 10 of the Utah Rules of Civil Procedure, except that in adoption proceedings, the petition must be accompanied by a certified copy of the Decree of Permanent Termination.

West's Utah Code Annotated

Title 78a. Judiciary and Judicial Administration (Refs & Annos)

Chapter 6. Juvenile Court Act (Refs & Annos)

Part 5. Termination of Parental Rights Act (Refs & Annos)

U.C.A. 1953 § 78A-6-505

Formerly cited as UT ST § 78-3a-405

§ 78A-6-505. Contents of petition

Currentness

(1) The petition for termination of parental rights shall include, to the best information or belief of the petitioner:

(a) the name and place of residence of the petitioner;

(b) the name, sex, date and place of birth, and residence of the child;

(c) the relationship of the petitioner to the child;

(d) the names, addresses, and dates of birth of the parents, if known;

(e) the name and address of the person having legal custody or guardianship, or acting in loco parentis to the child, or the organization or agency having legal custody or providing care for the child;

(f) the grounds on which termination of parental rights is sought, in accordance with [Section 78A-6-507](#); and

(g) the names and addresses of the persons or the authorized agency to whom legal custody or guardianship of the child might be transferred.

(2) A copy of any relinquishment or consent, if any, previously executed by the parent or parents shall be attached to the petition.

Credits

[Laws 2008, c. 3, § 428, eff. Feb. 7, 2008.](#)

Notes of Decisions (2)

U.C.A. 1953 § 78A-6-505, UT ST § 78A-6-505

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

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West's Utah Code Annotated

Title 78a. Judiciary and Judicial Administration (Refs & Annos)

Chapter 6. Juvenile Court Act (Refs & Annos)

Part 1. General Provisions (Refs & Annos)

U.C.A. 1953 § 78A-6-108

Formerly cited as UT ST § 78-3a-109

§ 78A-6-108. Title of petition and other court documents--Form and contents of petition--Order for temporary custody or protective services--Physical or psychological examination of minor, parent, or guardian--Dismissal of petition

Effective: May 12, 2020

[Currentness](#)

(1) The petition and all subsequent court documents in the proceeding shall be entitled:

“State of Utah, in the interest of....., an individual under 18 years old (or an individual under 21 years old).”

(2) The petition shall be verified and statements in the petition may be made upon information and belief.

(3) The petition shall be written in simple and brief language and include the facts which bring the minor within the jurisdiction of the court, as provided in Section 78A-6-103.

(4) The petition shall further state:

(a) the name, age, and residence of the minor;

(b) the names and residences of the minor's parents;

(c) the name and residence of the guardian, if there is one;

(d) the name and address of the nearest known relative, if no parent or guardian of a minor is known; and

(e) the name and residence of the person having physical custody of the minor. If any of the facts required are not known by the petitioner, the petition shall so state.

(5) At any time after a petition is filed, the court may make an order:

- (a) providing for temporary custody of the minor; or
 - (b) that the division provide protective services to the child, if the court determines that:
 - (i) the child is at risk of being removed from the child's home due to abuse or neglect; and
 - (ii) the provision of protective services may make the removal described in Subsection (5)(b)(i) unnecessary.
- (6)(a) The court may order that a minor concerning whom a petition has been filed shall be examined by a physician, surgeon, psychiatrist, or psychologist and may place the minor in a hospital or other facility for examination.
- (b) After notice and a hearing set for the specific purpose, the court may order a similar examination of a parent or guardian whose ability to care for a minor is at issue, if the court finds from the evidence presented at the hearing that the parent's or guardian's physical, mental, or emotional condition may be a factor in causing the neglect, dependency, or delinquency of the minor.
- (7) An examination conducted in accordance with Subsection (6) is not a privileged communication under [Utah Rules of Evidence, Rule 506\(d\)\(3\)](#), and is exempt from the general rule of privilege.
- (8) The court may dismiss a petition at any stage of the proceedings.
- (9) If the petition is filed under [Section 78A-6-304](#) or [78A-6-505](#), or if the matter is referred to the court under Subsection 78A-6-104(5), the court may require the parties to participate in mediation in accordance with Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

Credits

[Laws 2008, c. 3, § 374, eff. Feb. 7, 2008; Laws 2020, c. 214, § 41, eff. May 12, 2020.](#)

[Notes of Decisions \(3\)](#)

U.C.A. 1953 § 78A-6-108, UT ST § 78A-6-108

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

West's Utah Code Annotated

Title 78a. Judiciary and Judicial Administration (Refs & Annos)

Chapter 6. Juvenile Court Act (Refs & Annos)

Part 3. Abuse, Neglect, and Dependency Proceedings (Refs & Annos)

U.C.A. 1953 § 78A-6-304

Formerly cited as UT ST § 78-3a-305

§ 78A-6-304. Petition filed

Effective: May 12, 2020

[Currentness](#)

(1) For purposes of this section, “petition” means a petition to commence proceedings in a juvenile court alleging that a child is:

(a) abused;

(b) neglected; or

(c) dependent.

(2)(a) Subject to Subsection (2)(b), any interested person may file a petition.

(b) A person described in Subsection (2)(a) shall make a referral with the division before the person files a petition.

(3) If the child who is the subject of a petition is removed from the child's home by the division, the petition shall be filed on or before the date of the initial shelter hearing described in [Section 78A-6-306](#).

(4) The petition shall be verified, and contain all of the following:

(a) the name, age, and address, if any, of the child upon whose behalf the petition is brought;

(b) the names and addresses, if known to the petitioner, of both parents and any guardian of the child;

(c) a concise statement of facts, separately stated, to support the conclusion that the child upon whose behalf the petition is being brought is abused, neglected, or dependent; and

(d) a statement regarding whether the child is in protective custody, and if so, the date and precise time the child was taken into protective custody.

(5) If a petition is filed under this section, and a petition for termination of parental rights is filed under [Section 78A-6-504](#) before a dispositional hearing, a party may request a hearing on whether reunification services are appropriate in accordance with the factors described in Subsections 78A-6-312(21) and (23).

Credits

[Laws 2008, c. 3, § 402, eff. Feb. 7, 2008](#); [Laws 2020, c. 158, § 2, eff. May 12, 2020](#).

[Notes of Decisions \(18\)](#)

U.C.A. 1953 § 78A-6-304, UT ST § 78A-6-304

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

TAB 6

Draft December 2020

Rule 26. Rights of minors in delinquency proceedings.

(a) A minor who is the subject of a delinquency petition filed pursuant to Section 78A-6-103 shall be advised of the following rights:

(a)(1) to appear in person and to defend in person or by counsel;

(a)(2) to receive a copy of the petition which contains the allegations against the minor;

(a)(3) to testify in the minor's own behalf;

(a)(4) to be confronted by the witnesses against the minor;

(a)(5) to have compulsory process to ensure the attendance of witnesses in the minor's behalf;

(a)(6) to be represented by appointed counsel at all stages of the proceedings ~~and if indigent, to have appointed counsel;~~

(a)(7) to remain silent and to be advised that anything the minor says can and will be used against the minor in any court proceedings; and

(a)(8) to appeal any adjudication against the minor in the manner provided by law.

~~(b) If the minor or the minor's parent, guardian or custodian is found to be indigent and request counsel, the court shall appoint counsel at public expense in the manner provided by law. Where necessary to protect the interest of the minor, the court may appoint counsel without the request of the minor or parent, guardian or custodian.~~

~~(c) If the parent, guardian or custodian of a minor is found not to be indigent, but does not or will not retain counsel for the minor and the minor has no means to retain counsel, the court may appoint counsel at public expense. However, the court may order, after giving the parent, guardian or custodian reasonable opportunity to be heard, that the parent, guardian or custodian reimburse the county for the cost of appointed counsel, in whole or in part, depending on ability to pay.~~

(d) Parties other than the minor have the right to be represented by counsel retained by them and to participate as provided in these rules.

(e) A minor 14 years of age and older is presumed capable of intelligently comprehending and waiving the minor's right to counsel as above and may do so where the court finds such waiver to be knowing and voluntary, whether the minor's parent, guardian or

32 custodian is present. A child under 14 years of age may not waive such rights outside of
33 the presence of the child's parent, guardian or custodian.

34

Commented [BK1]: This language seems to conflict with 78B-22-204 – "A minor may not waive the right to counsel before:

- (1) the minor has consulted with counsel; and
- (2) the court is satisfied that in light of the minor's unique circumstances and attributes:
 - (a) the minor's waiver is knowing and voluntary; and
 - (b) the minor understands the consequences of the waiver."

TAB 7

West's Utah Code Annotated
State Court Rules
Rules of Juvenile Procedure (Refs & Annos)
Section XII. Adjudication and Judgment

Utah R. Juv. P. Rule 45

Rule 45. Pre-Disposition Reports and Social Studies

Currentness

(a) Unless waived by the court, a pre-disposition report shall be prepared in all proceedings which result in the filing of a petition. The pre-disposition report shall be deemed waived, unless otherwise ordered, in all traffic, fish and game and boating cases, and other bailable offenses. The report shall conform to the requirements in the Code of Judicial Administration.

(b) In delinquency cases, investigation of the minor and family for the purpose of preparing the pre-disposition report shall not be commenced before the allegations have been proven without the consent of the parties.

(c) The pre-disposition report shall not be submitted to or considered by the judge before the adjudication of the charges or allegations to which it pertains. If no pre-disposition report has been prepared or completed before the dispositional hearing, or if the judge wishes additional information not contained in the report, the dispositional hearing may be continued for a reasonable time to a date certain.

(d) For the purpose of determining proper disposition of the minor and for the purpose of establishing the fact of neglect or dependency, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the person who wrote the report or prepared the material appear as a witness if the person is reasonably available.

(e) The pre-dispositional report and social studies shall be provided by the author to the minor's counsel, the prosecuting attorney, the guardian ad litem, and counsel for the parent, guardian or custodian of the minor at least two days prior to the dispositional hearing. When the minor or the minor's parent, guardian or custodian are not represented by counsel, the court may limit inspection of reports by the minor or the minor's parent, guardian or custodian if the court determines it is in the best interest of the minor to do so.

Credits

[Adopted effective January 1, 1995. Amended effective November 1, 2003; November 1, 2004; April 1, 2008.]

Utah Rules of Juvenile Procedure Rule 45, UT R JUV Rule 45
Current with amendments received through September 15, 2020

West's Utah Code Annotated
State Court Rules
Rules of Juvenile Procedure (Refs & Annos)
Section XII. Adjudication and Judgment

Utah R. Juv. P. Rule 46

Rule 46. Disposition Hearing

Currentness

(a) Disposition hearings may be separate from the hearing at which the petition is proved or may follow immediately after that portion of the hearing at which the allegations of the petition are proved. Disposition hearings shall be conducted in an informal manner to facilitate the opportunity for all participants to be heard.

(b) The court may receive any information that is relevant to the disposition of the case including reliable hearsay and opinions. Counsel for the parties are entitled to examine under oath the person who prepared the pre-disposition report if such person is reasonably available. The parties are entitled to compulsory process for the appearance of any person, including character witnesses, to testify at the hearing. A minor's parent or guardian may address the court regarding the disposition of the case, and may address other issues with the permission of the court.

(c) After the disposition hearing, the court shall enter an appropriate order. After announcing its order, the court shall advise any party who is present and not represented by counsel of the right to appeal the court's decision.

(d) The disposition order made and entered by the court shall be reduced to writing and a copy mailed or furnished to the minor, and to the parent, guardian or custodian of a child, or counsel for the minor and parent, guardian or custodian, if any, the prosecuting attorney, the guardian ad litem, and any agency or person affected by the court's order. The disposition order may be prepared by counsel at the direction of the court, but shall be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of submission.

(e) Disposition of a petition alleging abuse, neglect, or dependency of a child shall be conducted also in accordance with [Utah Code Section 78A-6-117](#), [Section 78A-6-311](#), and [Section 78A-6-312](#).

Credits

[Adopted effective January 1, 1995. Amended effective April 1, 1996; April 1, 1997; May 10, 1999; November 1, 2003; November 1, 2004; April 1, 2008; January, 2009.]

[Notes of Decisions \(9\)](#)

Utah Rules of Juvenile Procedure Rule 46, UT R JUV Rule 46
Current with amendments received through September 15, 2020

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West's Utah Code Annotated

Title 78a. Judiciary and Judicial Administration (Refs & Annos)

Chapter 6. Juvenile Court Act (Refs & Annos)

Part 1. General Provisions (Refs & Annos)

U.C.A. 1953 § 78A-6-115

Formerly cited as UT ST § 78-3a-116

§ 78A-6-115. Hearings--Record--County attorney or district attorney responsibilities--
Attorney general responsibilities--Disclosure--Admissibility of evidence--Cannabis

Effective: May 12, 2020

[Currentness](#)

(1)(a) A verbatim record of the proceedings shall be taken in all cases that might result in deprivation of custody as defined in this chapter. In all other cases a verbatim record shall also be made unless dispensed with by the court.

(b)(i) For purposes of this Subsection (1)(b):

(A) "Record of a proceeding" does not include documentary materials of any type submitted to the court as part of the proceeding, including items submitted under Subsection (4)(a).

(B) "Subjects of the record" includes the child's guardian ad litem, the child's legal guardian, the Division of Child and Family Services, and any other party to the proceeding.

(ii) Notwithstanding any other provision, including Title 63G, Chapter 2, Government Records Access and Management Act, the court shall release a record of a proceeding made under Subsection (1)(a) to any person upon a finding on the record for good cause.

(iii) Following a petition for a record of a proceeding made under Subsection (1)(a), the court shall:

(A) provide notice to all subjects of the record that a request for release of the record has been made; and

(B) allow sufficient time for the subjects of the record to respond before making a finding on the petition.

(iv) A record of a proceeding may not be released under this Subsection (1)(b) if the court's jurisdiction over the subjects of the proceeding ended more than 12 months before the day on which the request is made.

(2)(a) Except as provided in Subsection (2)(b), the county attorney or, if within a prosecution district, the district attorney shall represent the state in any proceeding in a minor's case.

(b) Subject to the attorney general's prosecutorial discretion in civil enforcement actions, the attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and Family Services, and this chapter, relating to:

(i) protection or custody of an abused, neglected, or dependent child; and

(ii) petitions for termination of parental rights.

(3) The board may adopt special rules of procedure to govern proceedings involving violations of traffic laws or ordinances, wildlife laws, and boating laws. However, proceedings involving offenses under [Section 78A-6-606](#) are governed by that section regarding suspension of driving privileges.

(4)(a) For the purposes of determining proper disposition of the minor in dispositional hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and in hearings upon petitions for termination of parental rights, written reports and other material relating to the minor's mental, physical, and social history and condition may be received in evidence and may be considered by the court along with other evidence. The court may require that the individual who wrote the report or prepared the material appear as a witness if the individual is reasonably available.

(b) For the purpose of determining proper disposition of a minor alleged to be or adjudicated as abused, neglected, or dependent, dispositional reports prepared by the division under [Section 78A-6-315](#) may be received in evidence and may be considered by the court along with other evidence. The court may require any individual who participated in preparing the dispositional report to appear as a witness, if the individual is reasonably available.

(5)(a) Except as provided in Subsections (5)(c) through (e), in an abuse, neglect, or dependency proceeding occurring after the commencement of a shelter hearing under [Section 78A-6-306](#) or the filing of a petition under [Section 78A-6-304](#), each party to the proceeding shall provide in writing to the other parties or their counsel any information which the party:

(i) plans to report to the court at the proceeding; or

(ii) could reasonably expect would be requested of the party by the court at the proceeding.

(b) The disclosure required under Subsection (5)(a) shall be made:

(i) for dispositional hearings under [Sections 78A-6-311](#) and [78A-6-312](#), no less than five days before the day on which the proceeding is held;

(ii) for proceedings under Chapter 6, Part 5, Termination of Parental Rights Act, in accordance with Utah Rules of Civil Procedure; and

(iii) for all other proceedings, no less than five days before the day on which the proceeding is held.

(c) The division is not required to provide a court report or a child and family plan to each party to the proceeding if:

(i) the information is electronically filed with the court; and

(ii) each party to the proceeding has access to the electronically filed information.

(d) If a party to a proceeding obtains information after the deadline in Subsection (5)(b), the information is exempt from the disclosure required under Subsection (5)(a) if the party certifies to the court that the information was obtained after the deadline.

(e) Subsection (5)(a) does not apply to:

(i) pretrial hearings; and

(ii) the frequent, periodic review hearings held in a dependency drug court case to assess and promote the parent's progress in substance use disorder treatment.

(6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court may, in the court's discretion, consider evidence of statements made by a child under eight years of age to an individual in a trust relationship.

(7)(a) As used in this Subsection (7):

(i) "Cannabis" means the same as that term is defined in [Section 26-61a-102](#).

(ii) "Cannabis product" means the same as that term is defined in [Section 26-61a-102](#).

(iii)(A) "Chronic" means repeated or patterned.

(B) "Chronic" does not mean an isolated incident.

(iv) "Directions of use" means the same as that term is defined in [Section 26-61a-102](#).

(v) "Dosing guidelines" means the same as that term is defined in [Section 26-61a-102](#).

(vi) "Medical cannabis" means the same as that term is defined in [Section 26-61a-102](#).

(vii) “Medical cannabis cardholder” means the same as that term is defined in [Section 26-61a-102](#).

(viii) “Qualified medical provider” means the same as that term is defined in [Section 26-61a-102](#).

(b) In any child welfare proceeding in which the court makes a finding, determination, or otherwise considers an individual's possession or use of medical cannabis, a cannabis product, or a medical cannabis device, the court may not consider or treat the individual's possession or use any differently than the lawful possession or use of any prescribed controlled substance if:

(i) the individual's possession or use complies with Title 4, Chapter 41a, Cannabis Production Establishments;

(ii) the individual's possession or use complies with Subsection 58-37-3.7(2) or (3); or

(iii)(A) the individual's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act; and

(B) the individual reasonably complies with the directions of use and dosing guidelines determined by the individual's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5).

(c) In a child welfare proceeding, a parent's or guardian's use of cannabis or a cannabis product is not abuse or neglect of a child under [Section 78A-6-105](#) unless there is evidence showing that:

(i) the child is harmed because of the child's inhalation or ingestion of cannabis, or because of cannabis being introduced to the child's body in another manner; or

(ii) the child is at an unreasonable risk of harm because of chronic inhalation or ingestion of cannabis or chronic introduction of cannabis to the child's body in another manner.

(d) Unless there is harm or an unreasonable risk of harm to the child as described in Subsection (7)(c), in a child welfare proceeding a parent's or guardian's use of medical cannabis or a cannabis product is not contrary to the best interests of a child if:

(i) for a medical cannabis cardholder after January 1, 2021, the parent's or guardian's possession or use complies with Title 26, Chapter 61a, Utah Medical Cannabis Act, and there is no evidence that the parent's or guardian's use of medical cannabis unreasonably deviates from the directions of use and dosing guidelines determined by the parent's or guardian's qualified medical provider or through a consultation described in Subsection 26-61a-502(4) or (5); or

(ii) before January 1, 2021, the parent's or guardian's possession or use complies with Subsection 58-37-3.7(2) or (3).

(e) Subsection (7)(c) does not prohibit a finding of abuse or neglect of a child under [Section 78A-6-105](#), and Subsection (7)

(d) does not prohibit a finding that a parent's or guardian's use of medical cannabis or a cannabis product is contrary to the

best interests of a child, if there is evidence showing a nexus between the parent's or guardian's use of cannabis or a cannabis product and behavior that would separately constitute abuse or neglect of the child.

Credits

Laws 2008, c. 3, § 381, eff. Feb. 7, 2008; Laws 2008, c. 382, § 2217, eff. May 5, 2008; Laws 2009, c. 146, § 5, eff. May 12, 2009; Laws 2009, c. 161, § 5, eff. May 12, 2009; Laws 2010, c. 34, § 10, eff. May 11, 2010; Laws 2017, c. 330, § 52, eff. Aug. 1, 2017; Laws 2018, c. 359, § 2, eff. May 8, 2018; Laws 2019, 1st Sp. Sess., c. 5, § 63, eff. Sept. 23, 2019; Laws 2020, c. 12, § 53, eff. Feb. 28, 2020; Laws 2020, c. 132, § 2, eff. May 12, 2020; Laws 2020, c. 250, § 11, eff. May 12, 2020; Laws 2020, c. 354, § 132, eff. May 12, 2020.

[Notes of Decisions \(21\)](#)

U.C.A. 1953 § 78A-6-115, UT ST § 78A-6-115

Current with laws through the 2020 Sixth Special Session. Some statutes sections may be more current, see credits for details.

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