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

Meeting Agenda

Matthew Johnson, Chair

Location: Webex Meeting

Date: September 1, 2023

Time: 12:00 pm – 2:00 pm

Action: Welcome and approval of August 4, 2023, meeting minutes.	Tab 1	Matthew Johnson
Discussion: Juvenile Court Bilingual Notice • *The Forms Committee has drafted and is ready to approve a Bilingual Notice to include in the Summons regarding child welfare petitions. Feedback, if any, is sought before the Forms Committee votes to approve the notice.* • *The amendments to Rule 18 that would require a Bilingual Notice may be effective as soon as November 1, 2023.*	Tab 2	Mikelle Ostler All
Discussion: Notice of Right to Appeal. • *The Advisory Committee on the Rules of Appellate Procedure is amending Rule 52 Child Welfare Appeals after receiving the direction to do so from the Supreme Court in A.S. v. State, 2023 UT 11.* • *The Advisory Committee on the Rules of Appellate Procedure and the Guardian ad Litem in A.S. v. State also recommend that this Committee consider amendments to Rule 46 of the Rules of Juvenile Procedure.* • *Lastly, the Advisory Committee on the Rules of Appellate Procedure meets on September 7, 2023, at noon, and they are inviting attorneys with experience in child welfare appeals to join and take part in their committee's discussion.*	Tab 3	All

Discussion & Action: Rule 22. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503. • *Comment period closed on July 29, 2023.* ○ *No comments received*	Tab 4	All
Discussion & Action: Rule 31. Initiation of truancy proceedings. • *The Board of Juvenile Court Judges has decided that the juvenile court will not be accepting referrals from schools for truancy. A review of Utah Code sections 78A-6-103, 78A-6-103.5, and 53G-8-211 does not give the juvenile court jurisdiction over truancy referrals.*	Tab 5	All

Discussion & Action: Rule 17. The petition.
• *At a recent Supreme Court Conference, the Court suggested a few minor changes.*
  ○ *Changing "section" to "sections" in line 10.*
  ○ *Adding "and" or "or" in line 11.*
  ○ *Questioned if County Attorney and District Attorney should be capitalized.*
  ○ *Changing "Clerk of Court" to "court clerk" in line 45.*
	Tab 6	All

Discussion & Action: Rule 56. Expungement. • *References to statute in Rule 56 need to be updated as a result of H.B. 60, which passed during the 2023 legislative session.* • *Two new expungement categories were also added as a result of H.B. 60.* • *Added the court's responsibility to send the expungement orders to affected agencies.*	Tab 7	All

Discussion: Rule 52. Appeals.
• *At a recent Supreme Court Conference, the Court suggested a few minor changes.*
  ○ *Adding language to refer the reader to subsection (b).*
  ○ *Adding "or" twice in line 7.*
  ○ *Adding "after" in line 8.*
  ○ *Removing the comma in line 21.*
	Tab 8	All

Discussion: Old business or new business		All

URJP Committee Site

Meeting Schedule:

October 6, 2023 November 3, 2023 December 1, 2023

TAB 1

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

Draft Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: August 4, 2023

Time: 12:00 p.m. – 2:00 p.m.

Attendees:	**Excused Members**:
Matthew Johnson, Chair William Russell Sophia Moore Arek Butler James Smith Elizabeth Ferrin Adrianna Davis Dawn Hautamaki Judge Debra Jensen Thomas Luchs Judge Paul Dame Michelle Jeffs David Fureigh, Emeritus Member Carol Verdoia, Emeritus Member	Janette White Jordan Putnam **Guests:** Judge Monica Diaz Blake Murdoch Mollie McDonald Jacqueline Carlton Daniel Meza-Rincon
Staff: Raymundo Gallardo Kiley Tilby, Recording Secretary	

1. **Welcome and approval of the June 2, 2023 Meeting Minutes:** (Matthew Johnson)

   Mr. Johnson welcomed everyone to the meeting and introduced the newest members of the committee, Adrianna Davis, Dawn Hautamaki and Elizabeth Ferrin. Mr. Gallardo introduced the guests, Mollie McDonald, Blake Murdoch and Judge Monica Diaz. Mr. Johnson then asked the committee for approval of the June 2, 2023, meeting minutes. Mr. Russell proposed a grammatical change, and the change was made. With the amendment, Mr. Russell moved to approve the minutes. Ms. Moore seconded the motion, and it passed unanimously.

2. **Discussion – JJYS Juvenile Referral and Request for Detention Form:** (Mollie McDonald; Blake Murdoch)

   Mr. Johnson indicated this committee has been working with JJYS regarding a form when a minor is admitted into detention. Ms. McDonald indicated that the proposed form is substantially similar to the form that this committee has already come up with. Ms. McDonald indicated JJYS is on board with the requirement that the officer sign the form which was Judge Beck's concern, and the rest of the changes were related to formatting. Ms. McDonald does not believe JJYS has any problem using the form, but her remaining concern is making sure the form is accessible and appropriately distributed to law enforcement since they are the ones who will be using it.

   Mr. Murdoch stated they have not fully explored all the options, but one they have discussed is making a link that law enforcement would have access to so they can fill out the form. The form would then go to the detention center they select, and the detention center would have the ability to fill out their part and send it to the parties who would need the form from that point. This would allow the process to be more streamlined and user friendly for law enforcement and the detention centers. Mr. Murdoch indicated the biggest lift would be the implementation piece and letting all the law enforcement agencies throughout the state, probation teams, and JJYS teams know about this process. Mr. Murdoch anticipates that will take some time to get it all together, but he is confident they can make this something that is user friendly and something the officers would feel comfortable doing.

   Ms. McDonald stated another concern that was raised by Judge Beck was the lack of consistency of the forms used, so part of the idea with the distribution was to make everyone use the same form. Ms. McDonald also pointed out that the only substantive thing added to the proposed form was the requirement on the form that if JJYS knows the child needs an interpreter at the detention hearing, that they include that information.

   Mr. Russell stated that Ms. McDonald was correct that Judge Beck had a couple of concerns. One of those was that every law enforcement agency did the detention forms differently with levels of detail, descriptions, etc., and Judge Beck made a request for some sort of uniformity. Mr. Russell believes this goes a long way for that. Judge Beck also had a major concern that the document was not made under penalty

or perjury, or under oath. Mr. Russell is not sure there is a clear spot for a signature on the proposed form. Mr. Russell would feel more comfortable if there was a signature there because that is the form of attestation that has been used since the middle ages. Mr. Russell would request JJYS consider that suggestion, and then also include a spot where they spell their name out. Ms. McDonald indicates JJYS would have no problem with adding a signature line.

Ms. Davis stated she did a presentation earlier in the week that was attended by a lot of law enforcement, and she is thrilled to see these changes. Ms. Davis indicated this new form addresses a lot of the things law enforcement was concerned about and thinks having a link online would be wonderful. Ms. Davis is grateful this is the direction the committee is going and believes it will be very useful for law enforcement.

Judge Dame agrees a signature line needs to be added. Judge Dame stated that as far as the language that is used in the declaration portion, he would request that it be more consistent with the form declaration set out in Utah Code 78B-18a-106. Judge Dame expressed appreciation for the work that has gone into this. Judge Dame has some additional suggestions. Judge Dame believes it is helpful to have the statute for the offense. On the offense table, Judge Dame would propose to have a section to prompt the law enforcement officer to include the statute. Judge Dame recognizes law enforcement may not always do it, but he thinks it is helpful. Mr. Russell indicated law enforcement already cites the statute a lot of the time anyway, and Ms. Davis agreed.

Judge Dame proposes that further down on the form, when it references last name, first name and middle name, he would propose it is made clear that that section is referring to the youth or minor. Judge Dame noted that the statute uses the term minor, but the Utah Administrative Rules uses the term youth, so he thinks its okay to use them both. Judge Dame proposed under "Father/Guardian: Father" and "Mother/Guardian: Mother" that it be changed to just state, "Father/Guardian" and "Mother/Guardian." Further down on the form, where it states, "Juvenile living with (If different)," Judge Dame would suggest clarifying what they are asking for. Additionally, under notification, Judge Dame noted there are two different types of notifications and would suggest it be clarified which notification they are talking about.

Judge Dame further noted that he does not know where the requirement came from regarding whether the juvenile offered two telephone calls. Judge Dame would suggest that if JJYS was concerned about whether the juvenile rights were complied with, that the statue be cited. Ms. McDonald stated she also shares a concern about that requirement because this is supposed to be part of the booking process. Ms. McDonald indicated that it may be that the juvenile was ultimately offered two phone calls, but they also want to allow law enforcement to leave as soon as they have completed that part of the form. Ms. McDonald assumes that Mr. Russell is going to want it to be in there, but she wants to be able to say that law enforcement can leave before the box is checked that two phone calls have been offered. Judge Dame agrees and does not believe that is the responsibility of the officer and does not

feel like that needs to be in there. However, if it is included, Judge Dame would like it to be consistent with the statute.

Judge Dame stated that where the administrative code is cited, he believes the proper citation is Utah Admin. Code r. R547-13 and would suggest that be changed. Judge Dame also indicated he liked that they used the exact language from the statute at the very beginning, and then broke it out further in the individual boxes. Judge Dame would propose putting the boxes in the same order as outlined in the statute. Ms. McDonald stated she had suggested rearranging the order. However, what she was thinking is that law enforcement needs to say why the minor is being booked and provide that information, sign the form, and then JJYS has the responsibility to apply the detention guidelines and decide if the minor can safely be released. Ms. McDonald stated the reason she reordered the statute was to try and state to law enforcement what is their responsibility versus the responsibility of JJYS. However, Ms. McDonald is not sure that she completely understands what JJYS authority is to release under the detention guidelines. Judge Dame believes that is law enforcement's responsibility to do that before they leave, so he would prefer it be kept in the same order as the statute.

Ms. McDonald requested input from the committee regarding the comment that Judge Dame made regarding the two telephone calls and whether it should remain on the form. She also requested input from the committee if they should keep the actual citations to the statute or if it was confusing. Mr. Russell stated he likes the reference to the statute and would vote to keep it. Mr. Russell stated that as a defense attorney, he would like the minor to be offered two phone calls, but he agrees with Judge Dame that it does not necessarily belong on the form. Mr. Johnson stated he does not think law enforcement would even be able to answer that question since it is the booking sheet and does not know if that would be needed as that is more on JJYS and the detention facility to provide those phone calls.

Mr. Gallardo proposed that it could be kept in the form, but in a separate section for JJYS use only. Ms. McDonald stated that since the intention of this form is to meet the requirements for booking, perhaps there should be a separate policy or rule. Ms. McDonald inquired if the committee believes those rights should be outlined in the same form, but that it be made obvious it is a section for JJYS to fill out, or if it should be a separate requirement from the booking sheet. Judge Dame believes it should be separate and is concerned that if they have a sheet with too many boxes to check off, that is all they will look at and will not be as concerned about the statute. Judge Dame stated there are different rights of the minor that JJYS should be complying with that aren't included in the form. Judge Dame does not know where the two phone calls came from, but that the rights of the minor are not limited to two phone calls. Judge Dame does not want to conflate the JJYS responsibilities and what they are trying to accomplish by having a consistent booking sheet.

Mr. Murdoch stated they had discussed having just the officer information in that form, and then a cover sheet that would be filled out by JJYS completely and entirely separate from this form. Mr. Murdoch indicated JJYS would only get law enforcement's part of this form and the notification piece could be part of cover sheet

that would then be sent to probation so they can still have that information. Mr. Murdoch stated that process would be entirely separate from the booking sheet. Judge Dame would prefer they be kept entirely separate, and that he will remain silent on whether JJYS needs their own form as he believes that is more of an administrative thing that JJYS can decide on their own. Mr. Russell agrees with Judge Dame's suggestions and concerns. Ms. McDonald and Mr. Murdoch will make the suggested changes as outlined and will distribute the revised form to the committee members via e-mail so it can be discussed at the next committee meeting.

3. **Discussion – Rule 9. Detention hearings; scheduling; hearing procedure:** (All)

Mr. Johnson stated Judge Diaz is present and has some comments or suggestions in making a change to Rule 9. Judge Diaz stated that right now, for a youth pre-adjudication in detention, a review of the case is required every seven days. Judge Diaz indicated she has at least ten minors who are either under concurrent jurisdiction of the district and juvenile court or have a criminal information pending in juvenile court that are not going to be released from detention anytime soon. Judge Diaz stated it seems for the small population of youth, a seven-day detention review is overkill and burdensome on probation staff and judicial assistants because every seven days, probation is required to prepare a report and judicial assistants have to enter orders. Judge Diaz's request is that they be reviewed every 14 or 30 days, but if something comes up, they can request an earlier review.

Ms. Jeffs agrees that is a good suggestion. Judge Jensen stated in Second District, they do the reviews via Webex and agrees it is very burdensome when they are going on for months. Judge Jensen agrees with Judge Diaz that this request is needed. Mr. Russell stated he has a youth that has been in detention for a year under an Information filing, so he sees what Judge Diaz is talking about. Mr. Russell agrees that seven days is burdensome and believes a review is only necessary every 30 or 45 days because defense counsel can file a motion for an earlier review. Mr. Butler believes 30 days is appropriate. Ms. Moore asks if anyone on the committee remembers how they came up with seven days. Ms. Jeffs is concerned that 30 days will be set on odd dates for the court. Mr. Johnson proposed the language state that it be reviewed within 30 days to allow the Court discretion on what date they review it. Judge Diaz does not believe it will be a problem because she can always choose to hear it sooner than 30 days. Mr. Russell does not have any suggestions for change as proposed by Judge Diaz. Judge Dame has some soft suggestions as to comma placement. Mr. Russell agrees. Judge Dame otherwise believes the language is clear and he likes the suggestion made. Mr. Russell motions the committee to adopt the recommendation as proposed by Judge Diaz and as amended by the committee. Judge Jensen seconded the motion, and it passed unanimously. Mr. Johnson will place this on the schedule with the Supreme Court for the next meeting.

4. **Discussion & Action – Rule 37A. Visual recording of statement or testimony of child in abuse, neglect, and delinquency proceedings – Condition of admissibility:** (All)

   Mr. Johnson reminded the committee that at the last meeting, they had discussed Rule 37A because there was an issue with substantiation proceedings not being included. Mr. Johnson stated this was sent out for a comment period and there were no comments received. Mr. Gallardo stated what they are seeking to do now is to take this back to the Supreme Court for final publication, probably in November. Mr. Johnson requested the committee make a motion to take this to the Supreme Court for publication. Mr. Luchs made the motion, Ms. Jeffs seconded the motion, and it passed unanimously.

5. **Discussion & Action – Rule 10. Bail for non-resident minors:** (Judge Dame; Arek Butler)

   Mr. Johnson stated Judge Dame and Mr. Butler were working on and discussing the issues with regards to bail for non-resident minors. Mr. Johnson indicated the reference to the statute needed to be updated. Mr. Butler stated that is the only change that needs to be made. Mr. Butler stated in his view, after reviewing it, that 77-20b-101 et seq is no longer applicable. However, Mr. Butler thinks the 77-20-1 et seq is fine, but he does not have a strong feeling about it either way. Mr. Butler believes the best thing to do is that after 77-20-1 et seq is just to leave it and strike the rest of the sentence and not change it to Chapter 20, Parts 4 and 5. The reason Mr. Butler believes that is how it should be worded is because there are definitions in Part 1 that are relevant to Parts 4 and 5, but he does not have a strong objection if the committee wants to leave it how it has been proposed. Judge Dame agreed it should be kept in. Mr. Russell proposed to leave it at Title 77, Chapter 20. Mr. Butler and Judge Dame agreed as he would rather be over inclusive than under inclusive. The change was made during the committee meeting.

   Mr. Johnson requested a motion for the committee to send to the Supreme Court for a comment period and publication. Mr. Butler made the motion, Judge Dame seconded the motion, and it passed unanimously.

6. **Discussion & Action – Rule 17. The petition:** (All)

   Mr. Johnston stated changes needed to be made to Rule 17 to update the references to statutes as a result of H.B. 60, which passed this year. Mr. Russell stated he does not have any comments, and it looks good. There was no further discussion. Mr. Johnson requested a motion to send the proposed changes to Rule 17 out for comment. Ms. Moore made the motion, Mr. Russell seconded the motion, and it passed unanimously.

7. **Discussion & Action – Rule 56. Expungement:** (All; Joseph Rivera De La Vega; Raymundo Gallardo)

Mr. Johnson stated Joseph Rivera De La Vega and Mr. Gallardo worked on this rule. Mr. Gallardo indicated he had a few questions for the committee. Mr. Gallardo stated in section (b), subsection (1), there was an addition made regarding waiver of the hearing. Mr. Gallardo stated H.B. 60, Line 626, mentions that the expungement hearing can be waived, and Mr. Gallardo is interested to know if that addition makes sense for the committee to add. Ms. Moore believes it should be included and there should be an option to have the hearing waived.

Ms. Verdoia stated there are some exceptions in Section 1006.1, line 774-779 dealing with the Division of Child and Family Services. Ms. Verdoia stated occasionally the Division might be notified and want an opportunity to be heard. Ms. Verdoia stated that could happen before the judge decides not to hold a hearing, but the case law requires that the Division be notified and have an opportunity to be heard. Ms. Verdoia asked how that would work. Judge Jensen stated that right now what she has seen is that when they see a Petition for Expungement filed, the court sends a notice to the Division, and they receive a written statement back from the Division. Judge Jensen indicated the Division generally does not attend the hearing. Judge Jensen inquired if that is the process throughout the state, or if that is how the Second District processes those. Ms. Verdoia stated that could be the process throughout the state, likely because there aren't enough attorneys to appear if they do have an objection. Ms. Verdoia indicated that may be the process they would prefer to employ, and she can check on that. Ms. Verdoia stated that if this committee thinks the hearing would be waived after sending notice and waiting for that response from the Division, it can be left the way it is proposed. Judge Dame and Judge Jensen indicated the practice would be to send notice and wait for a response in writing before ruling on it.

Mr. Fureigh clarified that in the First and Second District, he has advised the Division that once they receive notice of the expungement request, they need to file something with the Court in writing and they don't need to appear at the hearing. Mr. Fureigh stated that if the Division wants to object, they should contact him so they can make sure there is an attorney there to appear at the hearing and place the objection on the record. Mr. Russell's only concern would be if there was no response, he does not know how long they would need to wait to get an affirmative position from the Division. Mr. Fureigh stated that is something that would have to change because if the Division does object, they just wait for the hearing and they appear at the hearing with counsel. Judge Dame inquired what the process would be if the Division sits on it and doesn't do anything. Mr. Fureigh stated at that point, the Court could make the findings without input from the Division by default and they will have to live with that decision. Mr. Luchs stated when he was practicing in First District, he would get an e-mail from the court clerk asking for the Division's input. Ms. Verdoia indicated the language that is new in this statute is that they have to stipulate in writing after notice and an opportunity to be heard. Ms. Verdoia expressed that with an agency

this big, it's possible that a notice goes to someone who is out on leave or no backup plan. Ms. Verdoia hopes they have gotten those processes in better shape, but it does require a stipulation in writing.

Judge Dame indicated his preference would be that the Division stipulate, rather than simply stating there is no objection. Judge Dame stated he does not recall any issues with the Division responding. Mr. Luchs suggested that if someone wants to petition for expungement or to seal a record, then they have to serve the AG's office and the AG's office will determine which courtroom the child is in, and they will file a response. Ms. Verdoia stated she has not heard of any problems with their process such that she does not know if they need to worry about this. Ms. Verdoia stated they tried to avoid making this too complicated for the court, which is why this was put into place. Ms. Verdoia understands that notice is sent to one person at the state administrative office so that one person then reaches out to whichever region has the case. Ms. Verdoia does not think that is a big burden on the Division at all. If that is the current process, Ms. Verdoia thinks it is fine, but she wanted to be sure what the Court process is with timing of the waiver of the hearing versus the notice and response back. Ms. Moore shares Ms. Verdoia's concern that if there is not an attorney gathering responses from the appropriate agencies, there could be a lack of compliance with the statute.

Judge Jensen inquired if it would be helpful on the court side to put a date or deadline that the Division must respond by whether they are objecting or not objecting. Judge Jensen stated that they could put in the notice that if no objection is received by that deadline, the hearing may be waived. Ms. Verdoia stated the court could do that, but the stipulation in writing is the piece that is difficult. Mr. Meza-Rincon put in the chat that there is an e-mail address where all notices are sent to. Ms. Verdoia stated that if the court sees any failure to respond so they cannot legitimately rely upon that stipulation in writing, however the court interprets that to be, she can work with the Division on that process.

Ms. Hautamaki stated her district has done that a little differently in that if they were only delinquency charges, the court would not notify the Division or the AG. Ms. Hautamaki indicated they got new direction to start doing that as of October 1st, but their judges had the thought that if the Division did not file a petition, then they did not need to be notified. Judge Dame indicated that under Rule 56(b)(1), it is a requirement that the agency with custody of the records be sent notice. Mr. Fureigh agreed. Ms. Hautamaki indicated they have probably erred there, but the petitioner was the one who was notifying them previously, but now it will be the court. Ms. Verdoia stated that makes sense that if the petitioner for the expungement doesn't list DCFS as an agency that they want to receive an order, that's why the court would not be notifying them. Ms. Verdoia would anticipate the larger jurisdictions see DCFS listed more. Ms. Verdoia indicated that in the past, there used to be a form order that used to say any agency with custody of the records. The petitioner would then take the order to DCFS, and others and they objected to that not being good enough under the case law. Ms. Verdoia stated that as long as the court's internal process doesn't waive the hearing before DCFS is notified and has responded, Ms. Verdoia is comfortable with that.

Mr. Russell stated that as he understands, not getting the written stipulation from DCFS and filing that, is not a bar to the court granting the expungement as to all other agencies. Instead, the expungement or sealing of the records would not have an effect on DCFS and DCFS would not be bound by that order or required to seal anything. Mr. Russell believes that is why it is necessary for the written stipulation to be filed because the court does not have any authority over DCFS by statute unless they're joined and given an opportunity of notice and hearing. Judge Dame and Ms. Verdoia agreed. Mr. Johnson inquired if the court would view it differently if appropriate notice was sent but the Division still had not responded. Judge Dame stated he would not view it differently and would wait for a stipulation in writing. Mr. Russell agreed that in his practice, if he does not have a stipulation from DCFS, he does not get an order that binds them. Ms. Moore agreed, and indicated she has had to go get the stipulation from counsel in the past if she wanted their records expunged. Ms. Verdoia stated she thinks the process will work.

Ms. Moore inquired whether the committee wanted to add language that there needs to be a stipulation from the Division if they want those records expunged. Ms. Verdoia is concerned that the exceptions language in the statute is lengthy, and she does not know all the exceptions should be listed in the rule. Ms. Verdoia stated that it may be that it needs to be clear that all the sections apply to the juvenile rule. Mr. Johnson proposed adding that portion of the statute in subsection (2) and make a direct reference to those exceptions. Ms. Moore expressed concern that those who are not represented may not know that is not automatic that if DCFS does not respond, their records will not be sealed. Mr. Johnson stated if they add reference to the statute 80-6-1006.1, it will at least put them on notice to check the exceptions. The proposed change was made by the committee.

Mr. Gallardo stated he is seeking clarification regarding how H.B. 60 defines juvenile record as all record for all incidents of delinquency involving that individual. Mr. Gallardo pointed out (b)(1), line 9, where it talks about the victim of record on each adjudication and inquired if the language needed to be changed. Judge Dame requested clarification of the concern. Mr. Meza-Rincon stated the language Mr. Gallardo is referring to is the portion that says, "…identified by the petitioner as being subject to expungement." Mr. Meza-Rincon indicated that right now the petitioner has the burden of listing all the agencies that need to be notified and the incidents that are subject to expungement. However, that is changing, and expungements will now be all-encompassing and will cover the entire record. Mr. Meza-Rincon stated the question or conversation proposed to this committee is the sentence referring to each adjudication identified by the petitioner because that will no longer be the burden of the petitioner.

Mr. Russell indicated he believes he understands the concern. Mr. Russell stated they don't identify adjudications but rather seal entire records. When it states each adjudication identified by petitioner, that is never done because the whole case history summary of the youth gets expunged – adjudicated, non-judicial, or not – just so long as there is an adjudication on it under the new law. That language is therefore problematic to Mr. Russell because it is no longer done and is unsure if it ever was

done. Judge Dame inquired if that is modifying the victim and the victim's representative. Mr. Gallardo stated that was his question, whether that language refers simply back to the victim. Judge Dame stated he believes it is just a modifier of the victim or victim's representatives who are supposed to be notified. Mr. Russell stated if it is an adjudicated victim or victim representative, that makes more sense because there could be a reported or alleged victim if there is no filing, or they are found not true. Mr. Russell stated if there is an adjudicated victim that makes more sense, but if it is Judge Dame's explanation that adjudication identified by petitioner refers back to a victim or victim's rep, that kind of makes sense but it is not clear. Mr. Johnson pointed out the language and stated it does refer back to victim or victim's representative on an adjudicated matter. Mr. Russell is more comfortable with that language now that he understands it.

Mr. Gallardo then walked through the additional proposed changes to Rule 56 to make it more consistent with H.B. 60, and the committee discussed those proposed changes. Judge Dame suggested some grammatical changes and those changes were made. The committee expressed appreciation for the work done on this rule.

Mr. Gallardo indicated he had one final question. At the last meeting, the committee had indicated they were not going to include automatic expungements as part of the rule because it is an administrative process. Mr. Gallardo wanted to make a note that the Rules of Criminal Procedure mention automatic expungement, so he wanted to provide an opportunity for this committee to add automatic expungements to this rule as well. Judge Dame stated if it is referenced in the Rules of Criminal Procedure, he would like to include it to be consistent. Mr. Meza-Rincon stated that was his suggestion. If everyone agrees it should be added to Rule 56, Mr. Gallardo and Mr. Meza-Rincon can circle back and add language referencing automatic expungements.

Mr. Johnson stated he does not do much delinquency work as a Guardian ad Litem, but as he looks at the language, it appears the automatic expungement language applies mostly to adult-type expungements. Mr. Johnson inquired if that would even apply to juvenile records. Mr. Meza-Rincon stated it is his understanding there is a new process for automatic expungements for juvenile records. Mr. Russell indicated he at first thought it is not something petitioners do, so there was no reason to include it, but after seeing the adult criminal rule, he thinks there should be something in there to guide the court process. Mr. Russell stated his only reservation is whether this committee needs to tell the court what the law is, since these expungements are *sua sponte*.

Judge Dame indicates he understands what Mr. Russell is saying, but one benefit may be that if one is looking to expunge something that would automatically be expunged, it gives them some guidance they do not have to do a petition because the rule references that it will be done automatically. Judge Dame would propose there be a short reference to the automatic expungement statute. Mr. Williams agreed a short reference to the statute would be best. Judge Jensen found it interesting that the Utah Rules of Criminal Procedure includes that the AOC will look at it once a month. Judge Jensen inquired if there needs to be guidelines for the court on how often the AOC needs to look at it. Judge Dame believes there should be, but they may need to come

back to this issue after getting feedback from the AOC. The committee then discussed what direction the courts have received in regard to this process and additional positions that may be required to assist in implementing that part of the bill.

The committee will place this on the agenda for the next committee meeting for further discussion to get input from the Board of Juvenile Judges and the AOC.

8. **Discussion – Rule 52. Appeals:** (All)

Mr. Johnson stated there was language added to include restoration of parental rights with regard to the appeals process in Rule 52. Mr. Gallardo indicated this language mirrors 78A-6-359 where it includes restoration of parental rights. Mr. Gallardo stated at the end of the last meeting, the committee lost their quorum, so it was not able to be voted on. Mr. Johnson asked the committee for a motion to send this proposed rule out for comment period and up to the Supreme Court. Mr. Russell made the motion, Mr. Luchs seconded the motion, and it passed unanimously.

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

Mr. Johnson asked for input from the committee of any old or new business. Mr. Gallardo stated he had a list of new business that was alerted to him by the appellate rules committee that he will send in an e-mail to the committee members and add to the agenda for next month. Mr. Gallardo stated the Supreme Court, in a recent decision, recommended the appellate rules committee amend one of their rules that may affect one of our rules. The appellate rules committee asked if anyone was willing to join one of their meetings. Mr. Gallardo also stated they are still working on the bilingual notice and there should be an update in September on those.

The meeting adjourned at 2:00 PM. The next meeting will be held on September 1, 2023 at 12:00 PM via Webex.

TAB 2

Bilingual Notice to Responding Party for In-State Summons for Abuse, Neglect, and/or Dependency Petition (for compliance with URJP 18)

A hearing has been scheduled about the children listed in the Verified Petition. The court will make a decision about your custody rights. You must attend the hearing. The date, time, and location of the hearing are on the summons. The hearing may be held in person or remotely. Read the Summons carefully.

Read the Verified Petition
The Verified Petition has been filed with the juvenile court. It explains what the government or other party is claiming and asking the Court to order. Read the Verified Petition carefully.

How do I tell the court my side of the story?

- Attend the hearing. Tell the court if you agree or disagree with the Verified Petition, OR
- Attend the hearing and file a written answer before the hearing.

If you do not attend the hearing:

1. The court could make temporary orders regarding custody without you having the chance to tell your side of the story.
2. You must file a written answer within 10 days after the hearing or 25 days after you were served the Verified Petition. Use whichever deadline comes first.

What happens if I ignore these papers?
Another party can ask for a default judgment if you do not attend the hearing or file an answer. This means the Court will decide the things in the Verified Petition are true. You will not get the chance to tell your side of the story. The Court might

(Spanish translation will go on this side)

make orders that affect your custody and visitation rights.

You can have a lawyer represent you
You can have a lawyer at this hearing and all other hearings in this case. If you cannot afford a lawyer, you can ask for one. The Court will ask you to fill out paperwork with details about your income. If you qualify, the Court will order a lawyer to represent you for free.

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Read the Verified Petition
The Verified Petition has been filed with the juvenile court. It explains what the government or other party is claiming and asking the Court to order. Read the Verified Petition carefully.

How do I tell the court my side of the story?

- Attend the hearing. Tell the court if you agree or disagree with the Verified Petition, OR
- Attend the hearing and file a written answer before the hearing.

If you do not attend the hearing:

1. The court could make temporary orders regarding custody without you having the chance to tell your side of the story.
2. You must file a written answer within 30 days after you were served the Verified Petition.

What happens if I ignore these papers?
Another party can ask for a default judgment if you do not attend the hearing or file an answer. This means the Court will decide the things in the Verified Petition are true. You will not get the chance to tell your side of the story. The Court might make orders that affect your custody and visitation rights.

(Spanish translation will go on this side)

You can have a lawyer represent you
You can have a lawyer at this hearing and all other hearings in this case. If you cannot afford a lawyer, you can ask for one. The Court will ask you to fill out paperwork with details about your income. If you qualify, the Court will order a lawyer to represent you for free.

Learn more
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Bilingual Notice to Responding Party for Out-of-State Summons for Abuse, Neglect, and/or Dependency Petition (for compliance with URJP 18)

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Read the Verified Petition
The Verified Petition has been filed with the juvenile court. It explains what the government or other party is claiming and asking the Court to order. Read the Verified Petition carefully.

How do I tell the court my side of the story?

- Attend the hearing. Tell the court if you agree or disagree with the Verified Petition, OR
- Attend the hearing and file a written answer before the hearing.

If you do not attend the hearing:

1. The court could make temporary orders regarding custody without you having the chance to tell your side of the story.
2. You must file a written answer within 10 days after the hearing or 25 days after you were served the Verified Petition. Use whichever deadline comes first.

What happens if I ignore these papers?
The Court will schedule a trial if you do not attend the hearing or file an answer. At the trial, the Court could decide the things in the Verified Petition are true. You will not get the chance to tell your side of the story. The Court might make orders that permanently terminate your parental rights.

(Spanish translation will go on this side)

You can have a lawyer represent you
You can have a lawyer at this hearing and all other hearings in this case. If you cannot afford a lawyer, you can ask for one. The Court will ask you to fill out paperwork with details about your income. If you qualify, the Court will order a lawyer to represent you for free.

Learn more
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Bilingual Notice to Responding Party for Out-of-State Summons for Petition for Termination of Parental Rights (for compliance with URJP 18)

A hearing has been scheduled about the children listed in the Verified Petition. The court will make a decision about your parental rights. You must attend the hearing. The date, time, and location of the hearing are on the summons. The hearing may be held in person or remotely. Read the Summons carefully.

Read the Verified Petition
The Verified Petition has been filed with the juvenile court. It explains what the government or other party is claiming and asking the Court to order. Read the Verified Petition carefully.

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2. You must file a written answer within 30 days after you were served the Verified Petition.

What happens if I ignore these papers?
The Court will schedule a trial if you do not attend the hearing or file an answer. At the trial, the Court could decide the things in the Verified Petition are true. You will not get the chance to tell your side of the story. The Court might make orders that permanently terminate your parental rights.

You can have a lawyer represent you

(Spanish translation will go on this side)

You can have a lawyer at this hearing and all other hearings in this case. If you cannot afford a lawyer, you can ask for one. The Court will ask you to fill out paperwork with details about your income. If you qualify, the Court will order a lawyer to represent you for free.

Learn more
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Rule 18. Summons; service of process; notice.

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

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

(2) Content of the summons.

(A) Abuse, neglect, and dependency cases. The summons ~~shall~~must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It ~~shall~~must state the time within which the respondent is required to answer the petition, and ~~shall~~must notify the respondent that in the case of the failure to do so, judgment by default may be rendered against the respondent. It ~~shall~~must ~~also~~ contain an abbreviated reference to the substance of the petition. It must include the bilingual notice set forth in the juvenile form summons approved by the Utah Judicial Council.

(B) Termination of parental rights cases. The summons must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It must state the time within which the respondent is required to answer the petition. It must contain an abbreviated reference to the substance of the petition. It must include the bilingual notice set forth in the juvenile form summons approved by the Utah Judicial Council.

(C) Other cases. The summons ~~shall~~must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It ~~shall~~must also contain an abbreviated

reference to the substance of the petition. In proceedings against an adult pursuant to Utah Code section 78A-6-450, the summons ~~shall~~must conform to the Utah Rules of Criminal Procedure and be issued by the prosecuting attorney.

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

(4) No summons ~~shall be~~is 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~~must be made by the methods provided in Rule 4 of Utah Rules of Civil Procedure. Service of process ~~shall~~must 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~~will reflect the service of the document and ~~shall~~will 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~~must also be made by delivering to the legal custodian a copy of the summons with a copy of the petition attached and notice ~~shall~~must 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~~must 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~~is 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~~will order service upon the parent, guardian, or custodian by publication. Any rehearing ~~shall~~must be requested by written motion.

(5) Service ~~shall~~must be completed at least 48 hours prior to the adjudicatory hearing. If the summons is for the permanent termination of parental rights, service ~~shall~~must be completed at least ten days before the adjudicatory hearing. If the summons is for a substantiation proceeding, service ~~shall~~must be completed at least ~~forty-five~~45 days before the adjudicatory hearing.

(c) **Service by publication**. Service by publication ~~shall~~must 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~~must be identified by their initials and respective birth dates, and not by their names. The parent, guardian, or custodian of each child ~~shall~~must 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~~is 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~~must 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~~will 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~~must 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.

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(2) Content of the summons.

(A) Abuse, neglect, and dependency cases. The summons must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It must state the time within which the respondent is required to answer the petition, and must notify the respondent that in the case of the failure to do so, judgment by default may be rendered against the respondent. It must contain an abbreviated reference to the substance of the petition. It must include the bilingual notice set forth in the juvenile form summons approved by the Utah Judicial Council.

(B) Termination of parental rights cases. The summons must contain the name and address of the court, the title of the proceeding, the type of hearing scheduled, and the date, place and time of the hearing. It must state the time within which the respondent is required to answer the petition. It must contain an abbreviated reference to the substance of the petition. It must include the bilingual notice set forth in the juvenile form summons approved by the Utah Judicial Council.

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(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 must also be made by delivering to the legal custodian a copy of the summons with a copy of the petition attached and notice must 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 must be made in the manner provided in the Utah Rules of Civil Procedure.

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(5) Service must be completed at least 48 hours prior to the adjudicatory hearing. If the summons is for the permanent termination of parental rights, service must be completed at least ten days before the adjudicatory hearing. If the summons is for a substantiation proceeding, service must be completed at least 45 days before the adjudicatory hearing.

(c) **Service by publication**. Service by publication must 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 must be identified by their initials and respective birth dates, and not by their names. The parent, guardian, or custodian of each child must be identified as such using their full names within the caption of any published document.

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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.

TAB 3

From: Nathalie Skibine
To: Appellate Rules Committee
Re: Memorandum on Utah Rule of Appellate Procedure 52(c)

Title change rule 52(c).

In *A.S. v. State*, 2023 UT 11, the Utah Supreme Court held that Utah Rule of Appellate Procedure 52(c) extended the time for any party to file a notice of appeal when a timely notice of appeal is filed by another party. The title of rule 52(c) is "Time for cross-appeal," but the opinion held that the appeal does not have to be a cross-appeal to get the benefit of the extension of time. The opinion noted that Utah Rule of Appellate Procedure 4(d) has nearly identical language to rule 52(c) but its title is clearer: Additional or cross-appeal.

The opinion included this footnote: "We encourage the Advisory Committee on the Utah Rules of Appellate Procedure to look at clarifying the title so it better reflects the rule's language and intent." *A.S. v. State*, 2023 UT 11, ¶ 36 n.13. The proposed change is to replace the title in rule 52(c) with the title from rule 4(d).

Adding a procedure to reinstate the period for filing an appeal in child welfare cases.

A.S. v. State also included this footnote:

> The guardian ad litem advocates that we task our rules committee with considering a new rule that would "reinstate the time for appeal in child welfare cases where a parent's right to effective counsel is implicated." We have previously recognized that a trial court may extend the time for appeal in a proceeding on termination of parental rights if a parent was denied effective assistance of counsel. *State ex rel. M.M.*, 2003 UT 54, ¶¶ 6, 9, 82 P.3d 1104. But this is not the same as a rule that says the court shall reinstate the time for appeal when a parent can show that they have been denied effective representation. We encourage the Advisory Committee on the Utah Rules of Appellate Procedure to explore such a rule, and we thank the guardian ad litem for the excellent suggestion.

A.S. v. State, 2023 UT 11, ¶ 43 n.15.

A memorandum from Martha Pierce is attached. My proposed changes attempt to mirror the rule for reinstating the right to appeal in criminal cases. The main difference is timing – I propose we agree on a bright line deadline from the date

of the challenged order after which even a parent who was deprived of the right to appeal cannot reinstate it.

Rule 52. Child welfare appeals.

(a) **Time for appeal**. A notice of appeal from an order in a child welfare proceeding, as defined in Rule 1(f), must be filed within 15 days of the entry of the order appealed from. If the juvenile court enters an order on a Saturday, Sunday, or legal holiday, the date of entry will be deemed to be the first day following the juvenile court's entry that is not a Saturday, Sunday, or legal holiday.

(b) **Time for appeal extended by certain motions.**

(1) If a party timely files in the trial court any of the following, the time for all parties to appeal from the judgment runs from the entry of the dispositive order:

(A) A motion for judgment under Rule 50(b) of the Utah Rules of Civil Procedure;

(B) A motion to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted, under Rule 52(b) of the Utah Rules of Civil Procedure;

(C) A motion to alter or amend the judgment under Rule 59 of the Utah Rules of Civil Procedure; or

(D) A motion for a new trial under Rule 59 of the Utah Rules of Civil Procedure.

(2) A notice of appeal filed after announcement or entry of judgment, but before entry of an order disposing of any motion listed in paragraph (b), will be treated as filed after entry of the order and on the day thereof, except that the notice of appeal is effective to appeal only from the underlying judgment. To appeal from a final order disposing of any motion listed in paragraph (b)(1), a party must file a notice of appeal or an amended notice of appeal within the prescribed time measured from the entry of the order.

(c) ~~Time for~~Additional or **cross-appeal**. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 5 days after the first notice of appeal was filed, or within the time otherwise prescribed by paragraphs (a) and (b) of this rule, whichever period last expires.

(d) Motion to reinstate period for filing a direct appeal in child welfare appeals.

(1) The juvenile court must reinstate the fifteen-day period for filing a direct appeal in a child welfare case if a parent with a right to effective assistance of counsel demonstrates by a preponderance of evidence that the parent was deprived of the right to appeal through no fault of the parent.

(2) The motion must be filed within XX of the entry of the order appealed from.

(3) If the parent is not represented by counsel and has the right to effective assistance of counsel, the juvenile court must appoint counsel.

(4) The motion must be served on the [attorney general and the guardian ad litem]. The attorney general, the guardian ad litem, or both may file a response to the motion within 28 days after being served.

(5) If the motion to reinstate the time to appeal is opposed, the juvenile court must set a hearing at which the parties may present evidence.

(6) If the juvenile court enters an order reinstating the time for filing a direct appeal, the parent's notice of appeal must be filed with the clerk of the juvenile court within 15 days after the date the order is entered.

(ed) **Appeals of interlocutory orders**. Appeals from interlocutory orders are governed by Rule 5.

Effective May 1, 2023

ATTORNEY ERROR AND EXTENSION OF APPEAL PERIOD

Notice of right to appeal, and duty of parental engagement. Currently both the statute and the rule require the juvenile court to advise parties of the right to appeal. Utah Code Ann. § 78A-6-359; Utah R. Juv. P. 46(c).

Unfortunately, both of these provisions require the notice to be provided at disposition, which rarely results in a final appealable order. The two orders that are *always* final and appealable are the adjudication order and the termination order. Disposition is usually a months-long process that rarely involves a final order. The general rule of thumb is that is a disposition results in an ending of juvenile court jurisdiction, the order is likely final. Therefore, I urge the committee to move the notification provision in the rule (and to ask the legislature to move the notification provision in the statute) from disposition to adjudication (or either an initial child welfare petition or a termination petition).

In addition, the statutory notice provision includes the parent's statutory duty to "maintain regular contact with the party's counsel and to keep the party's counsel informed of the party's whereabouts." Utah Code Ann. § 78A-6-359(3)(d). And, a parent is required to sign the notice of appeal to demonstrate some level of commitment to the appellate process. Utah R. App. P. 53(b). These requirements are part of an ongoing requirement in juvenile court proceedings for a parent to stay engaged with counsel and with the court throughout the proceedings. *See, e.g., Id.* 80-3-307. Indeed, juvenile court orders routinely include notices that failure to attend proceedings may result in diminishment of rights.

Manning. The task is to create a rule respecting a constitutional right to appeal, Utah Const. art. viii, § 5; a parent's statutory right to effective counsel, Utah Code Ann. § 80-3-104(2)(a); and the Child's right to swift permanency, as reflected in our statutes, court rules, and appellate rules. *See, e.g., In re M.H.,* 2014 UT 26, ¶ 44, 347 P.3d 368 (Nehring, J., concurring) (policy of swift permanency ensures that Children do not languish in legal limbo); *In re K.C.,* 2015 UT 92, ¶ 23, 362 P.3d 1248, (reasonableness of accommodation must take into account core principles and policies of CWRA, including paramount concern of BIOC).

Utah R. App. P. 4(f), formalized the holding in *Manning v. State,* 2006 UT 61, 122 P.3d 628 and to "provide criminal defendants who have been deprived an appeal through no fault of their own with an avenue for relief. *State v. Brown,* 2021 UT 11, ¶ 15, 489 P.3d 152. *Manning* required that, to have the time for appeal reinstated, a defendant must show loss of appellate rights because

> (1) counsel failed to file an appeal after agreeing to do so;
> (2) despite diligently attempting to file a timely appeal, the defendant was unable to do so through no fault of their own; or
> (3) the court or the defendant's counsel "failed to properly advise [them] of the right to appeal."

Id. ¶ 16.

First, I recommend moving the notification language in the rule and the statute from disposition to adjudication and to include a duty to keep counsel and the court updated on contact information.

Second, I recommend that the burden be on the proponent to show by a preponderance of evidence the three *Manning* requirements as well as the juvenile court requirement of parental engagement:

> (1) counsel failed to file an appeal after agreeing to do so;
> (2) despite diligently attempting to file a timely appeal, the defendant was unable to do so through no fault of their own; or
> (3) the court or the defendant's counsel "failed to properly advise [them] of the right to appeal." *Notwithstanding the party's compliance with the duty to maintain regular contact with the party's counsel and to keep the party's counsel informed of the party's whereabouts."*

TAB 4

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

(a) When a summons is issued in lieu of a warrant of arrest, the minor ~~shall~~must 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~~must be taken to a juvenile detention facility pending a detention hearing, which ~~shall~~must be held as provided by these rules. When any peace officer makes an arrest of a minor with a warrant, the minor ~~shall~~must be taken to the place designated on the warrant. If an information has not been filed, one ~~shall~~must 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~~must without unnecessary delay be returned to the county where the crime was committed and ~~shall~~must be taken before a judge of the juvenile court.

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

and ~~shall~~will 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~~will be advised of the right to a preliminary ~~examination~~hearing. If the minor waives the right to a preliminary ~~examination~~ hearing the court ~~shall~~will proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504(3).

(g) If the minor does not waive a preliminary ~~examination~~hearing, the court ~~shall~~will 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~~will be held within a reasonable time, but not later than 10 ~~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~~will 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) If a grand jury indicts a minor for a qualifying offense listed in Utah Code section 80-6-503, the court will proceed in accordance with Utah Code section 80-6-504(11).~~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~~ hearing ~~shall~~will be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and ~~shall~~will 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 under Utah Code section 80-6-504(2)(a) ~~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~~will proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504(3).

(k) The finding of probable cause may be based on hearsay in whole or in part, but may not be based solely on reliable hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence. 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~~will 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, Rights of Crime Victims Act, 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.

Rule 22. Initial appearance and preliminary 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 must 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 must be taken to a juvenile detention facility pending a detention hearing, which must be held as provided by these rules. When any peace officer makes an arrest of a minor with a warrant, the minor must be taken to the place designated on the warrant. If an information has not been filed, one must 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 must without unnecessary delay be returned to the county where the crime was committed and must be taken before a judge of the juvenile court.

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

and will 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 will be advised of the right to a preliminary hearing. If the minor waives the right to a preliminary hearing the court will proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504(3).

(g) If the minor does not waive a preliminary hearing, the court will schedule the preliminary hearing. The preliminary hearing will be held within a reasonable time, but not later than 10 days after the initial appearance if the minor is in custody for the offense charged. The preliminary hearing will be held within a reasonable time, but not later than 30 days after the initial appearance if the minor is not in custody. The time periods of this rule may be extended by the court for good cause shown.

(h) If a grand jury indicts a minor for a qualifying offense listed in Utah Code section 80-6-503, the court will proceed in accordance with Utah Code section 80-6-504(11).

(i) A preliminary hearing will be held under the rules and laws applicable to criminal cases tried before a court. The state has the burden of proof and will 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 under Utah Code section 80-6-504(2)(a), the court will proceed in accordance with Rule 23A to hear evidence regarding the factors contained in Utah Code section 80-6-504(3).

(k) The finding of probable cause may be based on hearsay in whole or in part, but may not be based solely on reliable hearsay evidence admitted under Rule 1102(b)(8) of the Utah Rules of Evidence. Objections to evidence on the ground that it was acquired by unlawful means are not properly raised at the preliminary 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 will 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 hearing, upon request of either party, and subject to Title 77, Chapter 38, Rights of Crime Victims Act, the court may:

(1) exclude witnesses from the courtroom;

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

(3) exclude spectators from the courtroom.

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Posted: June 14, 2023

Utah Courts

Rules of Juvenile Procedure – Comment Period Closed July 29, 2023

URJP022. Initial appearance and preliminary examination in cases under Utah Code section 80-6-503. Amend. The proposed amendments to Rule 22 include: (1) adding reference to Utah Code section 80-6-504 to the title; (2) changing the term "preliminary examination" to "preliminary hearing;" (3) in paragraph (f), adding reference to subsection (3) of 80-6-504; (4) in paragraph (g), clarifying timelines for scheduling preliminary hearings based on whether a youth is in custody, removing reference to Utah Code section 80-6-503, and moving the language allowing extension to time periods to the end of the paragraph; (5) replacing the language in paragraph (h) and making reference to 80-6-504(11); (6) removing specific probable cause language in paragraph (j) and making reference to 80-6-504(2)(a) and 80-6-503(3) instead; and, (7) adding "may" to the second clause of paragraph (k) to mirror the language of Rule 7B of the Utah Rules of Criminal Procedure. Lastly, the changes also include replacing the language "shall" with "must" or "will" to comply with the Supreme Court Style Guide.

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TAB 5

district in securing regular attendance by the school-age child; and

(e) shall be mailed to, or served on, the school-age child's parent.

(5) (a) Except as provided in Subsection (5)(b), nothing in this part prohibits a local school board, charter school governing board, or school district from taking action to resolve a truancy problem with a school-age child who has been truant fewer than five times, provided that the action does not conflict with the requirements of this part.

(b) A local school board, charter school governing board, or school district may not take punitive action to resolve a truancy problem with a school-age child during the period described in Subsection (2).

(6) Notwithstanding this section, during the period described in Subsection (2), a school administrator, designee of a school administrator, law enforcement officer acting as a school resource officer, or truancy specialist may not issue or otherwise enforce a notice of truancy.

Section 6. Section **53G-8-211** is amended to read:

53G-8-211. Responses to school-based behavior.

(1) As used in this section:

(a) "Evidence-based" means a program or practice that has:

(i) had multiple randomized control studies or a meta-analysis demonstrating that the program or practice is effective for a specific population;

(ii) been rated as effective by a standardized program evaluation tool; or

(iii) been approved by the state board.

(b) "Habitual truant" means a school-age child who:

(i) is in grade 7 or above, unless the school-age child is [~~less than~~] under 12 years old;

(ii) is subject to the requirements of Section 53G-6-202; and

(iii) (A) is truant at least 10 times during one school year; or

(B) fails to cooperate with efforts on the part of school authorities to resolve the school-age child's attendance problem as required under Section 53G-6-206.

(c) "Minor" means the same as that term is defined in Section 80-1-102.

(d) "Mobile crisis outreach team" means the same as that term is defined in Section 62A-15-102.

(e) "Prosecuting attorney" means the same as that term is defined in Subsections 80-1-102(58)(b) and (c).

(f) "Restorative justice program" means a school-based program or a program used or adopted by a local education agency that is designed:

(i) to enhance school safety, reduce school suspensions, and limit referrals to law enforcement agencies and courts; and

(ii) to help minors take responsibility for and repair harmful behavior that occurs in school.

(g) "School administrator" means a principal of a school.

(h) "School is in session" means a day during which the school conducts instruction for which student attendance is counted toward calculating average daily membership.

(i) "School resource officer" means a law enforcement officer, as defined in Section 53-13-103, who contracts with, is employed by, or whose law enforcement agency contracts with a local education agency to provide law enforcement services for the local education agency.

(j) "School-age child" means the same as that term is defined in Section 53G-6-201.

(k) (i) "School-sponsored activity" means an activity, fundraising event, club, camp, clinic, or other event or activity that is authorized by a specific local education agency or public school, according to LEA governing board policy, and satisfies at least one of the following conditions:

(A) the activity is managed or supervised by a local education agency or public school, or local education agency or public school employee;

(B) the activity uses the local education agency's or public school's facilities, equipment, or other school resources; or

(C) the activity is supported or subsidized, more than inconsequentially, by public funds, including the public school's activity funds or Minimum School Program dollars.

(ii) "School-sponsored activity" includes preparation for and involvement in a public performance, contest, athletic competition, demonstration, display, or club activity.

(l) (i) "Status offense" means an offense that would not be an offense but for the age of the offender.

(ii) "Status offense" does not mean an offense that by statute is a misdemeanor or felony.

(2) This section applies to a minor enrolled in school who is alleged to have committed an offense [~~at the school where the student is enrolled: (a)~~] on school property where the student is enrolled:

[~~(i)~~] (a) when school is in session; or

[~~(ii)~~] (b) during a school-sponsored activity[~~; or~~].

[~~(b) except during the period between March 17, 2021 and June 1, 2022, that is truancy.~~]

(3) If a minor is alleged to have committed an offense on school property that is a class C misdemeanor, an infraction, or a status offense, the school administrator, the school administrator's designee, or a school resource officer may refer the minor:

(a) to an evidence-based alternative intervention, including:

(i) a mobile crisis outreach team;

(ii) a youth services center, as defined in Section 80-5-102;

(iii) a youth court or comparable restorative justice program;

(iv) an evidence-based alternative intervention created and developed by the school or school district;

(v) an evidence-based alternative intervention that is jointly created and developed by a local education agency, the state board, the juvenile court, local counties and municipalities, the Department of Health and Human Services; or

(vi) a tobacco cessation or education program if the offense is a violation of Section 76-10-105; or

(b) for prevention and early intervention youth services, as described in Section 80-5-201, by the Division of Juvenile Justice Services if the minor refuses to participate in an evidence-based alternative intervention described in Subsection (3)(a).

(4) Except as provided in Subsection (5), if a minor is alleged to have committed an offense on school property that is a class C misdemeanor, an infraction, or a status offense, a school administrator, the school administrator's designee, or a school resource officer may refer a minor to a law enforcement officer or agency or a court only if:

(a) the minor allegedly committed the same offense on school property on two previous occasions; and

(b) the minor was referred to an evidence-based alternative intervention, or to prevention or early intervention youth services, as described in Subsection (3) for both of the two previous offenses.

(5) If a minor is alleged to have committed a traffic offense that is an infraction, a school administrator, the school administrator's designee, or a school resource officer may refer the minor to a law enforcement officer or agency, a prosecuting attorney, or a court for the traffic offense.

[~~(3) (a) Except as provided in Subsections (3)(c) and (5), if a minor is alleged to have committed an offense that is a class C misdemeanor, an infraction, a status offense on school property, or an offense that is truancy:~~]

[~~(i) a school district or school may not refer the minor to a law enforcement officer or agency or a court; and~~]

[~~(ii) a law enforcement officer or agency may not refer the minor to a prosecuting attorney or a court.~~]

[~~(b) Except as provided in Subsection (3)(c), if a minor is alleged to have committed an offense that is a class C misdemeanor, an infraction, a status offense on school property, or an~~

~~offense that is truancy, a school district, school, or law enforcement officer or agency may refer the minor to evidence-based alternative interventions, including:~~]

[~~(i) a mobile crisis outreach team;~~]

[~~(ii) a youth services center as defined in Section 80-5-102;~~]

[~~(iii) a youth court or comparable restorative justice program;~~]

[~~(iv) evidence-based interventions created and developed by the school or school district; and~~]

[~~(v) other evidence-based interventions that may be jointly created and developed by a local education agency, the state board, the juvenile court, local counties and municipalities, the Department of Health, or the Department of Human Services.~~]

[~~(c)~~] (6) Notwithstanding Subsection [~~(3)(a)~~] (4), a school resource officer may:

[~~(i)~~] (a) investigate possible criminal offenses and conduct, including conducting probable cause searches;

[~~(ii)~~] (b) consult with school administration about the conduct of a minor enrolled in a school;

[~~(iii)~~] (c) transport a minor enrolled in a school to a location if the location is permitted by law;

[~~(iv)~~] (d) take temporary custody of a minor in accordance with Section 80-6-201; or

[~~(v)~~] (e) protect the safety of students and the school community, including the use of reasonable and necessary physical force when appropriate based on the totality of the circumstances.

[~~(d) Notwithstanding other provisions of this section, if a law enforcement officer has cause to believe a minor has committed an offense on school property when school is not in session and not during a school-sponsored activity, the law enforcement officer may refer the minor to:~~]

[~~(i) a prosecuting attorney or a court; or~~]

[~~(ii) evidence-based alternative interventions at the discretion of the law enforcement~~

~~officer.~~]

[~~(c) If a minor is alleged to have committed a traffic offense that is an infraction, a school district, a school, or a law enforcement officer or agency may refer the minor to a prosecuting attorney or a court for the traffic offense.~~]

[~~(4) A school district or school shall refer a minor for prevention and early intervention youth services, as described in Section 80-5-201, by the Division of Juvenile Justice Services for a class C misdemeanor committed on school property or for being a habitual truant if the minor refuses to participate in an evidence-based alternative intervention described in Subsection (3)(b).~~]

[~~(5) A school district or school may refer a minor to a court or a law enforcement officer or agency for an alleged class C misdemeanor committed on school property or for allegedly being a habitual truant if the minor:~~]

[~~(a) refuses to participate in an evidence-based alternative intervention under Subsection (3)(b); and~~]

[~~(b) fails to participate in prevention and early intervention youth services provided by the Division of Juvenile Justice Services under Subsection (4).~~]

[~~(6)~~] (7) (a) If a minor is referred to a court or a law enforcement officer or agency under Subsection [~~(5)~~] (4), the school or the school district shall appoint a school representative to continue to engage with the minor and the minor's family through the court process.

(b) A school representative appointed under Subsection [~~(6)(a)~~] (7)(a) may not be a school resource officer.

(c) A school district or school shall include the following in the school district's or school's referral to the court or the law enforcement officer or agency:

(i) attendance records for the minor;

(ii) a report of evidence-based alternative interventions used by the school before the referral, including outcomes;

(iii) the name and contact information of the school representative assigned to actively

participate in the court process with the minor and the minor's family;

(iv) if the minor was referred to prevention or early intervention youth services under Subsection (3)(b), a report from the Division of Juvenile Justice Services that demonstrates the minor's failure to complete or participate in prevention and early intervention youth services under Subsection [~~(4)~~] (3)(b); and

(v) any other information that the school district or school considers relevant.

(d) A minor referred to a court under Subsection [~~(5)~~] (4) may not be ordered to or placed in secure detention, including for a contempt charge or violation of a valid court order under Section 78A-6-353, when the underlying offense is [~~a class C misdemeanor occurring on school property or habitual truancy~~] a status offense or infraction.

(e) If a minor is referred to a court under Subsection [~~(5)~~] (4), the court may use, when available, the resources of the Division of Juvenile Justice Services or the Division of Substance Abuse and Mental Health to address the minor.

[~~(7)~~] (8) [~~If the alleged offense is a class B misdemeanor or a class A misdemeanor~~] If a minor is alleged to have committed an offense on school property that is a class B misdemeanor or a class A misdemeanor, the school administrator, the school administrator's designee, or a school resource officer may refer the minor directly to a [~~juvenile~~] court or to the evidence-based alternative interventions in Subsection [~~(3)(b)~~] (3)(a).

Section 7. Section **53G-8-213** is enacted to read:

53G-8-213. Reintegration plan for student alleged to have committed violent felony or weapon offense.

(1) As used in this section:

(a) "Multidisciplinary team" means the local education agency, the juvenile court, the Division of Juvenile Justice Services, a school resource officer if applicable, and any other relevant party that should be involved in a reintegration plan.

(b) "Violent felony" means the same as that term is defined in Section 76-3-203.5.

(2) If a school district receives a notification from the juvenile court or a law

TAB 6

Rule 17. The petition.

(a) **Delinquency cases**.

(1) The petition ~~shall~~must allege the offense as it is designated by statute or ordinance, and ~~shall~~must 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) For all non-felony-level offenses, the petition ~~shall~~must state the specific condition that allows the filing of the petition pursuant to Utah Code sections 80-6-303.5, 80-6-304.5, and/or 80-6-305~~04~~.

(3) The petition ~~shall~~must 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~~must 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~~must 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~~must 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~~must be set forth and the petitioner ~~shall~~must designate his or her title.

(4) A petition for termination of parental rights ~~shall~~must 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~~s~~ must meet all of the criteria of Utah Code section 80-6-1004.1 and ~~shall~~must 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 ~~C~~county ~~A~~ttorney, or within a prosecution district, the ~~D~~istrict ~~A~~ttorney for each jurisdiction in which an adjudication occurred prior to being filed with the ~~Clerk of Court~~court clerk.

(3) Petitions for expungement of nonjudicial adjustments must meet all of the criteria of Utah Code section 80-6-1004.2~~5~~ and ~~shall~~must state: the name, age, and residence of the petitioner. Petition for nonjudicial expungement must be served upon the ~~C~~county ~~A~~ttorney, or within a prosecution district, the ~~D~~istrict ~~A~~ttorney 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~~must 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 ~~C~~ounty ~~A~~ttorney, or within a prosecution district, the ~~D~~istrict ~~A~~ttorney for each jurisdiction in which an adjudication occurred prior.

(5) Petitions in other proceedings ~~shall~~must 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 7

Rule 56. Expungement.

(a) Any individual who has been adjudicated delinquent by a juvenile court may petition the court for an order expunging and sealing the records pursuant to Utah Code section 80-6-1001, et. seq.

(b) **Adjudication expungement**.

(1) Upon filing the petition, the clerk ~~shall~~will calendar the matter for hearing and give at least 30 days' notice to the prosecuting attorney, the Juvenile Probation Department, the agency with custody of the records, and any victim or victim's representative of record ~~on each adjudication identified by petitioner as being subject to expungement~~ who have requested in writing notice of further proceedings. The petitioner may be required to obtain and file verifications from local law enforcement agencies in every community in which the petitioner has resided stating whether petitioner has a criminal record. The court may waive the hearing if there is no victim, or if there is a victim, the victim must agree to the waiver. The prosecuting attorney must also agree to the waiver.

(2) If the court finds, upon hearing, that the conditions for expungement under Utah Code section 80-6-1004.1 and 80-6-1006.1 have been satisfied, the court ~~shall~~will order the records of the case sealed as provided in Utah Code section 80-6-1004.1.

(c) **Nonjudicial expungement**. A person whose juvenile record consists solely of nonjudicial adjustments, as provided for in Utah Code section 80-6-304, may petition the court for expungement as provided for in Utah Code section 80-6-1004.2~~5~~.

(d) **Delinquency-records expungement**. A person whose juvenile record consists solely of records of arrest, investigation, detention, or petitions that did not result in adjudication may petition the court for expungement as provided for in Utah Code section 80-6-1004.3.

(e) **Petition-not-found-to-be-true expungement**. A person whose record contains allegations found not to be true by the juvenile court may petition the court for an expungement as provided for in Utah Code section 80-6-1004.4.

(f) **Automatic expungement**. A person whose record consists solely of successfully completed nonjudicial adjustments is eligible for an automatic expungement as provided for in Utah Code section 80-6-1004.5.

(g) The court will send a copy of the expungement order to any affected agency or official identified in the juvenile record.

(h) The clerk ~~shall~~will provide certified copies of the executed expungement order ~~of expungement~~, at no cost, to the petitioner, and the petitioner ~~shall~~may deliver ~~a~~ copies ~~y~~ of the expungement order to ~~each~~all agencies ~~y~~ and officials ~~in the State of Utah identified in~~affected by the expungement order.

Rule 56. Expungement.

(a) Any individual who has been adjudicated delinquent by a juvenile court may petition the court for an order expunging and sealing the records pursuant to Utah Code section 80-6-1001, et. seq.

(b) **Adjudication expungement**.

(1) Upon filing the petition, the clerk will calendar the matter for hearing and give at least 30 days' notice to the prosecuting attorney, the Juvenile Probation Department, the agency with custody of the records, and any victim or victim's representative of record who have requested in writing notice of further proceedings. The petitioner may be required to obtain and file verifications from local law enforcement agencies in every community in which the petitioner has resided stating whether petitioner has a criminal record. The court may waive the hearing if there is no victim, or if there is a victim, the victim must agree to the waiver. The prosecuting attorney must also agree to the waiver.

(2) If the court finds, upon hearing, that the conditions for expungement under Utah Code section 80-6-1004.1 and 80-6-1006.1 have been satisfied, the court will order the records of the case sealed as provided in Utah Code section 80-6-1004.1.

(c) **Nonjudicial expungement**. A person whose juvenile record consists solely of nonjudicial adjustments, as provided for in Utah Code section 80-6-304, may petition the court for expungement as provided for in Utah Code section 80-6-1004.2.

(d) **Delinquency-records expungement**. A person whose juvenile record consists solely of records of arrest, investigation, detention, or petitions that did not result in adjudication may petition the court for expungement as provided for in Utah Code section 80-6-1004.3.

(e) **Petition-not-found-to-be-true expungement**. A person whose record contains allegations found not to be true by the juvenile court may petition the court for an expungement as provided for in Utah Code section 80-6-1004.4.

(f) **Automatic expungement**. A person whose record consists solely of successfully completed nonjudicial adjustments is eligible for an automatic expungement as provided for in Utah Code section 80-6-1004.5.

(g) The court will send a copy of the expungement order to any affected agency or official identified in the juvenile record.

(h) The clerk will provide certified copies of the executed expungement order, at no cost, to the petitioner, and the petitioner may deliver copies of the expungement order to all agencies and officials affected by the expungement order.

TAB 8

Rule 52. Appeals.

(a) Except as otherwise provided by law and paragraph (b), an appeal may be taken from the juvenile court to the Court of Appeals from a final judgment, order, or decree by filing a Notice of Appeal with the clerk of the juvenile court within 30 days after the entry of the judgment, order, or decree appealed from.

(b) Appeals taken from juvenile court orders related to abuse, neglect, dependency, termination or restoration of parental rights, ~~and~~or adoption proceedings must be filed within 15 days ~~of~~after the entry of the order appealed from. In non-delinquency cases, a Notice of Appeal of a party who is not a minor or a state agency must be signed by each party himself or herself.

(c) An appeal from an interlocutory order may be sought by any party by filing a petition for permission to appeal from the interlocutory order with the Court of Appeals within 21 days after the entry of the order of the juvenile court.

(d) The Utah Rules of Appellate Procedure ~~shall~~ govern the appeal process, including preparation of the record and transcript.

(e) No separate order of the juvenile court directing a county to pay transcript costs is required to file a Request for Transcript in an appeal by an impecunious party who was represented during the juvenile court proceedings by court-appointed counsel.

(f) A party claiming entitlement to court-appointed counsel has a continuing duty to inform the court of any material changes that affect indigent status. If at any stage in the trial or appellate proceedings the court makes a finding that a party does not qualify~~,~~ or no longer qualifies for indigent status, the court may order the party to reimburse the county or municipality for the reasonable value of the services rendered, including all costs.