

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

Meeting Agenda

Matthew Johnson, Chair

Location: Webex Meeting

Date: June 6, 2025

Time: 12:00 pm – 2:00 pm

Action: Welcome and approval of the May 2, 2025 meeting minutes.	Tab 1	Matt Johnson
Discussion & Action: Rule 34 . Pre-trial hearing in non-delinquency cases. <ul style="list-style-type: none">• <i>Rule 34 was presented to the Utah Supreme Court on May 28, 2025. The Court made additional changes to Rule 34, including a restructure of the rule.</i>• <i>Both this Committee's most recent draft from April 23, 2025 and the Supreme Court's draft from May 28, 2025 are included in the meeting materials for comparison.</i>	Tab 2	All
Discussion: Defense Counsel Qualifications When Youth Face Risk of Adult Prosecution. <ul style="list-style-type: none">• <i>The Committee received a letter from the Indigent Defense Commission requesting this Committee consider a rule similar to Rule 8(b) of the Utah Rules of Criminal Procedure. Vice-chair Bill Russell has proposed new Rule 23B.</i>	Tab 3	All

<p>Discussion & Action: Rule 16. Transfer of delinquency case.</p> <ul style="list-style-type: none"> • Rule 16 was posted for public comment on April 22, 2025. • The comment period closes on June 6, 2025. 	Tab 4	All
<p>Discussion & Action: Rule 16A. Transfer of a non-delinquency proceeding.</p> <ul style="list-style-type: none"> • Rule 16A was posted for public comment on April 18, 2025. • The comment period closed on June 2, 2025, and there were no comments. 	Tab 5	All
<p>Discussion & Action: Rule 29. Multiple county offenses.</p> <ul style="list-style-type: none"> • Rule 29 was posted for public comment on December 18, 2024. • The comment period closed on February 1, 2025, and there were no comments. 	Tab 6	All
<p>Discussion & Action: Rule 37A. Visual recording of statement or testimony of child in abuse, neglect, dependency, or substantiation proceedings – Conditions of admissibility.</p> <ul style="list-style-type: none"> • Rule 37A was posted for public comment on April 18, 2025. • The comment period closed on June 2, 2025, and one comment was received in support of the proposed changes. 	Tab 7	All
<p>Discussion & Action: Rule 44. Findings and conclusions.</p> <ul style="list-style-type: none"> • Rule 44 was posted for public comment on April 18, 2025. • The comment period closed on June 2, 2025, and there were no comments. 	Tab 8	All
<p>Discussion: Rule 20A. Discovery in non-delinquency proceedings.</p> <ul style="list-style-type: none"> • Rule 20A(i) may have an outdated reference to Rule 37 of the Utah Rules of Civil Procedure. • In 2015, Rule 37 was amended to its current structure, more or less. • The current reference in Rule 20A(i) to Rule 37 made sense from 2011 to 2015. Included in the materials is a 2011 version of Rule 37. 	Tab 9	All

Discussion: Old business or new business.		All
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[URJP Committee Site](#)

Meeting Schedule:

August 1, 2025

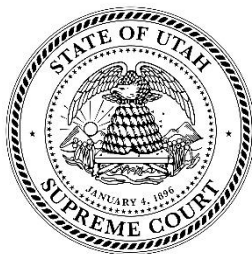
September 5, 2025

October 3, 2025

November 7, 2025

December 5, 2025

TAB 1



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

Draft Meeting Minutes

Matthew Johnson, Chair

Location: Webex Meeting

Date: May 2, 2025

Time: 12:00 p.m. – 2:00 p.m.

Attendees:

Matthew Johnson, Chair
William Russell, Vice Chair
Arek Butler
David Fureigh, Emeritus Member
Dawn Hautamaki
Elizabeth Ferrin
Michelle Jeffs
James Smith
Judge David Johnson
Judge Debra Jensen

Excused Members:

Adrianna Davis
Janette White
Jordan Putnam
Sophia Moore
Thomas Luchs

Guests:

Stacy Haacke, AOC
Blake Murdoch, AOC

Staff:

Tyler Ulrich, Recording Secretary
Raymundo Gallardo

17 **1. Welcome and approval of the April 4, 2025 Meeting Minutes.** (Matthew Johnson)

18
19 Committee chair Matthew Johnson welcomed everyone to the meeting and
20 introduced guests Stacy Haacke with the Administrative Office of the Courts-General
21 Counsel's Office, and Blake Murdoch with AOC. Chair Johnson then asked the
22 Committee for approval of the April 4, 2025 meeting minutes. Elizabeth Ferrin moved
23 to approve the minutes as presented. William Russell seconded the motion, and it
24 passed unanimously.

25
26 **2. Discussion & Action: Senate Bill 157 and Rule 15.** (All)

27
28 Vice-Chair Russell presented background on Senate Bill 157. SB 157 added statutory
29 language regarding Nonjudicial Adjustments that requires a minor be advised of their
30 right to consult with counsel prior to declining a nonjudicial adjustment. Vice-Chair
31 Russell provided information on a pilot program in the Third District that has
32 provided minors and their parents access to a juvenile defender at no cost prior to
33 agreeing to or declining an offer of a nonjudicial adjustment and reported that it has
34 been very successful.

35
36 Vice-Chair Russell presented proposed language to amend Rule 15. The proposed
37 language states, "Upon request, the probation officer must provide defense counsel
38 with copies of both the referral itself and all reports submitted to the court upon which
39 the referral is based." Vice-Chair Russell stated that this language will provide
40 counsel the ability to have a meaningful consultation with a minor and their parent.

41
42 Chair Johnson asked clarifying questions about how the pilot program functioned and
43 any delays that this adds to resolving delinquency matters. Judge David Johnson
44 shared that any extra time required by this change would be minimal, compared to
45 the time expended when a nonjudicial adjustment is initially declined without
46 consultation. In those cases, the charge must be petitioned, the parties are summoned
47 to court for arraignment, counsel is formally appointed, the charge is dismissed
48 without prejudice, and is then sent back to probation for another offer of nonjudicial
49 adjustment. Providing the minor with an opportunity to have a meaningful
50 consultation with counsel on the "front end" of this process serves to eliminate these
51 time-consuming and resource-intensive interim steps in many cases.

52
53 Ms. Haacke reported the Board of Juvenile Court Judges has met and discussed SB
54 157 and the sharing of classified reports. Currently, police reports are protected and
55 may only be made available by court order. The Board is currently working on
56 creating a standing order to address this issue and expressed concern that amending
57 Rule 15 could come into conflict with potential rules of judicial procedure. Ms. Haacke
58 reported that the Board does not necessarily believe that a new or amended rule is
59 needed if a standing order is created.

Michelle Jeffs inquired about the need to redact classified material prior to sharing with counsel and what protections need to be put in place about the dissemination of such material.

Vice-Chair Russell stated that UJDA would welcome a standing order from the court, and suggested that such an order could include protections about the dissemination and eventual destruction of such records. Vice-Chair Russell believes that the Code of Judicial Administration appears to have an exception regarding the release of protected records to an attorney of a party. Judge Johnson expressed concern that the Judicial Code may not completely address this issue.

Mr. Murdoch reported that the probation department is developing a form to provide to minors and parents regarding this new right. Mr. Murdoch explained that there will be a gap in time between when SB 157 takes effect and the IDC's plan to implement a program to provide counsel to a minor that seeks to decline a nonjudicial adjustment.

Judge Johnson suggested that further discussion be tabled regarding Rule 15 until the Board of Juvenile Court Judges meets again and decides on a potential standing order.

This matter is tabled until the August committee meeting to give the Board of Juvenile Court Judges the opportunity to meet and take further action.

3. Discussion & Action: Rule 34. Pretrial hearing in non-delinquency cases. (All)

Mr. Gallardo presented the current draft of the proposed Rule 34 amendments. Judge Johnson reported on the subcommittee's progress and stated that it took the best parts of the different proposals that have been presented and made compromises that protected the rights of all parties and timelines.

The proposed rule has been distributed to all members and was reviewed by the committee. Vice-Chair Russell thanked the members of the subcommittee for their work refining the different proposals. Vice-Chair Russell believes that the current proposal is appropriate and addresses all the concerns that have been raised.

Judge Johnson made a motion to adopt the proposed rule. The motion was seconded by Arek Butler. The proposed rule was unanimously adopted by the Committee and will be presented to the Supreme Court for approval of an initial public comment period.

102 **4. Discussion: Defense Counsel Qualifications When Youth Face Risk of Adult**
103 **Prosecution (All)**
104

105 Mr. Gallardo addressed the history and motivation for a potential new rule regarding
106 the required qualifications of counsel in cases where minors face potential transfer to
107 district court for prosecution. Mr. Gallardo presented information provided by the
108 AOC on the number cases in juvenile court that were filed by Information over the
109 past four years. Vice-Chair Russell reported that the IDC has asked for specific
110 qualifications in these types of cases similar to those required qualifications in capital
111 cases. Vice-Chair Russell presented information on the two phases of these types of
112 cases: the first is a probable cause hearing similar to a preliminary hearing in District
113 Court; the second is a much more in-depth phase that requires the Juvenile Court to
114 consider the interest of the minor and the public, the minor's history, resources
115 available in the juvenile court, and principles of adolescent brain development. Vice-
116 Chair Russell presented a rough draft that he has developed that embodies experience
117 and education qualifications similar to those for appointed counsel in capital cases
118 found in Rule 8(b) of the Utah Rules of Criminal Procedure.
119

120 Judge Johnson inquired about the process of training and qualifying attorneys to work
121 on this class of case. Vice-Chair Russell opined that there are likely not many attorneys
122 who would qualify under the current draft. Chair Johnson suggested that including
123 various types of cases and hearings from various courts, including Justice and District
124 Court trials and motion hearings, would help qualify a higher number of attorneys
125 while still addressing the necessary skills to handle transfer cases. Ms. Jeffs and Judge
126 Johnson agreed that including adult court hearings would address the training and
127 experience that is the purpose of such a proposal. Judge Johnson also wants to ensure
128 that these attorneys receive the necessary training regarding adolescent brain
129 development that is a crucial component to transfer cases.
130

131 Vice-Chair Russell agreed to continue working on his draft, taking into account the
132 input received today from the members of the Committee. Judge Johnson suggested
133 forming a subcommittee to help Vice-Chair Russell in this process, but Chair Johnson
134 would like to have a prosecutor present to be a part of any subcommittee to ensure
135 that there is representation from a variety of backgrounds.
136

137 Further discussion is tabled at this time and a subcommittee may be formed in the
138 near future.
139

140 **5. Old business/new business (All)**
141

142 Chair Johnson reported that Sophia Moore, Arek Butler, and Jordan Putnam are all
143 concluding their terms as members of the Committee in June and new members will
144 be sought to replace them.

145
146 The meeting adjourned at 1:50 p.m. The next meeting will be held on June 6, 2025 via
147 Webex.

TAB 2

Rule 34. Pre-trial hearing in non-delinquency cases.

(a) Petitions in non-delinquency cases ~~shall~~will be scheduled for an initial pre-trial hearing.

(b) The pre-trial hearing ~~shall~~will be scheduled on the nearest court calendar date available in all cases where the subject minor is in temporary shelter care custody in accordance with Utah Code section 80-3-401.

(c) In the pre-trial hearing, the court ~~shall~~will advise the parent, guardian, or custodian of the minor's rights and of the authority of the court in such cases. In the hearing or in any continuance of the hearing, the parent, guardian, or custodian ~~shall~~must answer the petition in open court.

(d) Before answering, the court will inform the respondent of their rights and their rights on appeal. The court will inform the respondent that a finding based on their response may subject the respondent and the children to the jurisdiction of the juvenile court and the potential for reasonable dispositional orders that may affect their parental rights. The court will specifically find that the respondent's answer and their waiver of rights is knowing and voluntary. ~~the respondent may move to dismiss the petition as insufficient to state a claim upon which relief can be granted. The court shall hear all parties and rule on said motion before requiring a party to answer.~~

(e) A respondent may answer by admitting or denying the specific allegations of the petition, or by proceeding with an uncontested answer by declining to admit or deny the allegations. Allegations not specifically denied by a respondent ~~shall~~will be deemed true.

(f) An answer to a child welfare petition is civil in nature. Relief from admissions or uncontested answers – pursuant to paragraph (e) above – are governed by civil remedies, including Rule 59 and Rule 60 of the Utah Rules of Civil Procedure, applicable rules of appellate procedure, and Rule 48 of these rules. Relief sought under this rule will not toll any statutory timeframes.

(g) Except in cases where the petitioner is seeking a termination of parental rights, the court may enter the default of any respondent who fails to file an answer⁷ or who fails to appear either in person or by counsel after having been served with a summons or notice pursuant to [Rule 18](#). Allegations relating to any party in default ~~shall~~will be deemed admitted unless the court, on its own motion, or the motion of any party not in default, ~~shall~~will require evidence in support of the petition. ~~Within the time limits set forth in Utah R. Civ. P. 60(b), upon the written motion of any party in default and a showing of good cause, the court may set aside an entry of default. On timely motion and for good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b) of the Utah Rules of Civil Procedure.~~

Rule 34. Pre-trial hearing in non-delinquency cases.

(a) Petitions in non-delinquency cases will be scheduled for an initial pretrial hearing.

(b) The pretrial hearing will be scheduled on the nearest court calendar date available in all cases where the subject minor is in temporary shelter care custody in accordance with Utah Code section 80-3-401.

(c) In the pretrial hearing, the court will advise the parent, guardian, or custodian of the minor's rights and of the authority of the court in such cases. In the hearing or in any continuance of the hearing, the parent, guardian, or custodian must answer the petition in open court.

(d) Before answering, the court will inform the respondent of their rights and their rights on appeal. The court will inform the respondent that a finding based on their response may subject the respondent and the children to the jurisdiction of the juvenile court and the potential for reasonable dispositional orders that may affect their parental rights. The court will specifically find that the respondent's answer and their waiver of rights is knowing and voluntary.

(e) A respondent may answer by admitting or denying the specific allegations of the petition or by proceeding with an uncontested answer by declining to admit or deny the allegations. Allegations not specifically denied by a respondent will be deemed true.

(f) An answer to a child welfare petition is civil in nature. Relief from admissions or uncontested answers – pursuant to paragraph (e) above – are governed by civil remedies, including [Rule 59](#) and [Rule 60](#) of the Utah Rules of Civil Procedure, applicable rules of appellate procedure, and [Rule 48](#) of these rules. Relief sought under this rule will not toll any statutory timeframes.

(g) Except in cases where the petitioner is seeking a termination of parental rights, the court may enter the default of any respondent who fails to file an answer or who fails to appear either in person or by counsel after having been served with a summons or notice pursuant to [Rule 18](#). Allegations relating to any party in default will be deemed admitted

28 unless the court, on its own motion, or the motion of any party not in default, will require
29 evidence in support of the petition. On timely motion and for good cause shown, the
30 court may set aside an entry of default and, if a judgment by default has been entered,
31 may likewise set it aside in accordance with [Rule 60\(b\)](#) of the Utah Rules of Civil
32 Procedure.

Rule 34. Pre-trial hearing in non-delinquency cases.

(a) The court will schedule ~~P~~petitions in non-delinquency cases ~~shall be scheduled~~ for an initial pre-trial hearing.

(b) The court will schedule ~~T~~he pre-trial hearing ~~shall be scheduled~~ on the nearest court calendar date available, in accordance with Utah Code section 80-3-401, in all cases where the subject minor is in temporary shelter care custody ~~in accordance with Utah Code section 80-3-401~~.

(c) At the outset of ~~h~~ the pre-trial hearing, the court ~~shall~~ will

(1) advise ~~inform~~ the respondent parent, guardian, or custodian of the minor's rights and of the authority of the court in such cases;

(2) inform the respondent of the respondent's rights, including appellate rights;

(3) advise the respondent that a finding based on the respondent's answer may subject the respondent and the respondent's children to the court's jurisdiction; and

(4) advise the respondent of the potential for reasonable dispositional orders that may affect the respondent's parental rights. ~~In the hearing or in any continuance of the hearing, the parent, guardian or custodian shall answer the petition in open court.~~

(d) ~~Before answering, the respondent may move to dismiss the petition as insufficient to state a claim upon which relief can be granted. The court shall hear all parties and rule on said motion before requiring a party to answer.~~ After the court provides the information identified in paragraph (c), the respondent must answer the petition in open court.

~~(e)~~ A respondent may answer the petition by admitting or denying ~~the~~ specific allegations ~~of the petition~~, or by proceeding with an uncontested answer by declining to admit or deny the allegations. Allegations not specifically denied by a respondent ~~shall~~ will be deemed true.

(e) The court will specifically find that the respondent's answer and any waiver of the respondent's rights is knowing and voluntary.

(f) An answer to a child welfare petition is civil in nature. Relief from admissions, non-denials, or uncontested petitions are governed by civil remedies, including Rule 59 and Rule 60 of the Utah Rules of Civil Procedure, applicable rules of appellate procedure, and Rule 48 of these rules. Relief sought under this rule will not toll any statutory timeframes.

(g) Except in cases where the petitioner is seeking a termination of parental rights, the court may enter the default of any respondent who fails to file an answer⁷, or who fails to appear either in person or by counsel after having been served with a summons or notice pursuant to Rule 18. Allegations relating to any party in default ~~shall~~will be deemed admitted unless the court, on its own motion, or the motion of any party not in default, ~~shall~~ requires evidence in support of the petition. ~~Within the time limits set forth in Utah R. Civ. P. 60(b), upon the written motion of any party in default and a showing of good cause, the court may set aside an entry of default. On timely motion and for good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b) of the Utah Rules of Civil Procedure.~~

Rule 34. Pre-trial hearing in non-delinquency cases.

(a) The court will schedule petitions in non-delinquency cases for an initial pretrial hearing.

(b) The court will schedule the pretrial hearing on the nearest court calendar date available, in accordance with Utah Code section 80-3-401, in all cases where the subject minor is in temporary shelter care custody.

(c) At the outset of the pretrial hearing, the court will

(1) inform the respondent parent, guardian, or custodian of the minor's rights and of the authority of the court in such cases;

(2) inform the respondent of the respondent's rights, including appellate rights;

(3) advise the respondent that a finding based on the respondent's answer may subject the respondent and the respondent's children to the court's jurisdiction; and

(4) advise the respondent of the potential for reasonable dispositional orders that may affect the respondent's parental rights.

(d) After the court provides the information identified in paragraph (c), the respondent must answer the petition in open court. A respondent may answer the petition by admitting or denying specific allegations or by proceeding with an uncontested answer by declining to admit or deny the allegations. Allegations not specifically denied by a respondent will be deemed true.

(e) The court will specifically find that the respondent's answer and any waiver of the respondent's rights is knowing and voluntary.

(f) An answer to a child welfare petition is civil in nature. Relief from admissions, non-denials, or uncontested petitions are governed by civil remedies, including [Rule 59](#) and [Rule 60](#) of the Utah Rules of Civil Procedure, applicable rules of appellate procedure, and [Rule 48](#) of these rules. Relief sought under this rule will not toll any statutory timeframes.

(g) Except in cases where the petitioner is seeking a termination of parental rights, the court may enter the default of any respondent who fails to file an answer or who fails to appear either in person or by counsel after having been served with a summons or notice pursuant to [Rule 18](#). Allegations relating to any party in default will be deemed admitted unless the court, on its own motion, or the motion of any party not in default, requires evidence in support of the petition. On timely motion and for good cause shown, the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with [Rule 60\(b\)](#) of the Utah Rules of Civil Procedure.

TAB 3

1 PROPOSED NEW JUV RULE 23B

2 (a) **Transfer case qualifications.** In all cases in which counsel is appointed to represent a
3 minor who is charged by information filed in the juvenile court under Utah Code section
4 80-6-503, the court will appoint one or more attorneys to represent the minor and will
5 make a finding on the record that appointed counsel is competent under this rule to
6 litigate a transfer case. To be found competent to represent a minor charged in a transfer
7 case, the experience of the appointed attorneys must meet the following requirements:

8 (1) at least one of the appointed attorneys must have appeared as counsel and tried to
9 judgment after trial, or to ruling after evidentiary hearing, at least four juvenile or
10 adult prosecutions as defense counsel within the past five years; or, have appeared as
11 counsel and tried to judgment after trial, or to ruling after evidentiary hearing, at least
12 eight juvenile prosecutions in the past 10 years, with at least two of the eight cases as
13 defense counsel or defense co-counsel;

14 (2) at least one of the appointed attorneys must have appeared as defense counsel or
15 defense co-counsel in a transfer case before the juvenile court which was submitted
16 for decision and final ruling on both the probable cause and retention/transfer phases
17 of the preliminary hearing;

18 (3) within the last five years, at least one of the appointed attorneys must have
19 completed or taught at least four hours of approved continuing legal education which
20 dealt, in substantial part, with the representation of youth in transfer cases and
21 including principles of adolescent brain development; and

22 (4) at least one of the appointed attorneys must have at least three years
23 of experience in the active practice of juvenile defense.

24 (b) **Transfer case appointment considerations.** In making its selection of attorneys for
25 appointment in a specific transfer case, the juvenile court will also consider the following
26 factors:

(1) whether the attorneys under consideration for appointment under this rule are members in good standing with the Utah State Bar;

(2) whether the attorneys under consideration for appointment under this rule have ever been the subject of a disciplinary proceeding and if so, when the proceedings took place and for what reason;

(3) whether one or more of the attorneys under consideration have previously appeared as defense counsel or defense co-counsel in a transfer case in the past five years;

(4) the extent to which the attorneys under consideration have sufficient time and support and can dedicate those resources to the representation of the minor in the transfer case now pending before the court with undivided loyalty to the minor;

(5) the extent to which the attorneys under consideration have engaged in the active practice of juvenile defense in the past three years;

(6) the diligence, competency, total workload, and ability of the attorneys being considered; and

(7) any other factor which may be relevant to a determination that counsel for appointment will fairly, efficiently, and effectively provide representation to the minor.

(c) **Exemption.** Notwithstanding any other provision of this rule, any attorney currently employed by an indigent defense service provider under Utah Code section 78B-22-102 to provide court-appointed representation for juvenile defense must be independently eligible for appointment to represent minors for transfer cases. This paragraph does not apply to an attorney who has contracted with a county in the attorney's individual capacity to provide court-appointed juvenile defense resources.

(d) **Transfer case bindover appeals.** In all cases where a minor is bound over to the district court in a transfer case, if appellate review of the bindover order is sought, the court will appoint one or more attorneys to represent the minor on such appeal who are

54 currently on the Appellate Roster under Rule 11-401 of the Utah Code of Judicial
55 Administration.

56

TAB 4

Rule 16. Transfer of delinquency case and venue.

(a) Transfer of delinquency case for preliminary inquiry.

(1) When a minor resides in a county ~~within the state~~ other than the county ~~in which~~where the alleged delinquency occurred, ~~and it appears that~~ the minor initially qualifies for a nonjudicial adjustment pursuant to statute, the ~~intake~~ probation officer of the county of occurrence ~~must~~shall, unless otherwise directed by court order, transfer the referral to the minor's county of residence for a preliminary inquiry to be conducted in accordance with Rule 15.

(2) If the minor or the minor's parent, guardian, or custodian cannot be located or fails to appear after notice of the preliminary inquiry, or the minor declines an offer for a nonjudicial adjustment~~any of the following circumstances are found to exist at the time of preliminary inquiry,~~ the probation officer must transfer the referral ~~shall be transferred~~ back to the county of occurrence to determine whether for a determination as to whether to ~~file~~ing of a petition, ~~and further proceedings:~~

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

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

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

~~(D) there are circumstances in the case that require adjudication in the county of occurrence in the interest of justice; or~~

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

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

(1) Upon the filing of a petition, the arraignment and initial pretrial conference will be held in the minor's county of residence. If the petition is resolved without a trial, venue will remain in the minor's county of residence.

(2) Prosecutors and defense counsel in both the county of occurrence and the county of residence must cooperate with each other both to provide discovery to defense counsel and to assist in the resolution or litigation of each case.

(3) The prosecutor in the minor's county of residence has the authority to resolve any out-of-county charge after consultation with the prosecutor in the county or counties where the alleged offenses occurred.

(4) A prosecutor attempting to resolve a petition must respect the rights of any alleged victim in the county or counties of occurrence.

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

(1) Once the court in the county of residence determines that the matter cannot be resolved, venue will be transferred to the county of occurrence for trial proceedings and scheduling.

(2) Any motion related to the admission, exclusion, or suppression of evidence at trial will be filed in and ruled upon by the trial court.

(3) Motions for inquiry into competency may be raised and ruled upon in either court. The court in the county of residence and the court in the county of occurrence will communicate and consult regarding the motion. The objective of that

52 communication is to consider the appropriate venue for a competency ruling and
53 attainment proceedings.

54 (4) If the petition is adjudicated, the case will be transferred back to the court in the
55 minor's county of residence for disposition and continuing jurisdiction.

56 (d) Notice to and proceedings in the receiving court. With each transfer, ~~T~~the
57 transferring ~~or certifying~~ court ~~shall~~will provide notice to the receiving court of any
58 petition or adjudication subject to transfer.~~notify the receiving court and transmit all~~
59 ~~documents and legal and social records, or certified copies thereof, to the receiving court.~~
60 The receiving court ~~shall~~will proceed with the case as though~~if~~ the petition ~~had been~~was
61 ~~originally~~ filed or the adjudication ~~had been~~was ~~originally~~ made in the ~~at~~ receiving court.

62 (e) Dismissal of petition. The dismissal of a petition in one district where the dismissal
63 is without prejudice and where there has been no adjudication upon the merits ~~shall~~does
64 not preclude refiling within the same district or another district where venue is proper.

Rule 16. Transfer of delinquency case and venue.**(a) Transfer of delinquency case for preliminary inquiry.**

(1) When a minor resides in a county other than the county where the alleged delinquency occurred and the minor initially qualifies for a nonjudicial adjustment pursuant to statute, the probation officer of the county of occurrence must transfer the referral to the minor's county of residence for a preliminary inquiry to be conducted in accordance with [Rule 15](#).

(2) If the minor or the minor's parent, guardian, or custodian cannot be located or fails to appear after notice of the preliminary inquiry, or the minor declines an offer for a nonjudicial adjustment, the probation officer must transfer the referral back to the county of occurrence to determine whether to file a petition.

(b) Arraignment and pretrial proceedings.

(1) Upon the filing of a petition, the arraignment and initial pretrial conference will be held in the minor's county of residence. If the petition is resolved without a trial, venue will remain in the minor's county of residence.

(2) Prosecutors and defense counsel in both the county of occurrence and the county of residence must cooperate with each other both to provide discovery to defense counsel and to assist in the resolution or litigation of each case.

(3) The prosecutor in the minor's county of residence has the authority to resolve any out-of-county charge after consultation with the prosecutor in the county or counties where the alleged offenses occurred.

(4) A prosecutor attempting to resolve a petition must respect the rights of any alleged victim in the county or counties of occurrence.

(c) Transfer of venue.

(1) Once the court in the county of residence determines that the matter cannot be resolved, venue will be transferred to the county of occurrence for trial proceedings and scheduling.

(2) Any motion related to the admission, exclusion, or suppression of evidence at trial will be filed in and ruled upon by the trial court.

(3) Motions for inquiry into competency may be raised and ruled upon in either court. The court in the county of residence and the court in the county of occurrence will communicate and consult regarding the motion. The objective of that communication is to consider the appropriate venue for a competency ruling and attainment proceedings.

(4) If the petition is adjudicated, the case will be transferred back to the court in the minor's county of residence for disposition and continuing jurisdiction.

(d) Notice to and proceedings in the receiving court. With each transfer, the transferring court will provide notice to the receiving court of any petition or adjudication subject to transfer. The receiving court will proceed with the case as though the petition was filed or the adjudication was made in the receiving court.

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

TAB 5

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

2 (a) After the adjudication of a petition in a non-delinquency proceeding, the court may
3 transfer the case to the district where the minor or parent resides so long as the court
4 finds it is in the best interest of the minor.

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

7 (c) The court may not transfer the case to another district after the initial disposition
8 hearing unless the transferring court first communicates and consults with the receiving
9 court.

10 (d) With each transfer, the receiving-transferring court shall will provide notice to the
11 receiving court of the transfer and whether an adjudication has occurred.~~schedule a~~
12 ~~hearing within 30 days of receiving notice of the transfer.~~

13 (e) ~~The transferring or certifying court shall notify the receiving court and transmit all~~
14 ~~documents and legal and social records, or certified copies thereof, to the receiving court.~~
15 The receiving court ~~shall~~will schedule a hearing within 30 days of receiving notice of the
16 transfer and will proceed with the case. ~~as if the petition had been originally filed or the~~
17 ~~adjudication had been originally made in that court.~~

18 (f) The dismissal of a petition in one district where the dismissal is without prejudice and
19 where there has been no adjudication upon the merits ~~shall~~does not preclude refiling
20 within the same district or another district where venue is proper.

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

2 (a) After the adjudication of a petition in a non-delinquency proceeding, the court may
3 transfer the case to the district where the minor or parent resides so long as the court
4 finds it is in the best interest of the minor.

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

7 (c) The court may not transfer the case to another district after the initial disposition
8 hearing unless the transferring court first communicates and consults with the receiving
9 court.

10 (d) With each transfer, the transferring court will provide notice to the receiving court of
11 the transfer and whether an adjudication has occurred.

12 (e) The receiving court will schedule a hearing within 30 days of receiving notice of the
13 transfer and will proceed with the case.

14 (f) The dismissal of a petition in one district where the dismissal is without prejudice and
15 where there has been no adjudication upon the merits does not preclude refiling within
16 the same district or another district where venue is proper.

TAB 6

Rule 29. Multiple county offenses.

(a) Arraignment and pretrial proceedings. When a minor is charged in a petition with the commission of offenses in more than one county, arraignment and pretrial all proceedings ~~except the trial may take place on all charges in the county in which the petition is filed~~ must take place in the minor's county of residence. If the petition is resolved without trial, venue will remain in the minor's county of residence.

(b) Transfer of venue. ~~If a minor denies some or all of the charges for those offenses committed outside the county in which the arraignment takes place, the court may enter such denial and set the matter for a pre-trial conference, or refer such charges to the prosecuting attorney for the county in which the offenses are alleged to have occurred. If the offenses are alleged to have occurred in a county which is within the same judicial district, the arraigning court may order that the matter be scheduled for trial in that county.~~ After arraignment and pretrial proceedings, all further proceedings in multiple county offenses will be governed by the provisions of Rule 16.

~~(c) Out of county charges may be included in a proposed pleas agreement as provided in Rule 25. Such charges shall not be dismissed by the court except on motion of the prosecuting attorney for the county where the offenses are alleged to have occurred, or on the court's own motion as part of a plea agreement approved by the court.~~

~~(d) Where charges are referred to another county for further proceedings, the clerk of the court where the petition was filed shall transmit all pertinent documents, including the petition, summons, minutes and orders to the receiving court clerk. The receiving court shall proceed with the case as if the petition had been originally filed and arraignment held in that court.~~

1 **Rule 29. Multiple county offenses.**

2 (a) **Arraignment and pretrial proceedings.** When a minor is charged in a petition with
3 the commission of offenses in more than one county, arraignment and pretrial
4 proceedings must take place in the minor's county of residence. If the petition is resolved
5 without trial, venue will remain in the minor's county of residence.

6 (b) **Transfer of venue.** After arraignment and pretrial proceedings, all further
7 proceedings in multiple county offenses will be governed by the provisions of Rule 16.

TAB 7

1 **Rule 37A. Visual recording of statement or testimony of child in abuse, neglect,**
2 **dependency, ~~or~~—substantiation, child protective order, or other related non-**
3 **delinquency proceedings;— ~~c~~Conditions of admissibility.**

4 (a) In any abuse, neglect, dependency, ~~or~~—substantiation, child protective order, or other
5 related non-delinquency proceeding, the oral statement of a child may be recorded, and
6 upon motion and for good cause shown is admissible as evidence in any court proceeding
7 regarding the petition if all of the following conditions are met:

8 (1) no attorney for any party is in the child's presence when the statement is recorded;

9 (2) the recording is visual and aural and is recorded on film, ~~or~~ videotape, ~~or by~~ other
10 electronic means;

11 (3) the recording equipment is capable of making an accurate recording; ~~the~~ operator
12 of the equipment is competent; ~~and~~ the recording is accurate and has not been altered;

13 (4) each voice in the recording is identified;

14 (5) the person conducting the interview of the child in the recording is present at the
15 proceeding and is available to testify and be cross-examined by either party;

16 (6) the parties and the parties' attorneys are provided an opportunity to view the
17 recording before it is shown to the court;

18 (7) the court views the recording and determines that it is sufficiently reliable and
19 trustworthy and that the interest of justice will best be served by admission of the
20 statement into evidence; and

21 (8) the child is available to testify and to be cross-examined at trial, either in person or
22 as provided by ~~Subsection~~ paragraph (b) or (c), or the court determines that the child
23 is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For
24 purposes of this ~~subsection~~ paragraph "unavailable" includes a determination, based
25 on medical or psychological evidence or expert testimony, that the child would suffer
26 serious emotional or mental strain if required to testify at trial.

(b) In any abuse, neglect, dependency, ~~or~~ substantiation, child protective order, or other related non-delinquency proceeding, the court may order that the testimony of any child may be taken in a room other than the courtroom. All of the following conditions must be observed:

(1) Only the judge, attorneys for each party, persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be with the child during the testimony. The parties may also be present during the child's testimony unless a party consents to be hidden from the child's view, or the court determines that the child will suffer serious emotional or mental strain if required to testify in the party's presence, or that the child's testimony will be unreliable if required to testify in the party's presence. If the court makes that determination, or if the party consents:

(A) the party may not be present during the child's testimony;

(B) the court will ensure that the child cannot hear or see the party;

(C) the court will advise the child prior to testifying that the party is present at the trial and may listen to the child's testimony;

(D) the party must be permitted to observe and hear the child's testimony, and the court will ensure that the party has a means of two-way telephonic communication with counsel during the child's testimony; and

(E) normal court procedures must be approximated as nearly as possible;

(2) Only the judge and attorneys may question the child unless otherwise approved by the judge; and

(3) As much as possible, persons operating equipment must be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(c) In any abuse, neglect, dependency, ~~or~~ substantiation, child protective order, or other related non-delinquency proceeding, the court may order that the testimony of any child

53 be taken outside the courtroom and be recorded. That testimony is admissible as
54 evidence, for viewing in any court proceeding regarding the allegations if the provisions
55 of ~~Subsection~~paragraph (b) are observed, in addition to the following provisions:

56 (1) the recording is both visual and aural and recorded on film ~~or~~ videotape ~~or by~~
57 other electronic means;

58 (2) the recording equipment is capable of making an accurate recording~~;~~ the operator
59 is competent~~;~~ and the recording is accurate and is not altered;

60 (3) each voice on the recording is identified; and

61 (4) each party is given an opportunity to view the recording before it is shown in the
62 courtroom.

63 (d) If the court orders that the testimony of a child be taken under ~~Subsection~~paragraph
64 (b) or (c), the child may not be required to testify in court at any proceeding where the
65 recorded testimony is used.

Rule 37A. Visual recording of statement or testimony of child in abuse, neglect, dependency, substantiation, child protective order, or other related non-delinquency proceedings; conditions of admissibility.

(a) In any abuse, neglect, dependency, substantiation, child protective order, or other related non-delinquency proceeding, the oral statement of a child may be recorded, and upon motion and for good cause shown is admissible as evidence in any court proceeding regarding the petition if all of the following conditions are met:

(1) no attorney for any party is in the child's presence when the statement is recorded;

(2) the recording is visual and aural and is recorded on film, videotape, or other electronic means;

(3) the recording equipment is capable of making an accurate recording; the operator of the equipment is competent; and the recording is accurate and has not been altered;

(4) each voice in the recording is identified;

(5) the person conducting the interview of the child in the recording is present at the proceeding and is available to testify and be cross-examined by either party;

(6) the parties and the parties' attorneys are provided an opportunity to view the recording before it is shown to the court;

(7) the court views the recording and determines that it is sufficiently reliable and trustworthy and that the interest of justice will best be served by admission of the statement into evidence; and

(8) the child is available to testify and to be cross-examined at trial, either in person or as provided by paragraph (b) or (c), or the court determines that the child is unavailable as a witness to testify at trial under the Utah Rules of Evidence. For purposes of this paragraph "unavailable" includes a determination, based on medical or psychological evidence or expert testimony, that the child would suffer serious emotional or mental strain if required to testify at trial.

(b) In any abuse, neglect, dependency, substantiation, child protective order, or other related non-delinquency proceeding, the court may order that the testimony of any child may be taken in a room other than the courtroom. All of the following conditions must be observed:

(1) Only the judge, attorneys for each party, persons necessary to operate equipment, and a counselor or therapist whose presence contributes to the welfare and emotional well-being of the child may be with the child during the testimony. The parties may also be present during the child's testimony unless a party consents to be hidden from the child's view, or the court determines that the child will suffer serious emotional or mental strain if required to testify in the party's presence, or that the child's testimony will be unreliable if required to testify in the party's presence. If the court makes that determination, or if the party consents:

(A) the party may not be present during the child's testimony;

(B) the court will ensure that the child cannot hear or see the party;

(C) the court will advise the child prior to testifying that the party is present at the trial and may listen to the child's testimony;

(D) the party must be permitted to observe and hear the child's testimony, and the court will ensure that the party has a means of two-way telephonic communication with counsel during the child's testimony; and

(E) normal court procedures must be approximated as nearly as possible;

(2) Only the judge and attorneys may question the child unless otherwise approved by the judge; and

(3) As much as possible, persons operating equipment must be confined to an adjacent room or behind a screen or mirror so the child cannot see or hear them.

(c) In any abuse, neglect, dependency, substantiation, child protective order, or other related non-delinquency proceeding, the court may order that the testimony of any child

53 be taken outside the courtroom and be recorded. That testimony is admissible as
54 evidence, for viewing in any court proceeding regarding the allegations if the provisions
55 of paragraph (b) are observed, in addition to the following provisions:

56 (1) the recording is both visual and aural and recorded on film, videotape, or other
57 electronic means;

58 (2) the recording equipment is capable of making an accurate recording; the operator
59 is competent; and the recording is accurate and is not altered;

60 (3) each voice on the recording is identified; and

61 (4) each party is given an opportunity to view the recording before it is shown in the
62 courtroom.

63 (d) If the court orders that the testimony of a child be taken under paragraph (b) or (c),
64 the child may not be required to testify in court at any proceeding where the recorded
65 testimony is used.

TAB 8

Rule 44. Findings and conclusions.

(a) If, upon the conclusion of an adjudicatory hearing, the court determines that the material allegations of the petition are established, it ~~shall~~will announce its ruling. The court's findings of fact ~~upon which it bases its determination~~ may also be announced or reserved for entry by the court in an order as provided in these ~~r~~Rules. In cases concerning any minor who ~~has~~ violated any federal, state, or local law, or municipal ordinance, or any person under 21 years of age who ~~has~~ violated any such law or ordinance before becoming 18 years of age, findings of fact ~~shall~~will not be necessary. If, after such a determination, the dispositional hearing is not held immediately and the minor is in detention or shelter care, the court ~~shall~~will determine whether the minor ~~shall~~will be released or continued in detention, shelter care, or the least restrictive alternative available.

(b) In proceedings under Utah Code sections 80-6-402, 80-6-503, and 80-6-504, and in abuse, neglect, dependency, termination of parental rights, and contested adoption cases, the court ~~shall~~will enter findings of fact and conclusions of law with specific reference to each statutory requirement considered, setting forth the complete basis for its determination. Such findings and conclusions may be prepared by counsel at the direction of the court, but ~~shall~~will be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of the documents submitted by counsel.

(c) The court may at any time during or at the conclusion of any hearing, dismiss a petition and terminate the proceedings relating to the minor if such action is in the interest of justice and the welfare of the minor. ~~The court shall dismiss any petition which has not been proven.~~

(d) If a petition has not been proven in a non-delinquency case, the court will dismiss the petition.

27 (e) If an allegation has not been proven during a juvenile delinquency trial, the court will
28 enter a finding and disposition that an allegation is *Not True*.

29 (~~f~~) After the dispositional hearing, the court ~~shall~~will enter an appropriate order or
30 decree of disposition.

31 (~~g~~) Adjudication of a petition alleging abuse, neglect, or dependency of a child ~~shall~~will
32 be conducted also in accordance with Utah Code sections 80-3-201 and 80-3-401.

33 (~~h~~) Adjudication of a petition to review the removal of a child from foster care ~~shall~~will
34 be conducted also in accordance with Utah Code section 80-3-502.

Rule 44. Findings and conclusions.

(a) If, upon the conclusion of an adjudicatory hearing, the court determines that the material allegations of the petition are established, it will announce its ruling. The court's findings of fact may also be announced or reserved for entry by the court in an order as provided in these rules. In cases concerning any minor who violated any federal, state, or local law, or municipal ordinance, or any person under 21 years of age who violated any such law or ordinance before becoming 18 years of age, findings of fact will not be necessary. If, after such a determination, the dispositional hearing is not held immediately and the minor is in detention or shelter care, the court will determine whether the minor will be released or continued in detention, shelter care, or the least restrictive alternative available.

(b) In proceedings under Utah Code sections 80-6-402, 80-6-503, and 80-6-504, and in abuse, neglect, dependency, termination of parental rights, and contested adoption cases, the court will enter findings of fact and conclusions of law with specific reference to each statutory requirement considered, setting forth the complete basis for its determination. Such findings and conclusions may be prepared by counsel at the direction of the court, but will be reviewed and modified as deemed appropriate by the court prior to the court's acceptance and signing of the documents submitted by counsel.

(c) The court may at any time during or at the conclusion of any hearing, dismiss a petition and terminate the proceedings relating to the minor if such action is in the interest of justice and the welfare of the minor.

(d) If a petition has not been proven in a non-delinquency case, the court will dismiss the petition.

(e) If an allegation has not been proven during a juvenile delinquency trial, the court will enter a finding and disposition that an allegation is *Not True*.

(f) After the dispositional hearing, the court will enter an appropriate order or decree of disposition.

- 28 (g) Adjudication of a petition alleging abuse, neglect, or dependency of a child will be
29 conducted also in accordance with Utah Code sections 80-3-201 and 80-3-401.
- 30 (h) Adjudication of a petition to review the removal of a child from foster care will be
31 conducted also in accordance with Utah Code section 80-3-502.

TAB 9

Rule 37. Discovery and disclosure motions; Sanctions.

(a) Motion for order compelling disclosure or discovery.

(a)(1) A party may move to compel disclosure or discovery and for appropriate sanctions if another party:

(a)(1)(A) fails to disclose, fails to respond to a discovery request, or makes an evasive or incomplete disclosure or response to a request for discovery;

(a)(1)(B) fails to disclose, fails to respond to a discovery request, fails to supplement a disclosure or response or makes a supplemental disclosure or response without an adequate explanation of why the additional or correct information was not previously provided;

(a)(1)(C) objects to a discovery request ;

(a)(1)(D) impedes, delays, or frustrates the fair examination of a witness; or

(a)(1)(E) otherwise fails to make full and complete disclosure or discovery.

(a)(2) A motion may be made to the court in which the action is pending, or, on matters relating to a deposition or a document subpoena, to the court in the district where the deposition is being taken or where the subpoena was served. A motion for an order to a nonparty witness shall be made to the court in the district where the deposition is being taken or where the subpoena was served.

(a)(3) The moving party must attach a copy of the request for discovery, the disclosure, or the response at issue. The moving party must also attach a certification that the moving party has in good faith conferred or attempted to confer with the other affected parties in an effort to secure the disclosure or discovery without court action and that the discovery being sought is proportional under Rule 26(b)(2).

(b) Motion for protective order.

(b)(1) A party or the person from whom discovery is sought may move for an order of protection from discovery. The moving party shall attach to the motion a copy of the request for discovery or the response at issue. The moving party shall also attach a certification that the moving party has in good faith conferred or attempted to confer with other affected parties to resolve the dispute without court action.

(b)(2) If the motion raises issues of proportionality under Rule 26(b)(2), the party seeking the discovery has the burden of demonstrating that the information being sought is proportional.

(c) **Orders.** The court may make any order to require disclosure or discovery or to protect a party or person from discovery being conducted in bad faith or from annoyance, embarrassment, oppression, or undue burden or expense, or to achieve proportionality under Rule 26(b)(2), including one or more of the following:

(c)(1) that the discovery not be had;

(c)(2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

(c)(3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

(c)(4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

(c)(5) that discovery be conducted with no one present except persons designated by the court;

(c)(6) that a deposition after being sealed be opened only by order of the court;

(c)(7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;

(c)(8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court;

(c)(9) that a question about a statement or opinion of fact or the application of law to fact not be answered until after designated discovery has been completed or until a pretrial conference or other later time; or

(c)(10) that the costs, expenses and attorney fees of discovery be allocated among the parties as justice requires.

(c)(11) If a protective order terminates a deposition, it shall be resumed only upon the order of the court in which the action is pending.

(d) **Expenses and sanctions for motions.** If the motion to compel or for a protective order is granted, or if a party provides disclosure or discovery or withdraws a disclosure or discovery request after a motion is filed, the court may order the party,

witness or attorney to pay the reasonable expenses and attorney fees incurred on account of the motion if the court finds that the party, witness, or attorney did not act in good faith or asserted a position that was not substantially justified. A motion to compel or for a protective order does not suspend or toll the time to complete standard discovery.

(e) Failure to comply with order.

(e)(1) Sanctions by court in district where deposition is taken. Failure to follow an order of the court in the district in which the deposition is being taken or where the document subpoena was served is contempt of that court.

(e)(2) Sanctions by court in which action is pending. Unless the court finds that the failure was substantially justified, the court in which the action is pending may impose appropriate sanctions for the failure to follow its orders, including the following:

(e)(2)(A) deem the matter or any other designated facts to be established in accordance with the claim or defense of the party obtaining the order;

(e)(2)(B) prohibit the disobedient party from supporting or opposing designated claims or defenses or from introducing designated matters into evidence;

(e)(2)(C) stay further proceedings until the order is obeyed;

(e)(2)(D) dismiss all or part of the action, strike all or part of the pleadings, or render judgment by default on all or part of the action;

(e)(2)(E) order the party or the attorney to pay the reasonable expenses, including attorney fees, caused by the failure;

(e)(2)(F) treat the failure to obey an order, other than an order to submit to a physical or mental examination, as contempt of court; and

(e)(2)(G) instruct the jury regarding an adverse inference.

(f) Expenses on failure to admit. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Rule 36, and if the party requesting the admissions proves the genuineness of the document or the truth of the matter, the party requesting the admissions may apply to the court for an order requiring the other party to pay the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that:

(f)(1) the request was held objectionable pursuant to Rule 36(a);

(f)(2) the admission sought was of no substantial importance;

(f)(3) there were reasonable grounds to believe that the party failing to admit might prevail on the matter;

(f)(4) that the request is not proportional under Rule 26(b)(2); or

(f)(5) there were other good reasons for the failure to admit.

(g) **Failure of party to attend at own deposition.** The court on motion may take any action authorized by paragraph (e)(2) if a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to appear before the officer taking the deposition, after proper service of the notice. The failure to act described in this paragraph may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order under paragraph (b).

(h) **Failure to disclose.** If a party fails to disclose a witness, document or other material as required by Rule 26(a) or Rule 26(d)(1), or to amend a prior response to discovery as required by Rule 26(d)(4), that party shall not be permitted to use the witness, document or other material at any hearing unless the failure to disclose is harmless or the party shows good cause for the failure to disclose. In addition to or in lieu of this sanction, the court on motion may take any action authorized by paragraph (e)(2).

(i) **Failure to preserve evidence.** Nothing in this rule limits the inherent power of the court to take any action authorized by paragraph (e)(2) if a party destroys, conceals, alters, tampers with or fails to preserve a document, tangible item, electronic data or other evidence in violation of a duty. Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

Advisory Committee Notes

The 2011 amendments to Rule 37 make two principal changes. First, the amended Rule 37 consolidates provisions for motions for a protective order (formerly set forth in Rule 26(c)) with provisions for motions to compel. By consolidating the standards for these two motions in a single rule, the Advisory Committee sought to highlight some of

the parallels and distinctions between the two types of motions and to present them in a single rule.

Second, the amended Rule 37 incorporates the new Rule 26 standard of "proportionality" as a principal criterion on which motions to compel or for a protective order should be evaluated. As to motions to compel, Rule 37(a)(3) requires that a party moving to compel discovery certify to the court "that the discovery being sought is proportional under Rule 26(b)(2)." Rule 37(b) makes clear that a lack of proportionality may be raised as ground for seeking a protective order, indicating that "the party seeking the discovery has the burden of demonstrating that the information being sought is proportional."

Rule 20A. Discovery in non-delinquency proceedings.

(a) **Scope of discovery.** The scope of discovery is governed by ~~Utah R. Civ. P. Rule~~ 26(b)(1) of the Utah Rules of Civil Procedure. Unless ordered by the court, no discovery obligation may be imposed upon a minor.

(b) **Disclosures.** Within 14 days of the answer, a party ~~shall~~must, without awaiting a discovery request, make reasonable efforts to provide to other parties information necessary to support its claims or defenses, unless solely for impeachment or unless the identity of a person is protected by statute, identifying the subjects of the information. The party ~~shall~~must inform the other party of the existence of such records.

(c) **Depositions upon oral questions.** After the filing of the answer, a party may take the testimony of any person, including a party, by deposition upon oral question without leave of the court. Depositions ~~shall~~must be conducted pursuant to ~~Utah R. Civ. P. Rule~~ 30 of the Utah Rules of Civil Procedure. The record of the deposition ~~shall~~must be prepared pursuant to ~~Utah R. Civ. P. Rule~~ 30(f) of the Utah Rules of Civil Procedure except the deponent will have seven days to review the transcript or recording under ~~Utah R. Civ. P. Rule~~ 30(e) of the Utah Rules of Civil Procedure. The use of depositions in court proceedings ~~shall be~~is governed by ~~Utah R. Civ. P. Rule~~ 32 of the Utah Rules of Civil Procedure.

(d) **Interrogatories.** After the filing of the answer, interrogatories may be used pursuant to ~~Utah R. Civ. P. Rule~~ 33 of the Utah Rules of Civil Procedure except all answers ~~shall~~must be served within 14 days after service of the interrogatories.

(e) **Production of documents and things.** After the filing of the answer, requests for production of documents may be used pursuant to ~~Utah R. Civ. P. Rule~~ 34 of the Utah Rules of Civil Procedure except all responses ~~shall~~must be served within 14 days after service of the requests.

(f) **Physical and mental examination of persons.** Physical and mental examinations may be conducted pursuant to ~~Utah R. Civ. P. Rule~~ 35 of the Utah Rules of Civil Procedure.

(g) **Requests for admission.** Except as modified in this paragraph, requests for admission may be used pursuant to ~~Utah R. Civ. P. Rule~~ 36 of the Utah Rules of Civil Procedure. The matter ~~shall~~will be deemed admitted unless, within 14 days after service of the request, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter, signed by the party or by his attorney. Upon a showing of good cause, any matter deemed admitted may be withdrawn or amended upon the court's own motion or the motion of any party. Requests for admission can be served anytime following the filing of the answer.

(h) **Experts.**

(1) **Adjudication trials.** Any person who has been identified as an expert whose opinions may be presented at the adjudication trial must be disclosed by the party intending to present the witness at least ten days prior to the trial or hearing unless modified by the court. If ordered by the court, a summary of the proposed testimony signed by the party or the party's attorney ~~shall~~must be filed at the same time.

(2) **Termination of parental rights trials.** Any person who has been identified as an expert whose opinions may be presented at the termination of parental rights trial must be disclosed by the party intending to present the witness at least thirty days prior to the trial or hearing unless modified by the court. Unless an expert report has been provided, a summary of the proposed testimony signed by the party or the party's attorney ~~shall~~must be filed at the same time.

(3) A party may not present the testimony of an expert witness without complying with this paragraph (h) unless the court determines that good cause existed for the failure to disclose or to provide the summary of proposed testimony.

(i) **Protective orders.** Any party or person from whom discovery is sought may request a protective order pursuant to ~~Utah R. Civ. P. Rule~~ 37 ~~(b)~~ of the Utah Rules of Civil Procedure.

(j) **Supplementation of responses.** Parties have a duty to supplement responses and disclosures pursuant to ~~Utah R. Civ. P. Rule~~ 26(d) of the Utah Rules of Civil Procedure.

(k) **Failure to cooperate in discovery.** As applicable, failure to cooperate with discovery ~~shall be~~is governed by ~~Utah R. Civ. P. Rule~~ 37 of the Utah Rules of Civil Procedure.

(l) No discovery can be taken that will interfere with the statutorily imposed time frames.

(m) Subpoenas are governed by ~~Utah R. Civ. P. Rule~~ 45 of the Utah Rules of Civil Procedure.

Rule 20A. Discovery in non-delinquency proceedings.

(a) **Scope of discovery.** The scope of discovery is governed by Rule 26(b)(1) of the Utah Rules of Civil Procedure. Unless ordered by the court, no discovery obligation may be imposed upon a minor.

(b) **Disclosures.** Within 14 days of the answer, a party must, without awaiting a discovery request, make reasonable efforts to provide to other parties information necessary to support its claims or defenses, unless solely for impeachment or unless the identity of a person is protected by statute, identifying the subjects of the information. The party must inform the other party of the existence of such records.

(c) **Depositions upon oral questions.** After the filing of the answer, a party may take the testimony of any person, including a party, by deposition upon oral question without leave of the court. Depositions must be conducted pursuant to Rule 30 of the Utah Rules of Civil Procedure. The record of the deposition must be prepared pursuant to Rule 30(f) of the Utah Rules of Civil Procedure except the deponent will have seven days to review the transcript or recording under Rule 30(e) of the Utah Rules of Civil Procedure. The use of depositions in court proceedings is governed by Rule 32 of the Utah Rules of Civil Procedure.

(d) **Interrogatories.** After the filing of the answer, interrogatories may be used pursuant to Rule 33 of the Utah Rules of Civil Procedure except all answers must be served within 14 days after service of the interrogatories.

(e) **Production of documents and things.** After the filing of the answer, requests for production of documents may be used pursuant to Rule 34 of the Utah Rules of Civil Procedure except all responses must be served within 14 days after service of the requests.

(f) **Physical and mental examination of persons.** Physical and mental examinations may be conducted pursuant to Rule 35 of the Utah Rules of Civil Procedure.

(g) **Requests for admission.** Except as modified in this paragraph, requests for admission may be used pursuant to Rule 36 of the Utah Rules of Civil Procedure. The matter will be

deemed admitted unless, within 14 days after service of the request, the party to whom the request is directed serves upon the requesting party a written answer or objection addressed to the matter, signed by the party or by his attorney. Upon a showing of good cause, any matter deemed admitted may be withdrawn or amended upon the court's own motion or the motion of any party. Requests for admission can be served anytime following the filing of the answer.

(h) Experts.

(1) **Adjudication trials.** Any person who has been identified as an expert whose opinions may be presented at the adjudication trial must be disclosed by the party intending to present the witness at least ten days prior to the trial or hearing unless modified by the court. If ordered by the court, a summary of the proposed testimony signed by the party or the party's attorney must be filed at the same time.

(2) **Termination of parental rights trials.** Any person who has been identified as an expert whose opinions may be presented at the termination of parental rights trial must be disclosed by the party intending to present the witness at least thirty days prior to the trial or hearing unless modified by the court. Unless an expert report has been provided, a summary of the proposed testimony signed by the party or the party's attorney must be filed at the same time.

(3) A party may not present the testimony of an expert witness without complying with this paragraph (h) unless the court determines that good cause existed for the failure to disclose or to provide the summary of proposed testimony.

(i) **Protective orders.** Any party or person from whom discovery is sought may request a protective order pursuant to Rule 37 of the Utah Rules of Civil Procedure.

(j) **Supplementation of responses.** Parties have a duty to supplement responses and disclosures pursuant to Rule 26(d) of the Utah Rules of Civil Procedure.

(k) **Failure to cooperate in discovery.** As applicable, failure to cooperate with discovery is governed by Rule 37 of the Utah Rules of Civil Procedure.

55 (l) No discovery can be taken that will interfere with the statutorily imposed time frames.

56 (m) Subpoenas are governed by Rule 45 of the Utah Rules of Civil Procedure.

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