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=m04992c4de650dfc96b8d74ee97463541

Date: March 4, 2022

Time: 12:00 pm – 2:00 pm

Action: Welcome and approval of February 4, 2022 Meeting minutes • *Professional Practice Disclosures - Rule 11-101 of the Supreme Court Rules of Professional Practice*	Tab 1	David Fureigh
Discussion: Appointing a Recording Secretary		David Fureigh
Discussion: Civil Rule 7A & 7B and impact on Juvenile Rules	Tab 2	All
Discussion: Identification of Legislative Bills Requiring Rule Changes *Please come prepared to share any legislation which may require rule changes or consideration. We need to begin composing a list of these for future meeting agendas.* *Legislative Bills to consider (so far):* *HB 248 - Juvenile Amendments* *HB 277 -- Juvenile Competency Amendments* *HB 299 - Juvenile Justice Changes* *SB 85 -- Protective Order and Stalking Injunction Expungement* *SB 120 - Juvenile Justice Amendments*		All
Discussion & Action: Rule 17: The petition	Tab 3	Judge Paul Dame
Discussion: Rule 37B: Hearings with remote conferencing from a different location • *Updating Rule 37B to allow for specific types of child welfare hearings to be held remotely; similar to Juvenile Rule 29B:*	Tab 4	Bridget Koza

Hearings with Remote Conferencing from a Different Location.		
Discussion: Old business or new business		All

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

Meeting Schedule:

April 1, 2022	May 6, 2022	June 3, 2022
August 5, 2022	September 2, 2022	October 7, 2022
November 4, 2022	December 2, 2022	

TAB 1

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

Draft Meeting Minutes

David W. Fureigh, Chair

Location: Zoom Meeting:
https://us02web.zoom.us/j/87983394007?pwd=RE5qWlRsVjV6MUI2MHZGRnk1OTNkUT09

Date: February 4, 2022

Time: 12:00 pm – 2:00 pm

Attendees:	**Excused Members**:
David Fureigh, Chair Arek Butler Judge Paul Dame Kristin Fadel Michelle Jeffs Matthew Johnson Jordan Putnam Mikelle Ostler William Russell Janette White Chris Yanelli Carol Verdoia, Emeritus Member	Judge Debra Jensen Sophia Moore
Staff: Bridget Koza Meg Sternitzky, Juvenile Court Law Clerk Savannah Schoon, Juvenile Court Law Clerk	

1. **Welcome and approval of the January 7, 2022 Meeting minutes:** (David Fureigh)

David Fureigh welcomed everyone to the meeting and asked for approval of the January 7, 2022 meeting minutes. *Judge Dame moved to approve the January 7, 2022 meeting minutes. Mikelle seconded the motion, and it passed unanimously.*

2. **Action:** Rule 8: Rights of minors while in detention**:** (David Fureigh)

David Fureigh reviewed with the committee that Rule 8 went out for public comment on November 18, 2021. The comment period closed on January 2, 2022, and no comments were received.

Michelle Jeffs motioned to present Rule 8 (Draft November 18, 2021) to the Supreme Court for final publication. Janette White seconded the motion and it passed unanimously.

3. **Discussion:** Rule 25: Pleas: (Bill Russell)

The committee continued their discussion of proposed changes to Rule 25 from the January 7, 2022 meeting. Bill Russell specifically discussed changes to paragraph (e) regarding the procedure for handling delayed admissions. The committee reviewed and considered the proposed change.

Bill Russell motioned to present the revised Rule 25 (Draft February 4, 2022) to the Supreme Court for approval to be sent out for an initial 45-day comment period. Arek Butler seconded the motion and it passed unanimously.

As a side note, Chris Yanelli asked the committee about their experiences with how delayed admissions are handled under Juvenile Rule 25 when a minor completes certain conditions before the timeframe agreed upon. The committee discussed their experiences across the state and if delayed admission is an adjudication, which would

require compliance with the presumptive timeframes under Utah Code section 80-6-712.

4. **Discussion:** Rule 60: Judicial bypass procedure to authorize minor to consent to an abortion**:** (Judge Paul Dame)

David recapped the conversation from last meeting with the ACLU of Utah and Planned Parenthood Association of Utah. He discussed modifying the time frame in paragraph (d) so there is at least one business between the receipt of the petition and the hearing on the petition. Judge Dame proposed two options to modify the time frame in the first sentence of paragraph (d).

Matthew Johnson reached to the guardians ad litem in 3rd District to understand their experience with handling these petitions. The GALs start immediately working on these cases once appointed and there are challenges getting ahold of the youth before the hearing. Judge Dame spoke with a juvenile judge in 3rd District and clerical staff report that it can challenging to get the hearing scheduled and a GAL appointed within three calendar days. Kirstin Fadel reported that for the GALs in 3rd District there is a delay in getting contact information for the youth from the ACLU, who typically represents the minors in these proceedings.

Judge Dame reviewed both options with the committee and the proposed change is an attempt to balance all the concerns presented to the committee. The committee agreed they like the second version so that the first sentence in paragraph (d) should be amended to read:

> "Upon receipt of the petition, the court shall schedule a hearing and resolve the petition within three calendar days or two business days, whichever time period is longer."

Matthew Johnson motioned to present the revised Rule 60 (Draft February 4, 2022) to the Supreme Court for approval to be sent out for an initial 45-day comment period. Bill Russell seconded the motion and it passed unanimously.

5. Discussion: Rule 7: Warrants: (Janette White & David Fureigh)

David Fureigh provided the committee with background information for the proposed change to Rule 7 to allow the Division of Child and Family Services to file an *ex parte* motion to vacate a warrant for a child, who is missing, has been abducted, or has run away. There are situations when the warrant needs to be vacated before it is executed because the child has turned to their out-of-home placement, is no longer in DCFS' custody and court jurisdiction is terminated, or a new warrant has been issued for the child to be returned to a different location. Currently, DCFS seeks these warrants *ex parte* so the proposed change would allow them to vacate the motion *ex parte*.

Janette White proposed language to add a new paragraph (h):

> "(h) The Division of Child and Family Services may file an ex parte motion to vacate a warrant issued for a child who is missing, has been abducted, or has run away pursuant to Utah Code Section 62A-4a-202.1 prior to a peace officer or a child welfare worker executing the warrant."

The committee discussed whether there also needs to be proposed language allowing oral motions to vacate the warrants and the committee agreed that the Juvenile Rules allow attorneys to make oral motions during a hearing. The committee discussed stylistic and grammatical changes the proposed language and agreed that paragraph (h) should state:

> "(h) Prior to a peace officer or a child welfare worker executing a warrant issued pursuant to Utah Code section 62A-4a-202.1 for a child who is missing, has been abducted, or has run away, counsel for the Division of Child and Family Services may file an *ex parte* motion to vacate the warrant."

Judge Dame motioned to present the revised Rule 7 (Draft February 4, 2022) to the Supreme Court for approval to be sent out for an initial 45-day comment period. Janette White seconded the motion and it passed unanimously.

6. Discussion: Rule 17: The Petition: (Judge Dame)

Judge Dame discussed with the committee a proposed change to Rule 17 to include a requirement in paragraph (a) that the delinquency petition includes a sentence regarding the prosecutor's authority to file under Utah Code section 80-6-304. Another juvenile judge proposed the change since delinquency petitions are different throughout the state. The change would create consistency so petitions are clear regarding the prosecutor's authority to file it under Utah Code section 80-6-304. Judge Dame proposed the following language to add to paragraph (a):

> "(3) The petition shall state the specific circumstance that allows the filing of the petition pursuant to Utah Code section 80-6-304."

David suggested adding the language to subparagraph (2) rather than (3) for clarity. The committee discussed the language now included in delinquency petitions across the state and how its important for the judge and all parties to be aware of the conditions that statutorily permit the prosecutor to file the petition. Kristin Fadel suggested change the word "circumstance" to "condition" in the proposed language and the committee agreed.

The committee decided to review the proposed language and agreed to put this agenda item on the March 4, 2022 meeting.

7. Discussion: Civil Rules Changes and Impact on Juvenile Rules: (All)

Bridget Koza reviewed with the committee that there have been changes to the Rules of Civil Procedure and if these changes have any effect on the Juvenile Rules. Also, Juvenile Rule 2 states that Rules of Civil Procedure will apply as long as they are

not inconsistent with the Juvenile Rules, and Bridget mentioned that it might be worth it for the committee to consider amending Rule 2 to specifically state which Rules of Civil Procedure apply in Juvenile Court so there isn't confusion and given all the changes that have been made to the Rules of Civil Procedure. David Fureigh agreed, and suggested the Juvenile Court law clerks review the Civil Rules to see which rules conflict with the Juvenile Rules. Bridget stated that the project would need to start after the legislative session as the law clerks have other responsibilities. Carol Verdoia suggested that the committee start with one rule and analyze it at the next meeting, such as service of process rules. Bridget Koza suggested Civil Rules 7A and 7B since they were recently changed in May 2021.

The committee agreed to review Civil Rules 7A and 7B and compare them to the Juvenile Rules, in particular Juvenile Rule 39, for a discussion at the next meeting. The committee agreed that the agenda item will be put on the March 4, 2022 meeting.

As a side note, Judge Dame asked the committee about their experience with minors being placed on probation as a condition of the delayed admission. Chris Yanelli has seen that sometimes minors are placed on probation and sometimes they aren't. Bill Russell stated that typically in his cases the minor is placed on intake or formal probation as part of conditions for the delayed admission.

The meeting adjourned at 2:04 pm. The next meeting will be held on March 4, 2022, at 12 pm via Webex.

TAB 2

West's Utah Code Annotated
State Court Rules
Rules of Civil Procedure (Refs & Annos)
Part III. Pleadings, Motions, and Orders

UT Rules Civ. Proc., Rule 7A

Rule 7A. Motion to Enforce Order and for Sanctions

Effective: May 1, 2021
Currentness

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, including in supplemental proceedings under Rule 64, a party must file an ex parte motion to enforce order and for sanctions (if requested), pursuant to this rule and Rule 7. The motion must be filed in the same case in which that order was entered. The timeframes set forth in this rule, rather than those set forth in Rule 7, govern motions to enforce orders and for sanctions.

(b) Affidavit. The motion must state the title and date of entry of the order that the moving party seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting affidavit or declaration that is based on personal knowledge and shows that the affiant or declarant is competent to testify on the matters set forth. The verified motion, affidavit, or declaration must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

(c) Proposed Order. The motion must be accompanied by a request to submit for decision and a proposed order to attend hearing, which must:

(1) state the title and date of entry of the order that the motion seeks to enforce;

(2) state the relief sought in the motion;

(3) state whether the motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(4) order the other party to appear personally or through counsel at a specific place (the court's address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving party has violated the order; and

(5) state that no written response to the motion is required but is permitted if filed within 14 days of service of the order, unless the court sets a different time, and that any written response must follow the requirements of Rule 7.

(d) Service of the Order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting affidavits served on the nonmoving party at least 28 days before the hearing. Service must be in a manner provided

in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28 day period if:

(1) the motion requests an earlier date; and

(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

(e) Opposition. A written opposition is not required, but if filed, must be filed within 14 days of service of the order, unless the court sets a different time, and must follow the requirements of Rule 7.

(f) Reply. If the nonmoving party files a written opposition, the moving party may file a reply within 7 days of the filing of the opposition to the motion, unless the court sets a different time. Any reply must follow the requirements of Rule 7.

(g) Hearing. At the hearing the court may receive evidence, hear argument, and rule upon the motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all claims made in the motion. At the court's discretion, the court may convene a telephone conference before the hearing to preliminarily address any issues related to the motion, including whether the court would like to order a briefing schedule other than as set forth in this rule.

(h) Limitations. This rule does not apply to an order that is issued by the court on its own initiative. This rule does not apply in criminal cases or motions filed under Rule 37. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket, or to limit the authority of the court to hold a party in contempt for failure to appear pursuant to a court order.

(i) Orders to Show Cause. The process set forth in this rule replaces and supersedes the prior order to show cause procedure. An order to attend hearing serves as an order to show cause as that term is used in Utah law.

Credits
[Adopted December 11, 2020, effective May 1, 2021.]

Utah Rules of Civil Procedure, Rule 7A, UT R RCP Rule 7A
Current with amendments received through May 1, 2021

End of Document

UT Rules Civ. Proc., Rule 7B

Rule 7B. Motion to Enforce Order and for Sanctions in Domestic Law Matters

Effective: May 1, 2021
Currentness

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, a party must file an ex parte motion to enforce order and for sanctions (if requested), pursuant to this rule and Rule 7. The motion must be filed in the same case in which that order was entered. The timeframes set forth in this rule, rather than those set forth in Rule 7, govern motions to enforce orders and for sanctions. If the motion is to be heard by a commissioner, the motion must also follow the procedures of Rule 101. For purpose of this rule, an order includes a decree.

(b) Affidavit. The motion must state the title and date of entry of the order that the moving party seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting affidavit that is based on personal knowledge and shows that the affiant is competent to testify on the matters set forth. The verified motion or affidavit must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

(c) Proposed Order. The motion must be accompanied by a request to submit for decision and a proposed order to attend hearing, which must:

(1) state the title and date of entry of the order that the motion seeks to enforce;

(2) state the relief sought in the motion;

(3) state whether the motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(4) order the other party to appear personally or through counsel at a specific place (the court's address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving party has violated the order; and

(5) state that no written response to the motion is required, but is permitted if filed at least 14 days before the hearing, unless the court sets a different time, and that any written response must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(d) Service of the Order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting affidavits served on the nonmoving party at least 28 days before the hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28 day period if:

(1) the motion requests an earlier date; and

(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

(e) Opposition. A written opposition is not required, but if filed, must be filed at least 14 days before the hearing, unless the court sets a different time, and must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(f) Reply. If the nonmoving party files a written opposition, the moving party may file a reply at least 7 days before the hearing, unless the court sets a different time. Any reply must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(g) Hearing. At the hearing the court may receive evidence, hear argument, and rule upon the motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all claims made in the motion. At the court's discretion, the court may convene a telephone conference before the hearing to preliminarily address any issues related to the motion, including whether the court would like to order a briefing schedule other than as set forth in this rule.

(h) Counter Motions. A responding party may request affirmative relief only by filing a counter motion, to be heard at the same hearing. A counter motion need not be limited to the subject matter of the original motion. All of the provisions of this rule apply to counter motions except that a counter motion must be filed and served with the opposition. Any opposition to the counter motion must be filed and served no later than the reply to the motion. Any reply to the opposition to the counter motion must be filed and served at least 3 business days before the hearing in a manner that will cause the reply to be actually received by the party responding to the counter motion (i.e. hand-delivery, fax or other electronic delivery as allowed by rule or agreed by the parties). The party who filed the counter motion bears the burden of proof on all claims made in the counter motion. A separate proposed order is required only for counter motions to enforce a court order or to obtain a sanctions order for violation of an order, in which case the proposed order for the counter motion must:

(1) state the title and date of entry of the order that the counter motion seeks to enforce;

(2) state the relief sought in the counter motion;

(3) state whether the counter motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(4) order the other party to appear personally or through counsel at the scheduled hearing to explain whether that party has violated the order; and

(5) state that no written response to the countermotion is required, but that a written response is permitted if filed at least 7 days before the hearing, unless the court sets a different time, and that any written response must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(i) Limitations. This rule does not apply to an order that i s issued by the court on its own initiative. This rule applies only to domestic relations actions, including divorce; temporary separation; separate maintenance; parentage; custody; child support; adoptions; cohabitant abuse protective orders; child protective orders; civil stalking injunctions; grandparent visitation; and modification actions. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket, or to limit the authority of the court to hold a party in contempt for failure to appear pursuant to a court order.

(j) Orders to Show Cause. The process set forth in this rule replaces and supersedes the prior order to show cause procedure. An order to attend hearing serves as an order to show cause as that term is used in Utah law.

Credits
[Adopted December 11, 2020, effective May 1, 2021.]

Utah Rules of Civil Procedure, Rule 7B, UT R RCP Rule 7B
Current with amendments received through May 1, 2021

End of Document

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

Utah R. Juv. P. Rule 39

Rule 39. Contempt of Court

Currentness

(a) Any parent, guardian, or custodian of a minor who willfully fails or refuses to produce the minor in court in response to a summons or order of the court may be proceeded against for contempt of court pursuant to Title 78B, Chapter 6 Contempt. Any person made the subject of a court order who willfully fails or refuses to comply with the order may be proceeded against for contempt of court.

(b) Contempt proceedings involving conduct occurring out of the presence of the court shall be initiated by a motion for an order by the court that the person alleged to be in contempt be ordered to appear and show cause why he should not be found in contempt and punished as provided by law. Such motion must be accompanied by an affidavit setting forth the conduct alleged to constitute the contempt. Such motion may be filed by any party to the proceeding or by an officer of the court.

(c) The court may issue a warrant for the arrest of any person who has failed to appear in response to a summons. Upon appearance, the court may find such person in contempt of court unless it appears that there was reasonable cause for the failure to obey the summons.

Credits
[Adopted effective January 1, 1995. Amended effective January 1, 2009.]

Utah Rules of Juvenile Procedure Rule 39, UT R JUV Rule 39
Current with amendments received through May 1, 2021

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UTAH SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Meeting Minutes – April 24, 2019

Committee members & staff	Present	Excused	Appeared by Phone
Jonathan Hafen	X		
Rod N. Andreason			X
Judge James T. Blanch	X		
Lincoln Davies		X	
Lauren DiFrancesco			X
Dawn Hautamaki	X		
Judge Kent Holmberg	X		
James Hunnicutt	X		
Larissa Lee	X		
Trevor Lee		X	
Judge Amber M. Mettler	X		
Timothy Pack		X	
Bryan Pattison	X		
Michael Petrogeorge		X	
Judge Clay Stucki		X	
Judge Laura Scott	X		
Leslie W. Slaugh	X		
Trystan B. Smith		X	
Heather M. Sneddon		X	
Paul Stancil	X		
Judge Andrew H. Stone		X	
Justin T. Toth	X		
Susan Vogel	X		
Katy Strand, Recording Secretary	X		
Nancy Sylvester, Staff	X		

GUESTS: Rep. Ken Ivory, Steve Johnson, Cathy Dupont, Michael Drechsel

(1) WELCOME AND APPROVAL OF MINUTES.

Johnathan Hafen welcomed the committee and asked for approval of the minutes. Jim Hunnicutt moved to approve the corrected minutes. Rod Andreason seconded. The motion passed.

(2) DISCUSSION OF RULE 68.

Mr. Hafen introduced Rep. Ken Ivory, as well as the issues surrounding Rule 68. Rep. Ivory described the practice in Nevada, which requires the parties to have a discussion of the merits of their cases early on. In Utah, he found that Offers of Judgment didn't work the same way, particularly for plaintiffs. He spoke with Rep. Brady Brammer, who agreed that there were no practical teeth in Rule 68. He recognized the concern of plaintiffs being pushed into accepting unreasonable offers and that some types of cases would not apply. However, he believes that the Nevada rule could compel the parties to get serious about the merits of their claims, and thus increase efficiency in cases.

Leslie Slaugh opined that the test of this rule is not related to reasonableness; it relates to guessing what a jury will do. He questioned how to protect those parties. He worried the rule rewarded deep pockets, as others could not afford the risk. Rep. Ivory responded that in Nevada the option is for the court to order some of the costs, while others would be a shall. Mr. Slaugh responded that there was discretion but no standards. Rep. Ivory said he found that it did work both ways. Mr. Slaugh asked if there were any rules that were based upon reasonable offers, rather than successful offers. Mr. Slaugh questioned the Nevada approach and has concerns about this rule, as he has seen it used as a strong-arm tactic. He pointed out that even when a judge can decline to award a penalty, generally they do award them. Judge Holmberg pointed out that this changes the economics, as parties do not know the other party's attorney fees. He asked whether the Idaho statute was reviewed before this meeting, which allows for a pre-suit demand, which locks in attorney fees, and can serve as a trap for defendants. Judge Blanch worried that there could be an incentive for low ball offers that are not in good faith. Ms. Vogel asked if this would happen where one party was pro se. Rep. Ivory stated that he hadn't seen it.

Mr. Hunnicutt asked if there was data on whether this policy placed a larger burden on the Court of Appeals. Mr. Hafen asked if this would generally come up early or later in cases in Nevada. Rep. Ivory responded it would happen at both times. Judge Blanch stated that they are not seen often in Utah. He wasn't sure if it was because of the lack of fee shifting, or a cultural question. Rep. Ivory believes culture can be developed with a rule. Mr. Hafen asked how many states have a fee provision. Rep. Ivory stated that Florida may, and he doesn't really know other than Nevada. Susan Vogel questioned why it wasn't used. Bryan Pattison opined that it would be difficult to get clients to move forward with this, as they might think it showed weakness. Judge Blanch opined that it would not be used when attorney fees were included under a statute or contract. Judge Scott agreed that she had not seen it.

Judge Blanch asked whether this was really a policy call for the Legislature: should Utah follow the English rule (the litigation loser pays attorney fees and costs)? Rep. Ivory said he believed that the Nevada rule would allow parties to choose which rule (American or English) to work with. He said that during his time practicing in Nevada, he found that the Nevada rule was best when the other party was not willing to move at all. Judge Blanch asked if there were any statistics on how often the rule is used in Nevada. Rep. Ivory said he did not know, but in his experience it was 30-40% of cases. Mr. Hafen wondered what additional data could be found.

Rep. Ivory noted that another important difference between the Utah and Nevada rules is that under the Nevada rule, the Defendant could move for a dismissal based upon the offer of judgment. Mr. Hafen questioned if there would be legislative pushback for such a large change. Rep. Ivory thought push back would be coming from the Bar, but pointed out that costs are continuing to rise, both for parties and the state.

Rep. Ivory proposed contacting experts for additional information and then bringing this topic back up. Mr. Hafen proposed creating a preliminary report including data on how it could work, which the committee would then bring to the Court. The committee will continue to look into this issue with Rep. Ivory.

(3) LICENSED PARALEGAL PRACTITIONERS AND THE CIVIL RULES.

Steve Johnson and Mr. Hafen introduced the issue of how to bring the rules up to date with respect to Licensed Paralegal Practitioners. Mr. Johnson opined that the committee should be bold in solving this problem. He reported that LPPs could not go to court, but could help people fill out forms in three areas. They would also be able to negotiate with opposing counsel and provide the financial documents as required by Rule 26.1. He believed the committee would need to make changes to that rule. He agreed there were other rules that would need to be changed, particularly with regards to lawyers talking with other lawyers, since lawyers would also now be talking with LPPs as well. He proposed changing the wording to legal professional. Mr. Hafen pointed out that we do not have a definition section of the Rules of Civil Procedure.

Mr. Johnson reported that there were 15 potential LPPs taking the ethics course, with 12 in the family law course. He believes that there could be almost 40 within the first year, particularly as the only other state with this kind of licensing has higher standards. The swearing in will be in October. Mr. Hafen pointed out that this would require around four months to amend the rules.

Ms. Vogel questioned the demographics of the potential LPPs. Mr. Johnson responded that the LPPs were mostly from firms. Judge Holmberg asked if there would be a mentorship program. Mr. Johnson said currently they have some requirements for a number of hours of supervised practice before they can sit for the exam. Mr. Hunnicutt thought it was 500 hours for landlord-tenant or collections work and 1000 hours for family law. He also predicted that the LPPs will sit in the back of court and the client will then need to discuss the question with the LPP, who is not allowed to speak. Mr. Johnson was concerned that lawyers would do things that would require attorneys, as LPPs are limited. Mr. Hafen stated that this would likely result in half unrepresented parties.

Lauren DiFrancesco questioned the scope of what an LPP could do to draft a motion, as there is a form labeled "Motion." Mr. Johnson answered that so long as there was a form, they could fill it out.

Mr. Hafen proposed a subcommittee to go through the rules and evaluate it. James Hunnicutt volunteered to be on the subcommittee. Nancy Sylvester volunteered him to be the chair. Larissa Lee agreed to be on this subcommittee. Mr. Hunnicutt requested that Michael Petrogeorge be

assigned as well, which was agreed to, in addition to a paralegal from his firm who has been involved with the LPP Committee.

(4) COORDINATION OF INTERVENTION RULES: URCP 24, URAP 25A, URCRP 12.

Ms. Sylvester introduced this issue. The Appellate Rules Committee preferred having the term "attorney representing the governmental entity," as it was a more general rule. This appears in Rule 24 at line 65. There may not be an appointed attorney, it could be a contract attorney, so the Committee proposed this change. Mr. Hafen asked how the parties would know who that was. Ms. Sylvester said the parties would be required to find that out. Ms. Lee asked if this would include school boards. Judge Holmberg questioned whether this now made it less clear that one attorney would receive notice, as opposed to potentially many. Mr. Pattison argued that a contract attorney is still considered the city attorney, but would serving them be sufficient?

Mr. Hunnicutt proposed using the language from Rule 4(d)(1)(F)-(K) and referencing back to the rule. Judge Mettler stated that she did not take the view that in criminal cases, the state was informed just because it was a party. Ms. Lee pointed out that the criminal rules were being amended, too. Mr. Slaugh reported that the AG's office was concerned that administrative personnel might not know where to take the notice. However, he believed that contract attorneys would have a similar problem, as they are not really city attorneys, but attorneys who are often hired by a governmental entity. Judge Holmberg approved of referencing Rule 4. Ms. Sylvester expressed concerned that the AG references should remain. Mr. Slaugh proposed leaving the AG references in, but referencing Rule 4 for the rest. Mr. Pattison proposed serving the clerk or recorder. Mr. Slaugh recalled that the state was opposed to incorporating Rule 4, however, Judge Holmberg recalled this was the state, but they are currently not included in the proposed incorporation. He pointed out that we have not received any notice of problems on the municipal level. Mr. Slaugh proposed using the governmental immunity site, as every entity must have a person who can receive notice. Mr. Hafen responded that the Court does not like referring to websites in the rules. He then asked if this language was really a problem that really exists, or if it could be just sent out for comment. Mr. Pattison does not believe that this is a practical problem, as he has never seen this. Mr. Slaugh asked if the rule could state "the person designated to receive a claim." Mr. Hunnicutt proposed that it must provide notice to "the person designated under Rule 4(d)(1)." Mr. Hafen and Judge Holmberg supported this proposal.

Mr. Slaugh proposed changing the "wills" to "must." Ms. Sylvester responded that for references to what the court does, "will" is generally used. Mr. Hafen questioned if the last two sentences should stay. Mr. Slaugh wanted to keep the first in, but cut the second as it was now addressed earlier in the rule. Mr. Hunnicutt and Judge Holmberg proposed changing "municipal attorney" in the second to last sentence to "municipality."

Judge Holmberg moved to send the rule, as it appears below, to the Court, and then out for comment. Mr. Hunnicutt seconded. Motion passed.

Rule 24. Intervention.

(a) Intervention of right. On timely motion, the court must permit anyone to intervene who:

(1) is given an unconditional right to intervene by a statute; or

(2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.

(b) Permissive intervention.

(1) In General. On timely motion, the court may permit anyone to intervene who:

(A) is given a conditional right to intervene by a statute; or

(B) has a claim or defense that shares with the main action a common question of law or fact.

(2) By a Government Officer or Agency. On timely motion, the court may permit a federal or state governmental officer or agency to intervene if a party's claim or defense is based on:

(A) a statute or executive order administered by the officer or agency; or

(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

(3) Delay or Prejudice. In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.

(c) Notice and Pleading Required. A motion to intervene must be served on the parties as provided in Rule 5. The motion must state the grounds for intervention and set out the claim or defense for which intervention is sought.

(d) Constitutionality of Utah statutes and ordinances.

(d)(1) **Challenges to a statute.** If a party challenges the constitutionality of a Utah statute in an action in which the Attorney General has not appeared, the party raising the question of constitutionality must notify the Attorney General of such fact as described in paragraphs (d)(1)(A), (d)(1)(B), and (d)(1)(C).

(d)(1)(A) **Form and Content**. The notice must (i) be in writing, (ii) be titled "Notice of Constitutional Challenge Under URCP 24(d)," (iii) concisely describe the nature of the challenge, and (iv) include, as an attachment, the pleading, motion, or other paper challenging the constitutionality of the statute.

(d)(1)(B) **Timing**. The party must serve the notice on the Attorney General on or before the date the party files the paper challenging the constitutionality of the statute.

(d)(1)(C) **Service**. The party must serve the notice on the Attorney General by email or, if circumstances prevent service by email, by mail at the address below, and file proof of service with the court.

Email: notices@agutah.gov

Mail:

Office of the Utah Attorney General

Attn: Utah Solicitor General

350 North State Street, Suite 230

P.O. Box 142320

Salt Lake City, Utah 84114-2320

(d)(1)(D) **Attorney General's response to notice.**

(d)(1)(D)(i) Within 14 days after the deadline for the parties to file all papers in response to the constitutional challenge, the Attorney General must file a notice of intent to respond unless the Attorney General determines that a response is unnecessary. The Attorney General may seek up to an additional 7 days' extension of time to file a notice of intent to respond.

(d)(1)(D)(ii) If the Attorney General files a notice of intent to respond within the time permitted by this rule, the court will allow the Attorney General to file a response to the constitutional challenge and participate at oral argument when it is heard.

(d)(1)(D)(iii) Unless the parties stipulate to or the court grants additional time, the Attorney General's response to the constitutional challenge must be filed within 14 days after filing the notice of intent to respond.

(d)(1)(D)(iv) The Attorney General's right to respond to a constitutional challenge under Rule 25A of the Utah Rules of Appellate Procedure is unaffected by the Attorney General's decision not to respond under this rule.

(d)(2) **Challenges to an ordinance**. If a party challenges the constitutionality of a county or municipal ordinance in an action in which the county or municipality has not appeared, the party raising the question of constitutionality must notify the county or municipality by providing notice

to the person identified in Rule 4(d)(1). The procedures for the party challenging the constitutionality of a county or municipal ordinance will be consistent with paragraphs (d)(1)(A), (d)(1)(B), and (d)(1)(C), except that service must be on the individual governmental entity. The procedures for the response by the county or municipality must be consistent with paragraph (d)(1)(D).

(d)(3) **Failure to provide notice.** Failure of a party to provide notice as required by this rule is not a waiver of any constitutional challenge otherwise timely asserted. If a party does not serve a notice as required under paragraphs (d)(1) or (d)(2), the court may postpone the hearing until the party serves the notice.

(5) NEW RULE 7A. MOTION FOR ORDER TO SHOW CAUSE.

Ms. DiFrancesco introduced this issue. The subcommittee tried to move orders to show cause to a one-step process, but opted not to take the order out of the process based on statutory language. The proposed rule would allow for, but not require, a phone conference before the hearing. There is still the process of creating the order, as you could not have contempt without the order coming from the Court, with service, before the hearing. She also stated that on line 11, "party" would be too restrictive, so "person" should be used. Ms. Vogel suggested that lines 16 and 17 should be in the present tense, so it would state "is requesting" the non-moving person be held in contempt. Judge Holmberg pointed out that line 19 should also say "person." Mr. Pattison questioned if the non-party would be a party to the motion, and therefore the word "party" could be used. Mr. Hafen proposed that the term "party" remain.

Judge Mettler questioned how this would interact with Rule 37 with respect to sanctions. Judge Holmberg pointed out there would have to be an order in place, and Ms. DiFrancesco stated that Rule 37 would only apply to parties. Judge Mettler pointed out that the party could proceed under either of these rules, so long as an order was in place. Judge Holmberg stated you would be getting a different order under Rule 37. This made Judge Mettler concerned that discovery disputes could now involve jail. Ms. DiFrancesco stated discovery disputes could not be exempted entirely. She also stated that the timing constraints would mean litigants would not use rule 7a. Mr. Slaugh pointed out that Rule 37 already allowed for contempt for discovery disputes. Ms. Sylvester proposed adding that "this rule does not apply to discovery disputes between the parties under Rule 37." Mr. Slaugh proposed stating that it did not apply to discovery disputes "within the scope of Rule 37." Mr. Hafen questioned what Rule 7A was intended to cover. Mr. Slaugh said that injunctions would be covered. Ms. Vogel said that it would also cover family law.

Mr. Hunnicutt pointed out that the schedule under this rule was consistent with rule 101. This was done because that will be the most likely use. Ms. Vogel pointed out that the rule was also flexible. Judge Mettler asked how the hearing would get on the calendar, as it would not happen without a request for hearing. Judge Holmberg thought that the language following Rule 7 would cover that

requirement. Judge Blanch questioned if it would ever be discussed without a hearing, as without a hearing the briefing schedule would not work. Mr. Slaugh said he did not believe you could hold someone in contempt without a hearing. Ms. DiFrancesco agreed that you could reduce something to a judgment without a hearing, which would also fall under this rule. Mr. Slaugh proposed a rule like in bankruptcy where a hearing would be scheduled, but if the response is not received, the court can strike the hearing and grant the relief.

Mr. Hafen questioned if we would need an advisory committee note, as this was rather new. Mr. Slaugh proposed waiting for comments before adding any notes.

Mr. Slaugh moved to send the rule as below to the Court and for comment. Ms. Lee seconded. The motion passed.

Rule 7A. Motion to enforce order and for sanctions.

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, a party must file a motion to enforce order and for sanctions (if requested), pursuant to the procedures of this rule and Rule 7. The timeframes set forth in this rule rather than those set forth in Rule 7 govern motions to enforce orders and for sanctions. If the motion is to be heard by a commissioner, the motion must also follow the procedures of Rule 101. For purpose of this rule, an order includes a judgment.

(b) Affidavit. The motion must state the title and date of entry of the order that the moving party seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting affidavit that is based on personal knowledge and shows that the affiant is competent to testify on the matters set forth. The verified motion or affidavit must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

(c) Proposed order. The motion must be accompanied by a proposed order to attend hearing, which must:

(c)(1) state the title and date of entry of the order that the moving party seeks to enforce;

(c)(2) state the relief sought by the moving party;

(c)(3) state whether the moving party is requesting that the nonmoving party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(c)(4) order the nonmoving party to appear personally or through counsel at a specific date, time and place to explain whether the nonmoving party has violated the order; and

(c)(5) state that no written response is required but is permitted if filed at least 14 days before the hearing, unless the court sets a different time, and that any written response must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(d) Service of the order. If the court grants the motion and issues an order to attend hearing, the moving party must have the order, the motion, and all supporting affidavits personally served on the nonmoving party in a manner provided in Rule 4 at least 28 days before the hearing. For good cause the court may order that service be made on the nonmoving party's counsel of record in a manner provided in Rule 5. The court may order less than 28 days' notice of the hearing if:

(d)(1) the motion requests an earlier date; and

(d)(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

(e) Reply. A reply is not required, but if filed, must be filed at least 7 days before the hearing, unless the court sets a different time.

(f) Hearing. At the hearing the court may receive evidence, hear argument, and rule upon the motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all claims made in the motion. At the court's discretion, the court may convene a telephone conference before the hearing to preliminarily address any issues related to the motion, including whether the court would like to order a briefing schedule other than as set forth in this rule.

(g) Limitations. This rule does not apply to an order to show cause that is issued by the court on its own initiative. A motion to enforce order and for sanctions presented to a court commissioner must also follow Rule 101, including all time limits set forth in Rule 101. This rule applies only in civil actions, and does not apply in criminal cases. This rule does not apply to discovery disputes within the scope of Rule 37.

(h) Orders to show cause. The process set forth in this rule replaces and supersedes the prior order to show cause procedure. An order to attend hearing serves as an order to show cause as that term is used in statute.

(6) RULE 100: COORDINATION BETWEEN THE DISTRICT AND JUVENILE COURTS IN MINOR GUARDIANSHIP CASES.

Ms. Sylvester introduced this issue. The court visitor program found that there were many "whereabout cases" on guardianship cases, but the different courts were not informing one another

when custody decisions were being made in the context of a district court minor guardianship. Mr. Hafen asked if there were any reasons not to accept the proposed rule change. Mr. Slaugh questioned if minor guardianship was a type of custody. However, he still believed this rule accomplished the result. Mr. Hunnicutt believed that minor guardianship was part of child custody, but that if we separated it out adoption would have to be added, and perhaps additional ones such as international parental abduction. He proposed adding adoption and any other similar child custody case.

Ms. Lee questioned the absence of oxford commas.

Mr. Slaugh moved to send the rule as below to the Court and for comment. Mr. Hunnicutt seconded. Motion passed.

Rule 100. Coordination of cases pending in district court and juvenile court.

(a) **Notice to the court.** In a case in which child custody, child support, or parent time is an issue, all parties have a continuing duty to notify the court:

(a)(1) of a case in which a party or the party's child is a party to or the subject of a petition or order involving child support, parent time, or child custody, including minor guardianship, adoption, or any similar child custody case;

(a)(2) of a criminal or delinquency case in which a party or the party's child is a defendant or respondent;

(a)(3) of a protective order case involving a party regardless whether a child of the party is involved.

The notice shall be filed with a party's initial pleading or as soon as practicable after the party becomes aware of the other case. The notice shall include the case caption, file number, and name of the judge or commissioner in the other case.

(b) **Communication among judges and commissioners.** The judge or commissioner assigned to a case in which child support, parent time, or child custody is an issue shall communicate and consult with any other judge or commissioner assigned to any other pending case involving the same issues and the same parties or their children. The objective of the communication is to consider the feasibility of consolidating the cases before one judge or commissioner or of coordinating hearings and orders.

(c) Participation of parties. The judges and commissioners may allow the parties to participate in the communication. If the parties have not participated in the communication, the parties shall be given notice and the opportunity to present facts and arguments before a decision to consolidate the cases.

(d) **Consolidation of cases.**

(d)(1) The court may consolidate cases within a county under Rule 42.

(d)(2) The court may transfer a case to the court of another county with venue or to the court of any county in accordance with Utah Code Section 78B-3-309.

(d)(3) If the district court and juvenile court have concurrent jurisdiction over cases, either court may transfer a case to the other court upon the agreement of the judges or commissioners assigned to the cases.

(e) Judicial reassignment. A judge may hear and determine a case in another court or district upon assignment in accordance with CJA Rule 3-108(3).

(7) ADJOURNMENT.

The committee was reminded that committee notes were due in May, and would be discussed in June, and the committee adjourned at 5:59 pm. The next meeting will be held May 22, 2019 at 4:00 pm.

UTAH SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Meeting Minutes – August 28, 2019

Committee members & staff	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair	X		
Rod N. Andreason	X		
Judge James T. Blanch		X	
Lauren DiFrancesco	X		
Dawn Hautamaki		X	
Judge Kent Holmberg			X
James Hunnicutt	X		
Larissa Lee	X		
Trevor Lee	X		
Judge Amber M. Mettler	X		
Timothy Pack	X		
Bryan Pattison		X	
Michael Petrogeorge	X		
Judge Clay Stucki		X	
Judge Laura Scott	X		
Leslie W. Slaugh	X		
Trystan B. Smith	X		
Heather M. Sneddon		X	
Paul Stancil		X	
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Brooke McKnight	X		
Ash McMurray, Recording Secretary	X		
Nancy Sylvester, Staff	X		

(1) WELCOME AND APPROVAL OF MINUTES

Jonathan Hafen welcomed the committee and introduced Brook McKnight, a new committee member, and Ash McMurray the new recording secretary. Mr. Hafen asked for approval of the minutes. The minutes were approved unanimously.

(2) RULE 4 AND ELECTRONIC ACCEPTANCE OF SERVICE

Lane Gleaves (Mr. Gleaves) and Tyler Gleaves of Utah Court Services, LLC, presented on their system of electronic service of process, which has evolved in response to feedback from judges and law firms. The presentation compared electronic service to certified mail and highlighted security features, including requiring individuals receiving service to provide their phone numbers and the last four digits of their social security numbers. Lauren DiFrancesco asked whether the system verifies phone numbers, and Mr. Gleaves explained that the system does not verify phone numbers but that requiring recipients to provide a phone number is a higher level of verification than used for in-person service. Susan Vogel raised concerns regarding the use of IP addresses, and Mr. Gleaves clarified that service is delivered not to IP addresses, but to email addresses, and that the system saves IP addresses of devices used to download documents in case recipients contest service. Judge Laura Scott raised concerns regarding whether the system merely provided service or also required acceptance of service. Judge Andrew Stone raised concerns regarding the proof of service details needed in affidavits of electronic service to guarantee the identities of individuals served, given that electronic service does not involve witnesses, physical addresses, or signatures. The subcommittee was asked to discuss and prepare a proposal to address acceptance and proof of service issues.

(3) SERVICE OF SUBPOENAS: DISCUSSION OF NEED FOR SERVICE OF SUPPORTING DOCUMENTS

Michael Drechsel introduced a legislator's request that documents accompanying civil subpoenas be made electronic via a weblink to court resources. He explained the practical problem officers face when they need to print multiple PDF's for lengthy civil subpoenas from their vehicles. Mr. Slaugh noted that the proposal to provide documents via weblink could extend to other documents, such as writs of execution and writs of garnishment. Susan Vogel raised concerns that elderly individuals unfamiliar or uncomfortable with digital technology and online resources would require assistance. Judge Stone noted that those who do not read English already face a similar problem. Larissa Lee suggested that the documents could be condensed and include a telephone number for those who need assistance. James Hunnicutt mentioned that the documents can be and often are reduced to a single ten-page document, and Ms. DiFrancesco noted that federal courts have condensed the documents to a single page that includes a telephone number and other information for additional resources. Nancy Sylvester was asked to create a proposed amendment to Rule 45 using the federal form as a model.

(4) LICENSED PARALEGAL PRACTITIONERS AND THE CIVIL RULES

Ms. Sylvester introduced the committee to the issue of clarifying the applicability of the Utah Rules of Civil Procedure to licensed paralegal practitioners (LPPs). The committee discussed adding "licensed paralegal practitioner" throughout the rules where attorneys are included. Mr. Slaugh suggested that "LPP" could be defined to apply attorney rules to LPPs except where doing so would go beyond the scope of permitted practice. Mr. Slaugh also suggested that the term "attorney" throughout the rules could be replaced by "legal professional," which would be defined to include both attorneys and LPPs. Judge Stone raised concerns that such changes could create access to justice problems by making LPP fees equivalent to attorney fees. Judge Amber Mettler, Mr. Hafen, and Ms. Lee also raised concerns that such changes could inappropriately expand the role of LPPs. Rod Andreason suggested an alternative solution of creating a new Rule 86 aggregating all LPP rules and a fee schedule in one place. Mr. Hafen and Ms. Sylvester were asked to create a proposal for a Rule 86.

(5) REVIEW OF COMMENTS TO RULES 7A, 7, 100

Ms. DiFrancesco introduced the public comments to the draft language of Rule 7A that recently circulated for public input. The committee discussed potential concerns regarding ex parte communications. Mr. Hunnicutt was asked to explore the possibility of having different tracks for different case types. The subcommittee will come back next month with a proposal to address the concerns raised in the comments. Approval of Rules 7 and 100, which received no comments, was deferred until next month.

(6) OTHER BUSINESS

The committee discussed the Supreme Court's approval of a new Utah Rules of Probate Procedure area.

(7) ADJOURNMENT

The remaining issues were deferred until next month. The fall meeting schedule was discussed. The meeting adjourned at 5:50 pm. The next meeting will be held September 25, 2019 at 4:00 pm.

UTAH SUPREME COURT ADVISORY COMMITTEE ON RULES OF CIVIL PROCEDURE

Meeting Minutes – November 20, 2019

Committee members & staff	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair	**X**		
Rod N. Andreason		**X**	
Judge James T. Blanch		**X**	
Lauren DiFrancesco	**X**		
Judge Kent Holmberg	**X**		
James Hunnicutt	**X**		
Larissa Lee		**X**	
Trevor Lee	**X**		
Judge Amber M. Mettler	**X**		
Timothy Pack	**X**		
Bryan Pattison			**X**
Michael Petrogeorge		**X**	
Judge Clay Stucki		**X**	
Judge Laura Scott	**X**		
Leslie W. Slaugh	**X**		
Trystan B. Smith	**X**		
Heather M. Sneddon		**X**	
Paul Stancil	**X**		
Judge Andrew H. Stone	**X**		
Justin T. Toth			**X**
Susan Vogel	**X**		
Brooke McKnight		**X**	
Ash McMurray, Recording Secretary	**X**		
Nancy Sylvester, Staff			**X**
Katie Gregory, Staff	**X**		

(1) WELCOME AND APPROVAL OF MINUTES

Jonathan Hafen welcomed the committee and asked for approval of the minutes as amended. The minutes were approved unanimously.

(2) FORMATION OF TECHNOLOGY SUBCOMMITTEE

Trevor Lee introduced the topic of forming a standing technology subcommittee. The committee discussed the subcommittee's potential goals and composition, noting that additional members or support staff may be needed in the future as IT or clerical resources. Judge Kent Holmberg moved to form the technology subcommittee as a standing committee with Trevor Lee as chair and Judge Andrew Stone, Susan Vogel, and Paul Stancil as members. Judge Amber Mettler seconded the motion. The motion passed unanimously.

(3) RULE 26.4 DISCUSSION

The committee discussed whether additional language regarding auxiliary aids and services is necessary or whether it is sufficiently covered by Rule 10(f). Judge Stone moved to add the following proposed language to the end of paragraph (c)(2)(A): "The court may for good cause waive the requirement of a writing and document the objection in the court record." Judge Stone further moved to delete in its entirety the proposed paragraph (c)(2)(C), which read:

> An objection made using auxiliary aids and services the person's preferred means of communication under paragraph (c)(2)(A) must also set forth the grounds for the objection and any supporting authority to the extent possible. The court will provide notice of the objection to the parties named in the petition and any interested persons, as that term is defined in Utah Code § 75-1-201.

James Hunnicutt seconded the motion. The motion passed unanimously. Jonathan Hafen and Nancy Sylvester will seek guidance from the Supreme Court and discuss whether the rule may move forward without an additional comment period.

Rule 26.4. Provisions governing disclosure and discovery in contested proceedings under Title 75 of the Utah Code.

(a) **Scope.** This rule applies to all contested actions arising under Title 75 of the Utah Code.

(b) **Definition.** A probate dispute is a contested action arising under Title 75 of the Utah Code.

(c) **Designation of parties, objections, initial disclosures, and discovery.**

(c)(1) **Designation of Parties**. For purposes of Rule 26, the plaintiff in probate proceedings is presumed to be the petitioner in the matter, and the defendant is presumed to be any party ~~filing~~ who has made an objection. Once a probate dispute arises, and based on the facts and circumstances of the case, the court may designate an interested person as plaintiff, defendant, or non-party for purposes of discovery. Only an interested person who has appeared on the record will be treated as a party for purposes of discovery.

(c)(2) **Objection to the petition**.

(c)(2)(A) Any oral objection ~~must be~~ made at a ~~scheduled~~ hearing on the petition ~~and~~ must then be put into writing and filed with the court within 7 days, unless the written objection has been previously filed with the court. ~~The court may for good cause in a guardianship or conservatorship case accept an objection made using the person's preferred means of communication and document the objection in the court record.~~ The court may for good cause waive the requirement of a writing and document the objection in the court record.

(c)(2)(B) A written objection must set forth the grounds for the objection and any supporting authority, must be filed with the court, and must be mailed to the parties named in the petition and any "interested persons," as that term is defined ~~provided~~ in Utah Code § 75-1-201~~(24)~~, unless the written objection has been previously filed with the court.

(c)(2)(C) If the petitioner and objecting party agree to an extension of time to file the written objection, notice of the agreed upon date must be filed with the court.

(c)(2)(D) The court may modify the timing for making an objection in accordance with Rule 6(b).

(c)(2)(~~D~~E) In the event no written objection is timely filed, the court will act on the original petition upon the petitioner's filing of a request to submit pursuant to Rule 7 ~~of the Utah Rules of Civil Procedure~~.

(c)(3) **Initial disclosures in guardianship and conservatorship matters.**

(c)(3)(A) In addition to the disclosures required by Rule 26(a), and unless included in the petition, the following documents must be served by the party in possession or control of the documents within 14 days after a written objection has been filed:

(c)(3)(A)(i) any document purporting to nominate a guardian or conservator, including a will, trust, power of attorney, or advance healthcare directive, copies of which must be served upon all interested persons; and

(c)(3)(A)(ii) a list of less restrictive alternatives to guardianship or conservatorship that the petitioner has explored and ways in which a guardianship or conservatorship of the respondent may be limited.

This paragraph supersedes Rule 26(a)(2).

(c)(3)(B) The initial disclosure documents must be served on the parties named in the probate petition and the objection and anyone who has requested notice under Title 75 of the Utah Code:

(c)(3)(C) If there is a dispute regarding the validity of an original document, the proponent of the original document must make it available for inspection by any other ~~the contesting~~ party within 14 days of the date of referral to mediation unless the parties agree to a different date.

(c)(3)(D) The court may for good cause modify the content and timing of the disclosures required in this rule or in Rule 26(a) in accordance with Rule 6(b). ~~for any reason justifying departure from these rules.~~

(c)(4) **Initial disclosures in all other probate matters.**

(c)(4)(A) In addition to the disclosures required by Rule 26(a), and unless included in the petition, the following documents must be served by the party in possession or control of the documents within 14 days after a written objection has been filed: any other document purporting to nominate a personal representative or trustee after death, including wills, trusts, and any amendments to those documents, copies of which must be served upon all interested persons. This paragraph supersedes Rule 26(a)(2).

(c)(4)(B) The initial disclosure documents must be served on the parties named in the probate petition and the objection and anyone who has requested notice under Title 75 of the Utah Code.

(c)(4)(C) If there is a dispute regarding the validity of an original document, the proponent of the original document must make it available for inspection by the contesting party within 14 days of the date of referral to mediation unless the parties agree to a different date.

(c)(4)(D) The court may for good cause modify the content and timing of the disclosures required in this rule or in Rule 26(a) in accordance with Rule 6(b). ~~for any reason justifying departure from these rules~~.

(c)(5) **Discovery once a probate dispute arises**. Except as provided in this rule or as otherwise ordered by the court, once a probate dispute arises, discovery will proceed pursuant to the Rules of Civil Procedure, including the other provisions of Rule 26.

(d) **Pretrial disclosures under Rule 26(a)(5), ~~objections~~.** The term "trial" in Rule 26(a)(5)(B) also refers to evidentiary hearings for purposes of this rule. ~~No later than 14 days prior to an evidentiary hearing or trial, the parties must serve the disclosures required by Rule 26(a)(5)(A).~~

(4) RULE 7A AND RULE 7B DISCUSSION

The committee discussed the final drafts for the new proposed Rules 7A and 7B, and unanimously approved three amendments. First, the committee approved the deletion of an extra "(d)" on line 25 of Rule 7A. Second, the committee approved the deletion of hyphens in the word

"ex-parte" on line 3 of both Rules 7A and 7B. Third, the committee approved the addition of the phrase "and has not withdrawn" to line 32 of both Rules 7A and 7B, which currently reads: "For purposes of this rule, a party is represented by counsel, within the last 120 days, counsel for that party has served or filed any documents in the case." The three changes will be sent to the Supreme Court for consideration with the Committee's recommendation that the rules be sent out for comment because the original Rule 7 has been split into two rules.

Rule 7A. Motion to enforce order and for sanctions.

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, a party must file an ex-parte motion to enforce order and for sanctions (if requested), pursuant to this rule and Rule 7. The motion must be filed in the same case in which that order was entered. The timeframes set forth in this rule, rather than those set forth in Rule 7, govern motions to enforce orders and for sanctions.

(b) Affidavit. The motion must state the title and date of entry of the order that the moving party seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting affidavit that is based on personal knowledge and shows that the affiant is competent to testify on the matters set forth. The verified motion or affidavit must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

(c) Proposed order. The motion must be accompanied by a request to submit for decision and a proposed order to attend hearing, which must:

(c)(1) state the title and date of entry of the order that the motion seeks to enforce;

(c)(2) state the relief sought in the motion;

(c)(3) state whether the motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(c)(4) order the other party to appear personally or through counsel at a specific place (the court's address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving party has violated the order; and

(c)(5) state that no written response to the motion is required but is permitted if filed within 14 days of service of the order, unless the court sets a different time, and that any written response must follow the requirements of Rule 7.

~~(d)~~

(d) Service of the order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting affidavits served on the nonmoving party at least 28 days before the hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28 day period if:

(d)(1) the motion requests an earlier date; and

(d)(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

(e) Opposition. A written opposition is not required, but if filed, must be filed within 14 days of service of the order, unless the court sets a different time, and must follow the requirements of Rule 7.

(f) Reply. If the nonmoving party files a written opposition, the moving party may file a reply within 7 days of the filing of the opposition to the motion, unless the court sets a different time. Any reply must follow the requirements of Rule 7.

(g) Hearing. At the hearing the court may receive evidence, hear argument, and rule upon the motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all claims made in the motion. At the court's discretion, the court may convene a telephone conference before the hearing to preliminarily address any issues related to the motion, including whether the court would like to order a briefing schedule other than as set forth in this rule.

(h) Limitations. This rule does not apply to an order that is issued by the court on its own initiative. This rule does not apply in criminal cases or motions filed under Rule 37. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket, or to limit the authority of the court to hold a party in contempt for failure to appear pursuant to a court order.

(i) Orders to show cause. The process set forth in this rule replaces and supersedes the prior order to show cause procedure. An order to attend hearing serves as an order to show cause as that term is used in Utah law.

Rule 7B. Motion to enforce order and for sanctions in domestic law matters.

(a) Motion. To enforce a court order or to obtain a sanctions order for violation of an order, a party must file an ex-parte motion to enforce order and for sanctions (if requested), pursuant to this rule and Rule 7. The motion must be filed in the same case in which that order was entered. The timeframes set forth in this rule, rather than those set forth in Rule 7, govern motions to enforce orders and for sanctions. If the motion is to be heard by a commissioner, the motion must also follow the procedures of Rule 101. For purpose of this rule, an order includes a decree.

(b) Affidavit. The motion must state the title and date of entry of the order that the moving party seeks to enforce. The motion must be verified, or must be accompanied by at least one supporting affidavit that is based on personal knowledge and shows that the affiant is competent to testify on the matters set forth. The verified motion or affidavit must set forth facts that would be admissible in evidence and that would support a finding that the party has violated the order.

(c) Proposed order. The motion must be accompanied by a request to submit for decision and a proposed order to attend hearing, which must:

(c)(1) state the title and date of entry of the order that the motion seeks to enforce;

(c)(2) state the relief sought in the motion;

(c)(3) state whether the motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(c)(4) order the other party to appear personally or through counsel at a specific place (the court's address) and date and time (left blank for the court clerk to fill in) to explain whether the nonmoving party has violated the order; and

(c)(5) state that no written response to the motion is required, but is permitted if filed at least 14 days before the hearing, unless the court sets a different time, and that any written response must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(d) Service of the order. If the court issues an order to attend a hearing, the moving party must have the order, motion, and all supporting affidavits served on the nonmoving party at least 28 days before the hearing. Service must be in a manner provided in Rule 4 if the nonmoving party is not represented by counsel in the case. If the nonmoving party is represented by counsel in the case, service must be made on the nonmoving party's counsel of record in a manner provided in Rule 5. For purposes of this rule, a party is represented by counsel if, within the last 120 days, counsel for that party has served or filed any documents in the case and has not withdrawn. The court may shorten the 28 day period if:

(d)(1) the motion requests an earlier date; and

(d)(2) it clearly appears from specific facts shown by affidavit that immediate and irreparable injury, loss, or damage will result to the moving party if the hearing is not held sooner.

(e) Opposition. A written opposition is not required, but if filed, must be filed at least 14 days before the hearing, unless the court sets a different time, and must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(f) Reply. If the nonmoving party files a written opposition, the moving party may file a reply at least 7 days before the hearing, unless the court sets a different time. Any reply must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(g) Hearing. At the hearing the court may receive evidence, hear argument, and rule upon the motion, or may request additional briefing or hearings. The moving party bears the burden of proof on all claims made in the motion. At the court's discretion, the court may convene a telephone conference before the hearing to preliminarily address any issues related to the motion, including whether the court would like to order a briefing schedule other than as set forth in this rule.

(h) Counter Motions. A responding party may request affirmative relief only by filing a counter motion, to be heard at the same hearing. A counter motion need not be limited to the subject matter of the original motion. All of the provisions of this rule apply to counter motions except that a counter motion must be filed and served with the opposition. Any opposition to the counter motion must be filed and served no later than the reply to the motion. Any reply to the opposition to the counter motion must be filed and served at least 3 business days before the hearing in a manner that will cause the reply to be actually received by the party responding to the counter motion (i.e. hand-delivery, fax or other electronic delivery as allowed by rule or agreed by the parties). The party who filed the counter motion bears the burden of proof on all claims made in the counter motion. A separate proposed order is required only for counter motions to enforce a court order or to obtain a sanctions order for violation of an order, in which case the proposed order for the counter motion must:

(h)(1) state the title and date of entry of the order that the counter motion seeks to enforce;

(h)(2) state the relief sought in the counter motion;

(h)(3) state whether the counter motion is requesting that the other party be held in contempt and, if so, state that the penalties for contempt may include, but are not limited to, a fine of up to $1000 and confinement in jail for up to 30 days;

(h)(4) order the other party to appear personally or through counsel at the scheduled hearing to explain whether that party has violated the order; and

(h)(5) state that no written response to the countermotion is required, but that a written response is permitted if filed at least 7 days before the hearing, unless the court sets a different time, and that any written response must follow the requirements of Rule 7, and Rule 101 if the hearing will be before a commissioner.

(i) Limitations. This rule does not apply to an order that is issued by the court on its own initiative. This rule applies only to domestic relations actions, including divorce; temporary separation; separate maintenance; parentage; custody; child support; adoptions; cohabitant abuse protective orders; child protective orders; civil stalking injunctions; grandparent visitation; and modification actions. Nothing in this rule is intended to limit or alter the inherent power of the court to initiate order to show cause proceedings to assess whether cases should be dismissed for failure to prosecute or to otherwise manage the court's docket, or to limit the authority of the court to hold a party in contempt for failure to appear pursuant to a court order.

(j) Orders to show cause. The process set forth in this rule replaces and supersedes the prior order to show cause procedure. An order to attend hearing serves as an order to show cause as that term is used in Utah law.

(5) ADVISORY COMMITTEE NOTES REVIEW

(a) *Group C – Review of Advisory Committee Note to Rule 26.*

Tim Pack introduced proposed edits to the Advisory Committee Note to Rule 26. During discussion, the committee proposed additional revisions to the note as follows:

- Sixth paragraph: The committee recommended that the phrase "enforce them" be deleted and replaced with the phrase "exclude the evidence." The proposed amended paragraph would read as follows:

> 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~~ exclude the evidence unless

the failure is harmless or the party shows good cause for the failure.

- Seventh paragraph: The committee recommended that the word "present" be deleted and replaced with the word "disclose." The proposed amended paragraph would read as follows:

> ~~The 2011 amendments also change the time for making these required disclosures. Because the plaintiff controls when it brings the action, plaintiffs must make their disclosures within 14 days after service of the first answer. A defendant is required to make its disclosures within 28 days after the plaintiff's first disclosure or after that defendant's appearance, whichever is later.~~ The purpose of early disclosure is to have all parties ~~present~~ disclose 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.

- Eighth paragraph: The committee recommended that the stricken portion of the eighth paragraph be retained so that it reads as follows:

> The time periods for making Rule 26(a)(1) disclosures, and the presumptive deadlines for completing fact discovery, are keyed to the filing of an answer. If a defendant files a motion to dismiss or other Rule 12(b) motion in lieu of an answer, these time periods normally would not begin to run until that motion is resolved.

The committee further recommended that the entire eighth paragraph be discussed with the Utah Supreme Court as an example of a provision that may be better inserted into the rule itself rather than in an advisory note.

Overall the committee recommended taking the note to Rule 26 back to the Supreme Court for further guidance.

(b) *Group D – Review of Advisory Committee Notes to Rules 41, 42, 43, 45, 47, 50, and 52.*

The committee discussed Advisory Committee Notes in Group D. After the discussion concluded, Jim Hunnicutt moved to delete the Advisory Committee Notes in their entirety to all rules in Group D, including notes to Rules 41, 42, 43, 45, 47, 50, and 52. Judge Scott seconded the motion. The motion passed unanimously.

(c) *Group C – Review of Advisory Committee Notes to Rules 26.1, 26.2, 27, 32, 34, 35, and 37.*

The committee returned to discuss additional Advisory Committee Notes in Group C. Throughout the discussion, the following recommendations were made:

- **Rule 26.1**: The committee recommended deleting the note to Rule 26.1.

- **Rule 26.2**: The committee recommended deleting the entire note with the exception of the final sentence, which reads as follows: "This includes wrongful death action, in which case the disclosure will usually be of the decedent's records rather than of the plaintiff's, and emotional distress accompanied by physical injury or physical sickness." The committee also recommended that the retained language be further discussed as another example of a note that may be better placed into the rule itself because of its substantive nature.

- **Rules 27 and 32**: The committee recommended deleting the notes to Rules 27 and 32 because they are outdated.

- **Rule 34**: The committee recommended retaining the note to Rule 34 because it is current.

- **Rule 35**: The committee recommended deleting the note to Rule 35.

- **Rule 37**: The committee recommended deleting the note to Rule 37 except for those portions that were not stricken in the copy attached to the November 20 meeting packet.

Judge Mettler moved to send the Advisory Committee Notes on Rules 26.1, 26.2, 27, 32, 34, 35, and 37 to the Supreme Court for further discussion. Paul Stancil seconded the motion. The motion passed unanimously.

(6) ADJOURNMENT

The remaining items were deferred until the next meeting. The meeting adjourned at 5:53 p.m. The next meeting will be held January 22, 2020.

UTAH COURT RULES – PUBLISHED FOR COMMENT

The Supreme Court and Judicial Council invite comments about amending these rules. To view the proposed amendment, click on the rule number.

To submit a comment or view the comments of others, click on "Continue Reading." To submit a comment, scroll down to the "Leave a Reply" section, and type your comment in the "Comment" field. Type your name and email address in the designated fields and click "Post Comment."

Comments cannot be acknowledged, but all will be considered. Comments are saved to a buffer for review before publication.

Category: URCP007A

Posted: August 17, 2020

Utah Courts

Rules of Civil Procedure – Comment period closes October 1, 2020

Consolidation and Venue Transfer Amendments

URCP042. Consolidation; separate trials; venue transfer. AMEND.

The amendments to Rule 42 involve two issues: consolidation and venue transfer. The amendments clarify the powers of the district court to 1) consolidate two or more cases from any district in the state, 2) transfer a case from any court to any other court in the state, or 3) take either action as to just a portion of two or more cases. The amendments further mandate that cases filed in an improper venue be transferred to a proper venue when such is available. The venue amendments address the Supreme Court's invitation in Footnote 4 of *Davis County v. Purdue Pharma, L.P.*, 2020 UT 17.

To view all comments submitted during a particular comment period, click on the comment deadline date. To view all comments to an amendment, click on the rule number.

CATEGORIES

Domestic Injunction Amendments

URCP005. Service and filing of pleadings and other papers. AMEND.

URCP109. Injunction in certain domestic relations cases. AMEND.

The proposed amendments to Rules 5 and 109 address conflicting provisions between the two rules. The amendments to Rule 5 add an exception to allow specific rules to state who serves the petition. The amendments to Rule 109 require the petitioner, rather than the court, to provide a copy of the injunction to the respondent.

Notice Amendments

As a whole, the proposed amendments to Rules 4, 7, 8, 36, and 101 would require more notice to parties of their rights and obligations. An example of a document containing the Judicial Council-approved bilingual notice of rights may be found here.

URCP004. Process. AMEND.

The proposed notice amendments to Rule 4(c)(1) would require that the Judicial Council-approved bilingual notice of rights be included with the summons.

URCP007. Pleadings allowed; motions, memoranda, hearings, orders. AMEND.

The proposed notice amendments to Rule 7(c) would require caution language on the first page of all dispositive motions. It also requires the inclusion of the Judicial Council-approved bilingual notice of rights and provides consequences for failing to include them.

URCP008. General rules of pleadings. AMEND.

The proposed notice amendments to Rule 8(a) would require caution language on the first page of all pleadings requesting relief and provides consequences for failing to do so.

URCP036. Request for admission. AMEND.

The proposed notice amendments to Rule 36(b) would require caution language on the first page of all requests for admission and provides consequences for failing to do so.

- -Rules of Appellate Procedure
- -Rules of Civil Procedure
- -Rules of Criminal Procedure
- -Rules of Evidence
- -Rules of Juvenile Procedure
- -Rules of Professional Conduct
- -Rules of Professional Practice
- -Rules of Small Claims Procedure
- ADR101
- ADR103
- Appendix B
- Appendix F
- CJA Appendix F
- CJA01-0201
- CJA01-0204
- CJA01-0205
- CJA01-0205
- CJA01-0303
- CJA01-0304
- CJA01-0305
- CJA010-01-0404
- CJA010-1-020
- CJA02-0101
- CJA02-0103
- CJA02-0104
- CJA02-0106.01
- CJA02-0106.02
- CJA02-0106.03
- CJA02-0106.04
- CJA02-0106.05
- CJA02-0204
- CJA02-0206
- CJA02-0208
- CJA02-0208
- CJA02-0211
- CJA02-0212
- CJA03-0101
- CJA03-0102
- CJA03-0103
- CJA03-0103
- CJA03-0104
- CJA03-0105
- CJA03-0106
- CJA03-0106
- CJA03-0107
- CJA03-0108
- CJA03-0109
- CJA03-0111
- CJA03-0111.01
- CJA03-0111.02

URCP101.Motion practice before court commissioners. AMEND.

The proposed notice amendments to Rule 101(a) would require caution language on the first page of all motions to court commissioners. It would also require the inclusion of the Judicial Council-approved bilingual notice of rights and provides consequences for failing to include them.

Service of Process Amendments

URCP004. Process. AMEND.

The proposed service of process amendments to Rule 4 address service on minors in paragraph (d)(1)(B) and outline the requirements for electronic acceptance of service in paragraph (d)(3)(B).

Supplemental Proceedings Amendments

URCP64.Writs in general. AMEND.

The proposed amendments to Rule 64 would require that 1) enforcement proceedings be initiated by motion under new Rule 7A, and 2) that the party against whom enforcement proceedings are initiated be served with the notice of hearing under Rule 4. Under the proposed amendments, If the party did not appear at the enforcement proceedings hearing, only then could a bench warrant issue. The term "referee" in paragraph (c) has also been replaced with "clerk of court."

URCP007A. Motion to enforce order and for sanctions. NEW.

URCP007B. Motion to enforce order and for sanctions in domestic law matters. NEW.

URCP007. Pleadings allowed; motions, memoranda, hearings, orders. AMEND.

New Rule 7A, which circulated once already for comment, has been split into two rules, 7A and 7B, in response to comments made during the comment period last year. Rules 7A and 7B would create a new, uniform process for enforcing court orders through regular motion practice. They would replace the current order to show cause process found in Rule 7(q) and in

- CJA03-0111.03
- CJA03-0111.04
- CJA03-0111.05
- CJA03-0111.06
- CJA03-0112
- CJA03-0113
- CJA03-0114
- CJA03-0115
- CJA03-0116
- CJA03-0117
- CJA03-0201
- CJA03-0201.02
- CJA03-0202
- CJA03-0301
- CJA03-0301.01
- CJA03-0302
- CJA03-0303
- CJA03-0304
- CJA03-0304.01
- CJA03-0305
- CJA03-0306
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- CJA03-0306.02
- CJA03-0306.03
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- CJA04-0201
- CJA04-0202
- CJA04-0202.01
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- CJA04-0202.03
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- CJA04-0202.05
- CJA04-0202.06
- CJA04-0202.07
- CJA04-0202.08

local court rules. During the comment period, several practitioners noted that the order to show cause process in the domestic arena differed from the process in other civil cases and should be separated out. Rule 7B would now address the domestic law order to show cause process. As previously noted, this would result in the repeal of Rule 7(q) because the provisions addressing the court's inherent power to initiate order to show cause proceedings would now be found in Rules 7A(h) and 7B(h).

Vexatious Litigant Amendments

URCP083. Vexatious litigants. AMEND.

The proposed amendments would bring represented parties into the rule's purview. They would also permit any court to rely on another court's vexatious litigant findings and order their own restrictions.

CONTINUE READING

Posted: June 27, 2019

Utah Courts

Rules of Civil Procedure – Comment Period Closed August 11, 2019

URCP007A. Motion to enforce order and for sanctions. New. Creates a new, uniform process for enforcing court orders through a regular motion practice. Replaces the current order to show cause process.
URCP007. Pleadings allowed; motions, memoranda, hearings, orders. Amend. Repeals paragraph (q) and moves the provisions addressing the court's inherent power to initiate order to show cause proceedings to new Rule 7A(h).

URCP100. Coordination of cases pending in district court and juvenile court. Amend. To ensure better coordination of cases between courts, Rule 100 is amended to clarify that parties who have a child custody case in one court must notify that court of any other custody case in another court involving the same

- CJA04-0202.09
- CJA04-0202.10
- CJA04-0202.12
- CJA04-0203
- CJA04-0205
- CJA04-0206
- CJA04-0208
- CJA04-0302
- CJA04-0401
- CJA04-0401.01
- CJA04-0401.02
- CJA04-0401.03
- CJA04-0402
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- CJA04-0404
- CJA04-0405
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- CJA04-0408.01
- CJA04-0409
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- CJA04-0501
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- CJA04-0510.01
- CJA04-0510.02
- CJA04-0510.03
- CJA04-0510.04
- CJA04-0510.05
- CJA04-0510.06
- CJA04-0601
- CJA04-0602
- CJA04-0603
- CJA04-0609
- CJA04-0610
- CJA04-0613
- CJA04-0701
- CJA04-0702
- CJA04-0704
- CJA04-0801
- CJA04-0901
- CJA04-0902
- CJA04-0903
- CJA04-0904
- CJA04-0905
- CJA04-0906
- CJA04-0907
- CJA05-0101
- CJA05-201
- CJA06-0101
- CJA06-0102
- CJA06-0303
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- CJA06-0402

party or the same child. Custody cases include minor guardianship.

CONTINUE READING

- CJA06-0501
- CJA06-0503
- CJA06-0504
- CJA06-0505
- CJA06-0506
- CJA06-0506
- CJA06-0507
- CJA06-0601
- CJA07-0101
- CJA07-0102
- CJA07-0301
- CJA07-0302
- CJA07-0302
- CJA07-0303
- CJA07-0304
- CJA07-0307
- CJA07-0308
- CJA09-0101
- CJA09-0103
- CJA09-0105
- CJA09-0107
- CJA09-0108
- CJA09-0109
- CJA09-0301
- CJA09-0302
- CJA09-109
- CJA10-1-203
- CJA10-1-602
- CJA11-0101
- CJA11-0102
- CJA11-0103
- CJA11-0104
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- CJA11-0511
- CJA11-0513
- CJA11-0591
- CJA14-0515
- CJA14-0721
- CJA_Appx_F
- CJA_Appx_I
- CJA_Appx_J
- CJC Terminology
- CJC01
- CJC02
- CJC02.11
- CJC02.12
- CJC02.3

TAB 3

Rule 17. The petition.

(a) **Delinquency cases**.

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

(2) The petition shall state the specific condition that allows the filing of the petition pursuant to Utah Code section 80-6-304.

(3) The petition shall be verified and filed by the prosecuting attorney upon information and belief.

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

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

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

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

(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; 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**.

(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.

(2) Petitions for adjudication expungements must meet all of the criteria of Utah Code section 80-6-1004 and shall state: the name, age, and residence of the 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.

(3) Petitions for expungement of nonjudicial adjustments must meet all of the criteria of Utah Code section 80-6-1005 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.

(4) Petitions for vacatur must meet all of the criteria of Utah Code section 80-6-1002 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.

(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.

TAB 4

Rule 37B. Hearings with Remote Conferencing from a Different Location

(a) In hearings other than those governed by Rule 29B, the court, for good cause and on its own initiative or on motion, may permit a party or a minor's parent, guardian, or custodian to attend any proceeding by remote conferencing from a different location unless otherwise prohibited by law or rule.

(b) For good cause and with appropriate safeguards, the court may permit testimony in open court by remote conferencing from a different location.

(c) The remote conference must enable:

(1) a party and the party's counsel to communicate confidentially;

(2) documents, photos and other things that are delivered in the courtroom to be delivered previously or simultaneously to the

remote participants;

(3) interpretation for a person of limited English proficiency; and

(4) a verbatim record of the hearing.

(d) If the court permits remote conferencing, the court may require a party to make the arrangements for the remote conferencing.

Effective November 1, 2016.

Rule 29B. Hearings with Remote Conferencing from a Different Location

(a) In any delinquency proceeding or proceeding under Title 80, Chapter 6, Part 5, Transfer to District Court, the court, on its own initiative or on motion, may conduct the following hearings with the minor or the minor's parent, guardian, or custodian attending by remote conferencing from a different location:

(1) contempt;

(2) detention;

(3) motion;

(4) review; and

(5) warrant.

(b) In any delinquency hearing or hearing under Title 80, Chapter 6, Part 5, Transfer to District Court other than those in paragraph (a), the court, for good cause and on its own initiative or on motion, may permit a party or a minor's parent, guardian, or custodian to attend a hearing by remote conferencing from a different location.

(c) For good cause, the court may permit testimony in open court by remote conferencing from a different location if the party not calling the witness waives confrontation of the witness in person.

(d) The remote conference must enable:

(1) a party and the party's counsel to communicate confidentially;

(2) documents, photos and other things that are delivered in the courtroom to be delivered previously or simultaneously to the remote participants;

(3) interpretation for a person of limited English proficiency; and

(4) a verbatim record of the hearing.

(e) If the court permits remote conferencing, the court may require a party to make the arrangements for the remote conferencing.

Effective September 1, 2021