



DISCOVERY PRACTICE POINTERS

Abuse, Neglect, and Dependency Proceedings

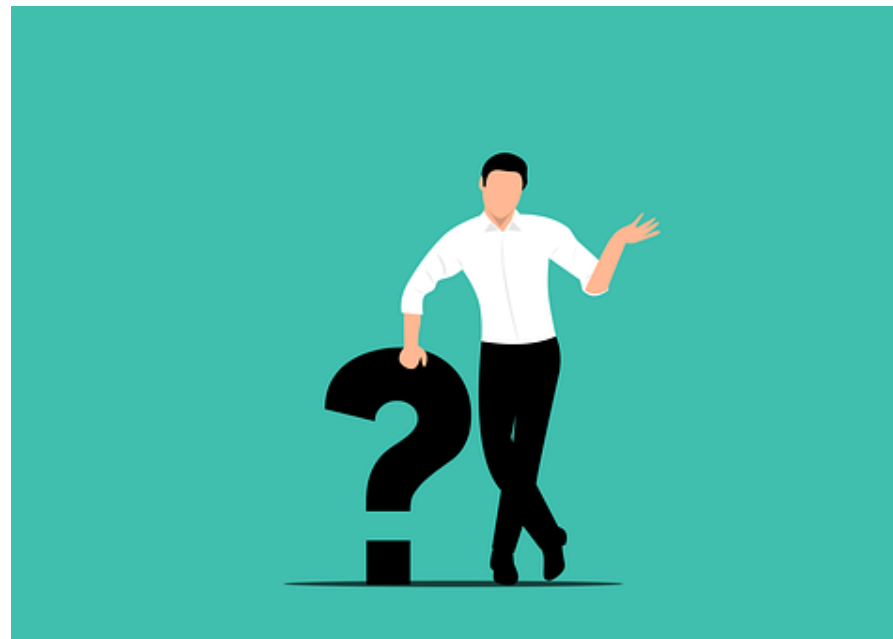
UTAH RULES OF JUVENILE PROCEDURE, RULE 20A

- ▶ Rule 20A is the Rule governing discovery in a neglect, dependency, or abuse case.
- ▶ When does the Rule Trigger?
- ▶ Does an answer have to be written?
 - ▶ * Practice Pointer - avoid the argument with the AAG and the GAL so you can get your discovery - file a written answer!



INITIAL DISCLOSURES UNDER RULE 20A

- 20A(b) Disclosures. Within 14 days of the answer, a party shall, 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 inform the other party of the existence of such records.
- What should you be getting?
 - Look at Utah R. Civ. P. 26(a)(1) for advice: The name and contact information for any potential witness, the name and contact information for anyone that is likely to be in possession of discoverable information, all documents (data compilations, caseworker logs and notes, police reports, witness statements), and all video/photographic evidence.
 - Survey: Who is actually getting this information automatically as the Rule requires?



- Practice Pointer: If you don't get your required disclosures, follow Utah R. Civ. P. 37! You must attempt to resolve the nondisclosure with the responsible attorney by phone or in person (follow up with an email). If you still don't get them, file your SODI.

DISCOVERY TOOLS AVAILABLE

- ▶ 20A.(c) Depositions upon oral questions.
- ▶ 20A.(d) Interrogatories.
- ▶ 20A.(e) Production of documents and things.
- ▶ 20A.(f) Physical and mental examination of persons.
- ▶ 20A.(g) Requests for admission.
- ▶ 20A.(h) Experts.
- ▶ 20A.(m) Subpoenas.



DEPOSITIONS

➤ Rule 20A.(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 be conducted pursuant to Utah R. Civ. P. 30. The record of the deposition shall be prepared pursuant to Utah R. Civ. P. 30(f) except the deponent will have seven days to review the transcript or recording under Utah R. Civ. P. 30(e). The use of depositions in court proceedings shall be governed by Utah R. Civ. P. 32.

➤ Why do we use these?

- Learn what the opposing witnesses might say prior to trial
- Learn what additional discovery and information you might need
- **IMPEACHMENT!!!**



*The witness had been doing so well
at his deposition when suddenly...*

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➤ Practice Pointer: Utah R. Civ. P. 37 must be followed if there is a failure to respond/
disclose

INTERROGATORIES

- Rule 20A.(d) Interrogatories. After the filing of the answer, interrogatories may be used pursuant to Utah R. Civ. P. 33 except all answers shall be served within 14 days after service of the interrogatories.
- Why do we use these?
 - You can obtain an expanse of written information quickly
 - Less expensive and less time consuming than depositions
 - You ask any questions that arise from the initial disclosures/fill information gaps
 - Interrogatories must be verified/statements made are under penalty of perjury... so IMPEACHMENT!
- Practice Pointer: Utah R. Civ. P. 37 must be followed if there is a failure to respond/disclose

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

- Rule 20A.(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. 34 except all responses shall be served within 14 days after service of the requests.
- Why do we use these?
 - To ensure we have all available evidence
 - To request items you have reason to believe exist but have not been provided (photos, emails, electronic data, medical notes/records, videos [CJC interviews])
- Practice Pointer: Utah R. Civ. P. 37 must be followed if there is a failure to respond/disclose

PHYSICAL AND MENTAL EXAMINATIONS OF PERSONS

- Rule 20A.(f) Physical and mental examination of persons. Physical and mental examinations may be conducted pursuant to Utah R. Civ. P. 35.
- Utah R. Civ. P. 35: When the mental or physical condition or attribute of a party or of a person in the custody or control of a party is in controversy, the court may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or control. The order may be made only on motion for good cause shown. All papers related to the motion and notice of any hearing must be served on a nonparty to be examined. The order must specify the time, place, manner, conditions, and scope of the examination and the person by whom the examination is to be made. The person being examined may record the examination by audio or video means unless the party requesting the examination shows that the recording would unduly interfere with the examination.
- Why do we use these?
 - This is very case specific
 - Psychosexual and mental health evaluations can be used as a defensive tool
 - To verify alleged injury(ies), mental capacity or integrity of the accuser

REQUESTS FOR ADMISSION

- Rule 20A.(g) Requests for admission. Except as modified in this paragraph, requests for admission may be used pursuant to Utah R. Civ. P. 36. The matter shall 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.
- Why do we use these?
 - To identify factual disputes
 - To narrow down factual issues for trial
 - To expose flaws in the state's evidence/support for their facts
 - Opportunity where the state fails to respond
- Practice pointers
 - If there is not timely response, file a motion to deem the admissions admitted!

SUBPOENAS

- Rule 20.A(m) Subpoenas are governed by Utah R. Civ. P. 45.
- Utah R. Civ. P. 45: Subpoenas shall each person to whom it is directed to 1) to appear and give testimony at a trial, hearing or deposition, or 2) to appear and produce for inspection, copying, testing or sampling documents, electronically stored information or tangible things in the possession, custody or control of that person, or 3) to copy documents or electronically stored information in the possession, custody or control of that person and mail or deliver the copies to the party or attorney responsible for issuing the subpoena before a date certain, or 4) to appear and to permit inspection of premises.
- Use subpoenas to get witnesses to depositions, to get them to trial, to obtain necessary records from a third party.
- Practice pointer: Do not forget to subpoena a child's therapist to get records, depose them, or get them to trial. They often have vital information. This will often require having the Court issue the subpoena after you file a motion asking the court to issue the subpoena, and you will draw objection

EXPERTS

- Utah Rules of Evidence, Rule 702: a witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue. Scientific, technical, or other specialized knowledge may serve as the basis for expert testimony only if there is a threshold showing that the principles or methods that are underlying in the testimony 1) are reliable, 2) are based upon sufficient facts or data, and 3) have been reliably applied to the facts.

- Rule 20A.(h) Experts.
 - (h)(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 be filed at the same time.
 - (h)(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 be filed at the same time.
 - (h)(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.

- Practice Pointers: Don’t forget motions in limine when an expert and their proposed testimony do not meet the requirements of URE 702! Also note that treating physicians may need to be disclosed as an expert to ensure you can get your desired evidence from the treating physician admitted.

UTAH R. CIV. P. 37 – STATEMENT OF DISCOVERY ISSUES

- Statement of Discovery Issues. The statement of discovery issues must be no more than 4 pages, not including permitted attachments, and must include in the following order: (A) the relief sought and the grounds for the relief sought stated succinctly and with particularity; (B) a certification that the requesting party has in good faith conferred or attempted to confer with the other affected parties in person or by telephone in an effort to resolve the dispute without court action; (C) a statement regarding proportionality under Rule [26\(b\)\(2\)](#); and (D) if the statement requests extraordinary discovery, a statement certifying that the party has reviewed and approved a discovery budget.
- Objection/Opposition. No more than 7 days after the statement is filed, any other party may file an objection to the statement of discovery issues. The objection must be no more than 4 pages, not including permitted attachments, and must address the issues raised in the statement.
- Permitted attachments. The party filing the statement must attach to the statement only a copy of the disclosure, request for discovery or the response at issue.
- Proposed Order. Each party must file a proposed order concurrently with its statement or objection.

WAR STORIES, EXAMPLES, AND QUESTIONS

