

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

### Meeting Agenda

*David W. Fureigh, Chair*

Location: Webex Meeting

Date: September 2, 2022

Time: 12:00 pm – 2:00 pm

<b>Action:</b> Welcome and approval of June 3, 2022, meeting minutes	Tab 1	David Fureigh
<b>Discussion:</b> <a href="#">S.B. 85</a> : Protective Order and Stalking Injunction Expungement. <ul style="list-style-type: none"><li><i>Further discussion regarding the applicability of Senate Bill 85 to the juvenile court and civil protective orders, including child protective orders.</i></li></ul>	Tab 2	Michael Drechsel Daniel Meza Rincon
<b>Discussion &amp; Action:</b> Rule 25A. Withdrawal of plea. <ul style="list-style-type: none"><li><i>Comment period closed July 2, 2022</i><ul style="list-style-type: none"><li>No comments received</li></ul></li></ul>	Tab 3	All
<b>Discussion &amp; Action:</b> Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503. <ul style="list-style-type: none"><li><i>Amend Rule 22, as proposed by Law Clerk Meg Sternitzky, to clarify preliminary hearing timelines.</i></li></ul>	Tab 4	All
<b>Discussion &amp; Action:</b> Rule 6. Admission to detention without court order. <ul style="list-style-type: none"><li><i>Amend Rule 6, as proposed by Judge Steven Beck, to include additional language that conforms to statute and addresses the problem of disproportionality.</i></li></ul>	Tab 5	All

<b>Discussion:</b> URCP Rule 4 and URJP Rule 18. <ul style="list-style-type: none"> <li><i>Discuss amending URJP Rule 18 to include similar language related to a bilingual notice as included in Rule 4 of the Rules of Civil Procedure.</i></li> </ul>	Tab 6	All
<b>Discussion:</b> Old business or new business		All

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

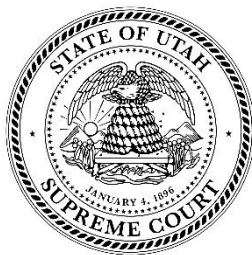
Meeting Schedule:

October 7, 2022

December 2, 2022

November 4, 2022

# TAB 1



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

### Draft Meeting Minutes

*David W. Fureigh, Chair*

Location: Webex Meeting

Date: June 3, 2022

Time: 12:00 p.m. – 2:00 p.m.

<b><u>Attendees:</u></b> David Fureigh, Chair Arek Butler Judge Paul Dame Judge Debra Jensen Michelle Jeffs Mikelle Ostler Janette White Jordan Putnam Carol Verdoia, Emeritus Member	<b><u>Excused Members:</u></b> Chris Yannelli Kristin Fadel Matthew Johnson William Russell Sophia Moore
	<b><u>Guests:</u></b> Jacqueline Carlton, Office of Legislative Research and General Counsel Judge Steven Beck
<b><u>Staff:</u></b> Raymundo Gallardo Kiley Tilby, Recording Secretary Meg Sternitzky, Juvenile Court Law Clerk	

**1. Welcome and approval of the May 6, 2022 Meeting Minutes: (David Fureigh)**

David Fureigh welcomed everyone to the meeting and reminds the committee there is not a meeting in July. David Fureigh asked for approval of the May 6, 2022 Minutes. Michelle Jeffs moves to approve the May 6, 2022 Minutes. Mikelle Ostler seconded the motion, and it passed unanimously.

**2. Discussion & Action – Rule 6: Admission to Detention Without Court Order: (All)**

Judge Beck provided the committee with background as to how the Petition to amend Rule 6 originated. Judge Beck indicates he was involved in a pilot program where attorneys appeared at detention hearing. As part of the pilot program, Judge Beck kept statistics and did a deep dive into the detention process. At the conclusion of the pilot program, he wrote a report and gave recommendations. One of the recommendations he made was to require a sworn statement when a child is booked into a detention facility. In that same report, Judge Beck kept statistics on children that are booked into detention and discovered there was a disproportionate problem, and the statistics matched the nationwide data on the issue.

Judge Beck indicated Utah Code 80-6-203 discusses a form JJS is to provide law enforcement when they book a child into detention and proposed that form should contain language provided for in the statute to make it a sworn statement. Judge Beck further states Utah Code 80-6-203 outlines other requirements that are not sufficiently being addressed in the current procedure. 80-6-203(3)(c) outlines the report should indicate the reason the minor was not released by the peace officer or other person. Judge Beck states in his experience, that is not being provided even though it is required by statute.

Judge Beck believes this requirement would cause reflection on the part of the person requesting booking of an individual to consider whether they thought about possible alternatives to detention or if detention is the only way going forward. Judge Beck proposes the sworn statement includes language that the reason the minor was not released was free from bias. Judge Beck outlined that although he does not believe it will completely resolve the issue, it is a start. If the individual has to affirmatively state the reason for not releasing the minor is free from bias, it will require them to have a moment of reflection to think about whether that was a factor in it.

The committee discussed that the current JJS form does not require a sworn statement. Janette White proposed to put this on the agenda for a future meeting to allow JJS time to respond and for Ms. White to speak to the Attorney General currently assigned to JJS.

David Fureigh indicates he does not have an issue with the proposed change but is concerned the Supreme Court may think the “free from bias” language is not procedural but agrees the form should require a sworn statement.

Jordan Putnam is in favor of the proposed change and does not believe the Supreme Court would have a big issue with the “free from bias” language because that should be a given.

David Fureigh asked Janette White to obtain a copy of the JJS form for the next meeting for the committee to look at. Mikelle Ostler indicated she believes each of the detention centers uses their own form and she does not believe there is a standardized form and thinks it would be beneficial for state-wide form. Judge Dame states law enforcement will likely need some additional training and agrees there should be one uniform form that JJS uses. Janette White will speak to the Attorney General about that issue as well.

This issue will be placed in the agenda for the next meeting for the committee to discuss.

### **3. Discussion & Action – Rule 17: The Petition: (All)**

David Fureigh states the rule went out for comment and five comments were received. Mr. Fureigh states he agrees with Judge Beck’s comment that the juvenile courts are courts of limited jurisdiction, and it should be the petitioner’s responsibility to put in their petition how they have jurisdiction. Janette White agrees. Mikelle Ostler indicates she believes it will be helpful to have an option in CARE for a drop-down option, so it is very clear they have checked all their boxes and there may be some additional things they can do to resolve some of the heartache some may be feeling.

Janette White indicates she spoke to Davis County, and they were not very supportive of the change due to the work it would take. Michelle Jeffs states she can see both sides but will vote against it to represent the prosecutors voice from those who she has discussed it with. Judge Jensen states from a judge’s perspective, she believes the change is very helpful and Judge Dame agreed. Judge Dame also indicated it goes some way to reduce disparity treatment of minors which is another big benefit of the proposal.

Raymundo Gallardo asks when this would be effective. David Fureigh states he believes it should be effective November 1<sup>st</sup> to give Weber County more time if they need to make changes. No opposition was received.

Janette White made a motion to submit the proposed change to the Supreme Court, Jordan Putnam seconded the motion. Michelle Jeffs opposed the motion. The motion carried and the rule will be submitted to the Supreme Court.

#### **4. Discussion – S.B. 161: Child Welfare Appeals Amendments (2022): (All)**

David Fureigh stated there was a question raised with regard to S.B. 161 and whether it was necessary for the committee to review and make changes to Rule 52 and 53 of the Utah Rules of Juvenile Procedure based on that bill.

Carol Verdoia stated she looked at the legislation and the two rules and did not see that the new legislation changed anything from the juvenile rules in terms of those procedures or issues. Ms. Verdoia indicated that it does change some things with regard to the appellate rules, but those have already been aligned with the changes. Ms. Verdoia does not believe any changes are necessary.

Judge Dame agreed with Ms. Verdoia and indicated he did not see anything that conflicts. Judge Dame indicated that as a side note, he believes Rule 52 is confusing, specifically Rule 52(a) and 52(b) and could use some reworking. The committee discussed the reworking the rule and Judge Dame indicated he would make a note to request this issue be added to the agenda at another meeting.

David Fureigh indicated the issue was resolved and no amendments were needed at this time.

#### **5. Discussion – Update Regarding 2022 Legislative Bills Possibly Requiring Rule Changes: S.B. 85, Protective Order and Stalking Injunction Expungements: (Jordan Putnam)**

Jordan Putnam stated he reviewed the bill and the applicable statutes. In looking at 78B-7-1001, the way it defines civil protective orders and stalking injunctions, the only agency or group that was not included in the definition of agency is DCFS. Adult protective orders and stalking injunction would not apply to children or the juvenile court. Jordan indicated there is a clearly delineated code section for Child Protective Orders and he does not believe S.B. 85 would apply to Child Protective Orders so he does not believe any changes need to be made to the Utah Rules of Juvenile Procedure.

Carol Verdoia stated it is odd to put an exclusion in a definition and she has concerns people will miss that it does not apply to DCFS records. Ms. Verdoia indicated when she looked at the juvenile courts legislative update and S.B. 85, she did not see anything about it excluding DCFS records so she does not know if it was missed or if it was assumed everyone would carefully read the law. Ms. Verdoia stated she agreed with Mr. Putnam that it does not apply to Child Protective Orders because DCFS records are not implicated in the bill. Ms. Verdoia suggested the legislative counsel could look at it and ask for some clarification in the law.

The committee agreed no amendments need to be made in regard to this issue.

**6. Discussion – Update Regarding 2022 Legislative Bills Possibly Requiring Rule Changes: H.B. 299, Juvenile Justice Changes & Juvenile Rules 10 and 30:** (David Fureigh/Chris Yannelli)

David Fureigh stated Chris Yannelli was not able to be at the meeting, but he sent an e-mail to Mr. Fureigh that he had reviewed the bill and did not believe any amendments were needed. Mr. Yannelli indicated he used Bridgett's recodification graph to review it, but it was split up and a little bit confusing, but from his review, no amendments were needed. Mr. Yannelli stated someone else may want to look at it and verify. Judge Dame suggested to go with Mr. Yannelli's conclusion and if something comes up, the committee can address it. Mr. Fureigh agreed.

The committee agreed no amendments need to be made in regard to this issue.

**7. Discussion – Update Regarding 2022 Legislative Bills Possibly Requiring Rule Changes: H.B. 277, Juvenile Competency Amendments:** (Sophia Moore/David Fureigh)

David Fureigh stated Sophia Moore was not able to be at the meeting, but she sent an e-mail stating she did not feel any amendments were needed with this house bill. The committee agreed no changes need to be made in regard to this issue.

**8. Discussion – Update Regarding 2022 Legislative Bills Possibly Requiring Rule Changes: Juvenile Rules 27A and 51:** (William Russell/Raymundo Gallardo)

Raymundo Gallardo stated William Russell was not able to join the meeting. Mr. Russell sent an e-mail to Mr. Gallardo with his analysis on the legislation impacting Rule 27A and 51. In the e-mail, Mr. Russell outlined in regard to Rule 27A, while the internally cited statute section 80-6-206 was amended to add an additional consideration prior to admitting a youth's statement to law enforcement into evidence, the existing Rule makes reference to the entire statute by number. By incorporation, the Rule now includes this additional statutory consideration. Mr. Russell outlined it is his opinion that Rule 27A does not require any amendments.

In regard to Rule 51, Mr. Russell outlined the statutory provisions incorporated by the existing rule (section 78A-6-353 and Title 78B, Chapter 6, Part 3) were not amended in the 2022 session and the Rule therefore requires no amendments.

The committee agreed no amendments were necessary.

**9. Discussion – Rule 22: Initial Appearance and Preliminary Examination in Cases under Utah Code Section 80-6-503:** (Meg Sternitzky)

Meg Sternitzky stated one of the juvenile court assistant administrators discovered a potential discrepancy in Rule 22. Ms. Sternitzky indicated pre-June 2020, the version of this rule distinguished the timelines in scheduling of preliminary



examinations based on age. When the Rule was revised in June 2020, it lost the distinction outlined in 78A-6-702 and 78A-6-703 when those statutes were merged into 78A-6-703.3. Due to this, under the current version of Rule 22, the Court can schedule preliminary examinations either in 10 days or 30 days under the same conditions when the minor is in custody and the information is filed under section 80-6-503. Ms. Sternitzky presents to the committee whether Rule 22 should retain the age distinction.

Judge Dame stated he did not understand why there was a distinction based on age and believes the only distinction that should be made is youth in custody versus not in custody, which is similar to adult preliminary hearings under Rule 7 of the Criminal Procedure. Judge Dame proposed the committee distinguish between in custody, with a shorter time frame, and out of custody, with a longer time frame. David Fureigh agreed and indicated he did not recall why the distinction between age was made but believes it was taken out because there was no foundation for it. Mr. Fureigh agreed it needs to be fixed and there should be a distinction between in custody and out of custody. Arek Butler is also in agreement with that proposal.

The committee discussed potential changes to Rule 22, including differentiating between in custody and out of custody time frames, changing “preliminary examination” to “preliminary hearing,” and striking the reference to 80-6-503 in Rule 22(g). David Fureigh suggested putting this on the agenda for the next meeting prior to voting on it so the members of the committee who are not present and who deal with those rules and statutes can weigh in on the proposed changes. Judge Dame and Judge Jensen agreed so the committee can take a closer look at the rule and applicable statutes.

This issue will be added to the agenda for the next committee meeting.

#### **10. Discussion – Future Meetings: In-person, Webex, or Hybrid: (All)**

The committee discussed preferences on the platform to hold future meetings. Raymundo Gallardo stated the Supreme Court has no preference and has indicated it is up to the committee and committee chair to decide how to hold meetings in the future. Mr. Gallardo indicated the Supreme Court has stated with the technology available, they believe it is appropriate to offer virtual for those who are not able to attend in person.

David Fureigh stated holding the meetings virtually gives him more availability to schedule other meetings and hearings without travel time. Carol Verdoia agreed and stated the need to travel may decrease participation and virtual may be better. Judge Dame indicated he would appear remotely, and Judge Jensen stated her preference is to continue holding the meetings via Webex as well.

Mikelle Ostler suggested the committee meet in person once a year, with the remaining meetings being held virtually. The committee agreed. The committee will continue to meet virtually and can readdress it in the future.

**11. Old business/new business: (All)**

No old or new business was discussed.

The meeting adjourned at 1:30 PM. The next meeting will be held on August 5, 2022 at 12:00 PM via Webex.

# TAB 2

**PROTECTIVE ORDER AND STALKING INJUNCTION**

**EXPUNGEMENT**

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: Stephanie Pitcher

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**LONG TITLE**

**General Description:**

This bill addresses the expungement of protective orders and stalking injunctions.

**Highlighted Provisions:**

This bill:

- ▶ defines terms relating to the expungement of protective orders and stalking injunctions;
- ▶ makes statutory provisions for the expungement of protective orders and stalking injunctions retroactive;
- ▶ allows for the expungement of certain protective orders and stalking injunctions;
- ▶ provides the requirements for expunging certain protective orders and stalking injunctions;
- ▶ addresses the distribution and effect of an order for expungement of certain protective orders and stalking injunctions; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides a special effective date.

**Utah Code Sections Affected:**

ENACTS:

**78B-7-1001**, Utah Code Annotated 1953

30 **78B-7-1002**, Utah Code Annotated 1953

31 **78B-7-1003**, Utah Code Annotated 1953

32 **78B-7-1004**, Utah Code Annotated 1953

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

35 Section 1. Section **78B-7-1001** is enacted to read:

36 **Part 10. Expungement of Protective Orders and Stalking Injunctions**

37 **78B-7-1001. Definitions.**

38 As used in this part:

39 (1) (a) Except as provided in Subsection (1)(b), "agency" means a state, county, or  
40 local government entity that generates or maintains records relating to a civil order for which  
41 expungement may be ordered.

42 (b) "Agency" does not include the Division of Child and Family Services created in  
43 Section **62A-4a-103**.

44 (2) "Civil order" means:

45 (a) an ex parte civil protective order;

46 (b) an ex parte civil stalking injunction;

47 (c) a civil protective order; or

48 (d) a civil stalking injunction.

49 (3) "Expunge" means to seal or otherwise restrict access to an individual's record held  
50 by an agency when the record includes a civil order.

51 (4) "Petitioner" means an individual petitioning for expungement of a civil order under  
52 this part.

53 Section 2. Section **78B-7-1002** is enacted to read:

54 **78B-7-1002. Retroactive application.**

55 The provisions of this part apply retroactively to all civil orders issued before, on, or  
56 after May 4, 2022.

57 Section 3. Section **78B-7-1003** is enacted to read:

**78B-7-1003. Requirements for expungement of protective order or stalking injunction.**

(1) (a) An individual against whom a civil order is sought may petition the court to expunge records of the civil order.

(b) A petition under Subsection (1) shall be filed in accordance with the Utah Rules of Civil Procedure.

(2) (a) The petitioner shall provide notice to the individual whom filed the civil order against the petitioner in accordance with Rule 4 of the Utah Rules of Civil Procedure.

(b) The individual who filed the civil order against the petitioner:

(i) may file a written objection with the court within 30 days after the day on which the petition is received by the individual; and

(ii) if the individual files a written objection, provide a copy of the written objection to the petitioner.

(c) If the court receives a written objection to the petition for expungement of a civil order, the court shall:

(i) set a date for a hearing on the petition;

(ii) provide notice at least 30 days before the day on which the hearing is held to:

(A) all parties of the civil order; and

(B) any other person or agency that the court has reason to believe may have relevant information related to the expungement of the civil order.

(d) The petitioner may respond, in writing, to any written objection within 14 days after the day on which the written objection is received by the court.

(3) If no written objection is received within 60 days from the day on which the petition for expungement is filed under Subsection (1), the court may grant the expungement in accordance with Subsection (4) without a hearing.

(4) A court may expunge an ex parte civil protective order or an ex parte civil stalking injunction if:

(a) the ex parte civil protective order or the ex parte civil stalking injunction was issued

86 but:

87 (i) the ex parte civil protective order or the ex parte civil stalking injunction is  
88 dismissed, dissolved, or expired upon a hearing by the court;

89 (ii) the court did not issue a civil protective order or a civil stalking injunction on the  
90 same circumstances for which the ex parte civil protective order or the ex parte civil stalking  
91 injunction was issued;

92 (iii) at least 30 days have passed from the day on which the ex parte civil protective  
93 order or the ex parte civil stalking injunction was issued;

94 (iv) the petitioner has not been arrested, charged, or convicted for violating the ex parte  
95 civil protective order or ex parte civil stalking injunction; and

96 (v) there are no criminal proceedings pending against the petitioner in the state; or

97 (b) (i) the individual who filed the ex parte civil protective order or the ex parte civil  
98 stalking injunction failed to appear for the hearing on the ex parte civil protective order or ex  
99 parte civil stalking injunction;

100 (ii) at least 30 days have passed from the day on which the hearing on the ex parte civil  
101 protective order or the ex parte civil stalking injunction was set to occur, including any  
102 continuance, postponement, or rescheduling of the hearing;

103 (iii) the petitioner has not been arrested, charged, or convicted for violating the ex parte  
104 civil protective order or ex parte civil stalking injunction; and

105 (iv) there are no criminal proceedings pending against the petitioner in the state.

106 (5) A court may expunge a civil protective order or a civil stalking injunction if:

107 (a) the civil protective order or the civil stalking injunction has been dismissed,  
108 dissolved, vacated, or expired;

109 (b) three years have passed from the day on which the civil protective order or the civil  
110 stalking injunction is dismissed, dissolved, vacated, or expired;

111 (c) the petitioner has not been arrested, charged, or convicted for violating the civil  
112 protective order or the civil stalking injunction; and

113 (d) there are no criminal proceedings pending against the petitioner in the state.

Section 4. Section **78B-7-1004** is enacted to read:

**78B-7-1004. Distribution and effect of order of expungement -- Penalty.**

(1) An individual who receives an order of expungement under Section [78B-7-1003](#) shall be responsible for delivering a copy of the order of expungement to any affected agency.

(2) Upon receipt of an order of expungement as described in Subsection (1), an agency shall expunge all records described in the expungement order that are under the control of the agency.

(3) Upon entry of an expungement order by a court under Section [78B-7-1003](#):

(a) the civil order is considered to never have occurred; and

(b) the petitioner may reply to an inquiry on the matter as though there was never a civil order.

(4) (a) Unless ordered by a court to do so, an agency or official may not divulge information or records that have been expunged under this part.

(b) An expungement order may not restrict an agency's use or dissemination of records in the agency's ordinary course of business until the agency has received a copy of the expungement order.

(c) Any action taken by an agency after issuance of the expungement order but before the agency's receipt of a copy of the expungement order may not be invalidated by the order.

(5) An expungement order under this part may not:

(a) terminate or invalidate any pending administrative proceedings or actions of which the individual had notice according to the records of the administrative body before issuance of the expungement order;

(b) affect the enforcement of any order or findings issued by an administrative body pursuant to the administrative body's lawful authority prior to issuance of the expungement order; or

(c) prevent an agency from maintaining, sharing, or distributing any record required by law.

(6) An employee or agent of an agency that is prohibited from disseminating



142 information from an expunged record under this section who knowingly or intentionally  
143 discloses identifying information from the expunged record, unless allowed by law, is guilty of  
144 a class A misdemeanor.

145 (7) Records expunged under this part may be released to, or viewed by, the following  
146 individuals:

147 (a) the petitioner; or

148 (b) parties to a civil action arising out of the expunged civil order, providing the  
149 information is kept confidential and utilized only in the action.

150 (8) This part does not preclude a court from considering the same circumstances or  
151 evidence for which an expunged civil order was issued in any proceeding that occurs after the  
152 civil order is expunged.

153 **Section 5. Effective date.**

154 This bill takes effect on July 1, 2022.

# TAB 3

1 **Rule 25A. Withdrawal of plea.**

2 ~~(a) A denial of an offense may be withdrawn at any time prior to adjudication.~~

3 ~~(b)(1) An admission or a plea of no contest may be withdrawn only upon leave of the~~  
4 ~~court and a showing that it was not knowingly and voluntarily made.~~

5 ~~(b)(2)~~ A request to withdraw an admission or a plea of no contest made pursuant to  
6 Utah Code section 80-6-306, including a plea held in abeyance, shall be made within 30  
7 days after entering an admission or a ~~the~~ plea of no contest, even if the court has  
8 imposed disposition. If the court has not imposed dispositional orders then such orders  
9 ~~disposition~~ shall not be announced unless the motion to withdraw is denied.

1   **Rule 25A. Withdrawal of plea.**

2   A request to withdraw an admission or a plea of no contest made pursuant to Utah  
3   Code section 80-6-306 shall be made within 30 days after entering an admission or a  
4   plea of no contest, even if the court has imposed disposition. If the court has not  
5   imposed dispositional orders then such orders shall not be announced unless the  
6   motion to withdraw is denied.

7

## 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.”

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Posted: May 18, 2022

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### Rules of Juvenile Procedure – Comment Period Closed July 2, 2022

**URJP025A. Withdrawal of plea.** Amend. Removes subsections (a) and (b)(1) because they are substantive rules that are provided for in Utah Code section 80-6-306. Amends subsection (b)(2) to mirror Utah Code section 80-6-306, and removes the heading number (b)(2).

This entry was posted in [-Rules of Juvenile Procedure, URJP025A.](#)

« [Code of Judicial Administration – Comment Period Closes July 15, 2022](#)

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UTAH COURTS

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# TAB 4

**Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503**

(a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before the court as directed in the summons.

(b) When any peace officer or other person makes an arrest of a minor without a warrant, the minor shall be taken to a juvenile detention facility pending a detention hearing, which shall be held as provided by these rules. When any peace officer makes an arrest of a minor with a warrant, the minor shall be taken to the place designated on the warrant. If an information has not been filed, one shall be filed without delay in the court with jurisdiction over the offense.

(c) If a minor is arrested in a county other than where the offense was committed the minor shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before a judge of the juvenile court.

(d) The court shall, upon the minor's first appearance, inform the minor:

(1) of the charge in the information or indictment and furnish the minor with a copy;

(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(3) of the right to retain counsel or have counsel appointed by the court;

(4) of rights concerning detention, pretrial release, and bail in the event the minor is bound over to stand trial in district court; and

(5) that the minor is not required to make any statement, and that any statements made may be used against the minor in a court of law.

(e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel

and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.

(f) The minor may not be called on to enter a plea. During the initial appearance, the minor shall be advised of the right to a preliminary examination. If the minor waives the right to a preliminary examination the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

(g) If the minor does not waive a preliminary examination, the court shall schedule the preliminary examination. The time periods of this rule may be extended by the court for good cause shown. The preliminary examination shall be held within a reasonable time, but not later than ten days after the initial appearance if the minor is in custody for the offense charged and the information is filed under Utah Code section 80-6-503. The preliminary examination shall be held within a reasonable time, but not later than 30 days after the initial appearance if:

(1) the minor is in custody for the offense charged and the information is filed under Utah Code section 80-6-503; or

(2) the minor is not in custody.

(h) A preliminary examination may not be held if the minor is indicted. If the indictment is filed under Utah Code section 80-6-503, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-503.

(i) A preliminary examination shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence. The minor may cross-examine adverse witnesses.

(j) If from the evidence the court finds probable cause to believe that the crime charged has been committed, that the minor has committed it, and the information is filed under Utah Code section 80-6-503, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.



(k) The finding of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary examination.

(l) If the court does not find probable cause to believe that the crime charged has been committed or that the minor committed it, the court shall dismiss the information and discharge the minor. The court may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(m) At a preliminary examination, upon request of either party, and subject to Title 77, Chapter 38, Victim Rights, the court may:

(1) exclude witnesses from the courtroom;

(2) require witnesses not to converse with each other until the preliminary examination is concluded; and

(3) exclude spectators from the courtroom.

*Effective September 1, 2021.*

**Rule 22. Initial appearance and preliminary ~~examination hearing~~ in cases under Utah Code sections 80-6-503 and 80-6-504**

(a) When a summons is issued in lieu of a warrant of arrest, the minor shall appear before the court as directed in the summons.

(b) When any peace officer or other person makes an arrest of a minor without a warrant, the minor shall be taken to a juvenile detention facility pending a detention hearing, which shall be held as provided by these rules. When any peace officer makes an arrest of a minor with a warrant, the minor shall be taken to the place designated on the warrant. If an information has not been filed, one shall be filed without delay in the court with jurisdiction over the offense.

(c) If a minor is arrested in a county other than where the offense was committed the minor shall without unnecessary delay be returned to the county where the crime was committed and shall be taken before a judge of the juvenile court.

(d) The court shall, upon the minor's first appearance, inform the minor:

(1) of the charge in the information or indictment and furnish the minor with a copy;

(2) of any affidavit or recorded testimony given in support of the information and how to obtain them;

(3) of the right to retain counsel or have counsel appointed by the court;

(4) of rights concerning detention, pretrial release, and bail in the event the minor is bound over to stand trial in district court; and

(5) that the minor is not required to make any statement, and that any statements made may be used against the minor in a court of law.

(e) The court shall, after providing the information under paragraph (d) and before proceeding further, allow the minor reasonable time and opportunity to consult counsel

and shall allow the minor to contact any attorney by any reasonable means, without delay and without fee.

(f) The minor may not be called on to enter a plea. During the initial appearance, the minor shall be advised of the right to a preliminary ~~examination~~hearing. If the minor waives the right to a preliminary ~~examination-hearing~~ the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

(g) If the minor does not waive a preliminary ~~examination~~hearing, the court shall schedule the preliminary ~~examination~~hearing. ~~The time periods of this rule may be extended by the court for good cause shown.~~ The preliminary ~~examination~~hearing shall be held within a reasonable time, but not later than ten days after the initial appearance if the minor is in custody for the offense charged. ~~and the information is filed under Utah Code section 80-6-503.~~ The preliminary ~~examination~~hearing shall be held within a reasonable time, but not later than 30 days after the initial appearance if:

~~(1) the minor is in custody for the offense charged and the information is filed under Utah Code section 80-6-503; or~~

~~(2) the minor is not in custody. The time periods of this rule may be extended by the court for good cause shown.~~

(h) A preliminary ~~examination~~hearing may not be held if the minor is indicted. If the indictment is filed under Utah Code section 80-6-503, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-503.

(i) A preliminary ~~examination~~hearing shall be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and shall proceed first with its case. At the conclusion of the state's case, the minor may testify under oath, call witnesses, and present evidence. The minor may cross-examine adverse witnesses.

(j) If from the evidence the court finds probable cause to believe that the crime charged has been committed, that the minor has committed it, and the information is filed under Utah Code section 80-6-503, the court shall proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504.

(k) The finding of probable cause may be based on hearsay in whole or in part. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary ~~examination~~hearing.

(l) If the court does not find probable cause to believe that the crime charged has been committed or that the minor committed it, the court shall dismiss the information and discharge the minor. The court may enter findings of fact, conclusions of law, and an order of dismissal. The dismissal and discharge do not preclude the state from instituting a subsequent prosecution for the same offense.

(m) At a preliminary ~~examination~~hearing, upon request of either party, and subject to Title 77, Chapter 38, Victim Rights, the court may:

(1) exclude witnesses from the courtroom;

(2) require witnesses not to converse with each other until the preliminary ~~examination~~hearing is concluded; and

(3) exclude spectators from the courtroom.

*Effective September 1, 2021.*

# TAB 5

## Petition to Amend Rule 6 of the Utah Rules of Juvenile Procedure

This petition is submitted pursuant to Rule 11-102(1) of the Utah Judicial Council Code of Judicial Administration

### Proposed revisions:

Rule 6. Admission to detention without court order.

(a) Admission to detention without court order is governed by Utah Administrative Rules Title R547, Chapter 13, Guidelines for Admission to Secure Youth Detention Facilities.

(b) The form described in Utah Code section 80-6-203 must contain the following language above the signature line: "Pursuant to Utah Code section 78B-18a-104, I declare under criminal penalty of the State of Utah that the foregoing is true and correct to the best of my belief and knowledge, that alternatives to detention have been considered, and that the reason the minor was not released is free from bias."

### Rationale:

It is likely unconstitutional for an individual, including a minor, to be detained without a sworn probable cause statement. (See attached memorandum). Nevertheless, current procedure in Utah juvenile courts does not require a sworn statement. By adding the language in paragraph (b), the probable cause statement becomes a sworn declaration pursuant to Utah Code section 78B-18a-104 (this is the same or similar language that is contained on delinquency petitions generated through CARE).

The addition of the language "...that alternatives to detention have been considered..." relates to the requirement in Utah Code section 80-6-203(3)(c)(iii) that the form state the reason the minor was not released by the peace officer since it encourages reflection about alternatives to detention.

The addition of the language "...and that the reason the minor was not released is free from bias" addresses both Utah Code section 80-6-203(3)(c)(iii) and the problem of disproportionality in the detention rates of youth of color in Utah. Data show that youth of color are detained at a higher rate than white youth. In 2019, youth of color constituted 50.9% of the population in detention in Utah despite only representing 25.8% of the school-aged youth population. *Striving for Equity in Utah's Juvenile Justice System*, p. 26. In other words, youth of color are detained at a rate of approximately twice their proportion of the population. Often, juvenile court professionals lament disproportionality but argue they can only address the cases brought to them. Without conceding that point, and while it certainly will not eliminate the problem of disproportionality in detention rates, the proposed language is a very small step in the right direction to ensure that reasons for detaining youth are free from bias.

This petition received the unanimous endorsement of the Utah Board of Juvenile Court Judges at its meeting on April 8, 2022.

Thank you for your consideration,

Steven Beck (jbeck@utcourts.gov)

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# TAB 6

1 Rule 4. Process.

2 (a) Signing of summons. The summons must be signed and issued by the plaintiff or the  
3 plaintiff's attorney. Separate summonses may be signed and issued.

4 (b) Time of service. Unless the summons and complaint are accepted, a copy of the  
5 summons and complaint in an action commenced under Rule [3\(a\)\(1\)](#) must be served no  
6 later than 120 days after the complaint is filed, unless the court orders a different period  
7 under Rule 6. If the summons and complaint are not timely served, the action against the  
8 unserved defendant may be dismissed without prejudice on motion of any party or on  
9 the court's own initiative.

10 (c) Contents of summons.

11 (1) The summons must:

12 (A) contain the name and address of the court, the names of the parties to  
13 the action, and the county in which it is brought;

14 (B) be directed to the defendant;

15 (C) state the name, address and telephone number of the plaintiff's attorney,  
16 if any, and otherwise the plaintiff's address and telephone number;

17 (D) state the time within which the defendant is required to answer the  
18 complaint in writing;

19 (E) notify the defendant that in case of failure to answer in writing,  
20 judgment by default will be entered against the defendant;

21 (F) state either that the complaint is on file with the court or that the  
22 complaint will be filed with the court within 10 days after service; and

23 (G) include the bilingual notice set forth in the form summons approved by  
24 the Utah Judicial Council.

25 (2) If the action is commenced under Rule [3\(a\)\(2\)](#), the summons must also:

(A) state that the defendant need not answer if the complaint is not filed within 10 days after service; and

(B) state the telephone number of the clerk of the court where the defendant may call at least 14 days after service to determine if the complaint has been filed.

(3) If service is by publication, the summons must also briefly state the subject matter and the sum of money or other relief demanded, and that the complaint is on file with the court.

(d) Methods of service. The summons and complaint may be served in any state or judicial district of the United States. Unless service is accepted, service of the summons and complaint must be by one of the following methods:

(1) Personal service. The summons and complaint may be served by any person 18 years of age or older at the time of service and not a party to the action or a party's attorney. If the person to be served refuses to accept a copy of the summons and complaint, service is sufficient if the person serving them states the name of the process and offers to deliver them. Personal service must be made as follows:

(A) Upon any individual other than one covered by paragraphs (d)(1)(B), (d)(1)(C) or (d)(1)(D), by delivering a copy of the summons and complaint to the individual personally, or by leaving them at the individual's dwelling house or usual place of abode with a person of suitable age and discretion who resides there, or by delivering them to an agent authorized by appointment or by law to receive process;

(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to a parent or guardian of the minor or, if none can be found within the state, then to any person having the care and control of the minor, or with whom the minor resides, or by whom the minor is employed;

(C) Upon an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, by delivering a copy of the summons and complaint to the individual and to the guardian or conservator of the individual if one has been appointed; the individual's legal representative if one has been appointed, and, in the absence of a guardian, conservator, or legal representative, to the person, if any, who has care, custody, or control of the individual;

(D) Upon an individual incarcerated or committed at a facility operated by the state or any of its political subdivisions, by delivering a copy of the summons and complaint to the person who has the care, custody, or control of the individual, or to that person's designee or to the guardian or conservator of the individual if one has been appointed. The person to whom the summons and complaint are delivered must promptly deliver them to the individual;

(E) Upon a corporation not otherwise provided for in this rule, a limited liability company, a partnership, or an unincorporated association subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or other agent authorized by appointment or law to receive process and by also mailing a copy of the summons and complaint to the defendant, if the agent is one authorized by statute to receive process and the statute so requires. If no officer or agent can be found within the state, and the defendant has, or advertises or holds itself out as having, a place of business within the state or elsewhere, or does business within this state or elsewhere, then upon the person in charge of the place of business;

(F) Upon an incorporated city or town, by delivering a copy of the summons and complaint as required by statute, or in the absence of a controlling statute, to the recorder;

81 (G) Upon a county, by delivering a copy of the summons and complaint as  
82 required by statute, or in the absence of a controlling statute, to the county  
83 clerk;

84 (H) Upon a school district or board of education, by delivering a copy of the  
85 summons and complaint as required by statute, or in the absence of a  
86 controlling statute, to the superintendent or administrator of the board;

87 (I) Upon an irrigation or drainage district, by delivering a copy of the  
88 summons and complaint as required by statute, or in the absence of a  
89 controlling statute, to the president or secretary of its board;

90 (J) Upon the state of Utah or its department or agency by delivering a copy  
91 of the summons and complaint to the attorney general and any other person  
92 or agency required by statute to be served; and

93 (K) Upon a public board, commission or body by delivering a copy of the  
94 summons and complaint as required by statute, or in the absence of a  
95 controlling statute, to any member of its governing board, or to its executive  
96 employee or secretary.

97 (2) Service by mail or commercial courier service.

98 (A) The summons and complaint may be served upon an individual other  
99 than one covered by paragraphs (d)(1)(B) or (d)(1)(C) by mail or commercial  
100 courier service in any state or judicial district of the United States provided  
101 the defendant signs a document indicating receipt.

102 (B) The summons and complaint may be served upon an entity covered by  
103 paragraphs (d)(1)(E) through (d)(1)(I) by mail or commercial courier service  
104 in any state or judicial district of the United States provided defendant's  
105 agent authorized by appointment or by law to receive service of process  
106 signs a document indicating receipt.

(C) Service by mail or commercial courier service shall be complete on the date the receipt is signed as provided by this rule.

(3) Acceptance of service.

(A) Duty to avoid expenses. All parties have a duty to avoid unnecessary expenses of serving the summons and complaint.

(B) Acceptance of service by party. Unless the person to be served is a minor under 14 years old or an individual judicially declared to be incapacitated, of unsound mind, or incapable of conducting the individual's own affairs, a party may accept service of a summons and complaint by signing a document that acknowledges receipt of the summons and complaint.

(i) Content of proof of electronic acceptance. If acceptance is obtained electronically, the proof of acceptance must demonstrate on its face that the electronic signature is attributable to the party accepting service and was voluntarily executed by the party. The proof of acceptance must demonstrate that the party received readable copies of the summons and complaint prior to signing the acceptance of service.

(ii) Duty to avoid deception. A request to accept service must not be deceptive, including stating or implying that the request to accept service originates with a public servant, peace officer, court, or official government agency. A violation of this paragraph may nullify the acceptance of service and could subject the person to criminal penalties under applicable Utah law.

(C) Acceptance of service by attorney for party. An attorney may accept service of a summons and complaint on behalf of the attorney's client by signing a document that acknowledges receipt of the summons and complaint.

(D) Effect of acceptance, proof of acceptance. A person who accepts service of the summons and complaint retains all defenses and objections, except for adequacy of service. Service is effective on the date of the acceptance. Filing the acceptance of service with the court constitutes proof of service under Rule 4(e).

(4) Service in a foreign country. Service in a foreign country must be made as follows:

(A) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents;

(B) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(i) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction;

(ii) as directed by the foreign authority in response to a letter of request issued by the court; or

(iii) unless prohibited by the law of the foreign country, by delivering a copy of the summons and complaint to the individual personally or by any form of mail requiring a signed receipt, addressed and dispatched by the clerk of the court to the party to be served; or

(C) by other means not prohibited by international agreement as may be directed by the court.

(5) Other service.

(A) If the identity or whereabouts of the person to be served are unknown and cannot be ascertained through reasonable diligence, if service upon all of the individual parties is impracticable under the circumstances, or if there is good cause to believe that the person to be served is avoiding service, the party seeking service may file a motion to allow service by some other means. An affidavit or declaration supporting the motion must set forth the efforts made to identify, locate, and serve the party, or the circumstances that make it impracticable to serve all of the individual parties.

(B) If the motion is granted, the court will order service of the complaint and summons by means reasonably calculated, under all the circumstances, to apprise the named parties of the action. The court's order must specify the content of the process to be served and the event upon which service is complete. Unless service is by publication, a copy of the court's order must be served with the process specified by the court.

(C) If the summons is required to be published, the court, upon the request of the party applying for service by other means, must designate a newspaper of general circulation in the county in which publication is required.

(e) Proof of service.

(1) The person effecting service must file proof of service stating the date, place, and manner of service, including a copy of the summons. If service is made by a person other than by an attorney, sheriff, constable, United States Marshal, or by the sheriff's, constable's or marshal's deputy, the proof of service must be by affidavit or unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.



(2) Proof of service in a foreign country must be made as prescribed in these rules for service within this state, or by the law of the foreign country, or by order of the court.

(3) When service is made pursuant to paragraph(d)(4)(C), proof of service must include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court.

(4) Failure to file proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

1   **Rule 18. Summons; service of process; notice.**

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

4       (1) Summons may be issued by the petitioning attorney. If the petitioning attorney  
5       does not issue a summons, summons shall be issued by the clerk in accordance  
6       with Utah Code section 78A-6-351. The summons shall conform to the format  
7       prescribed by these rules.

8       (2) Content of the summons.

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

16          (B) Other cases. The summons shall contain the name and address of the  
17          court, the title of the proceeding, the type of hearing scheduled, and the  
18          date, place and time of the hearing. It shall also contain an abbreviated  
19          reference to the substance of the petition. In proceedings against an adult  
20          pursuant to Utah Code section 78A-6-450, the summons shall conform to  
21          the Utah Rules of Criminal Procedure and be issued by the prosecuting  
22          attorney.

23       (3) The summons shall be directed to the person or persons who have physical  
24       care, control or custody of the minor and require them to appear and bring the  
25       minor before the court. If the person so summoned is not the parent, guardian, or  
26       custodian of the minor, a summons shall also be issued to the parent, guardian, or  
27       custodian. If the minor or person who is the subject of the petition has been

emancipated by marriage or is 18 years of age or older at the time the petition is filed, the summons may require the appearance of the minor only, unless otherwise ordered by the court. In neglect, abuse and dependency cases, unless otherwise directed by the court, the summons shall not require the appearance of the subject minor.

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

**(b) Service.**

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

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

(3) Service may be made by any form of mail requiring a signed receipt by the addressee. Service is complete upon return to court of the signed receipt. Service of process may be made by depositing a copy thereof in the United States mail addressed to the last known address of the person to be served. Any person who appears in court in response to mailed service shall be considered to have been legally served.

(4) In any proceeding wherein the parent, guardian, or custodian cannot after the exercise of reasonable diligence be located for personal service, the court may proceed to adjudicate the matter subject to the right of the parent, guardian or custodian to a rehearing, except that in certification proceedings brought pursuant to Title 80, Chapter 6, Part 5, Transfer to District Court and in proceedings seeking permanent termination of parental rights, the court shall order service upon the parent, guardian, or custodian by publication. Any rehearing shall be requested by written motion.

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

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

(d) **Notice.**

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

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

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

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

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

*Effective September 1, 2021.*