COURT FEE WAIVER AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: V. Lowry Snow

Cosponsor:

Todd D. Weiler

LONG TITLE

General Description:

This bill amends provisions relating to the waiver of court fees.

Highlighted Provisions:

This bill:

- amends provisions regarding an affidavit of indigency;
- defines the term, "indigent";
- allows court fees, costs, or security to be waived for indigent individuals;
- requires a court to find an individual indigent under certain circumstances; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-11.3, as last amended by Laws of Utah 2018, Chapter 470

30-3-11.4, as last amended by Laws of Utah 2018, Chapter 470

41-6a-518, as last amended by Laws of Utah 2021, Chapter 83

78A-2-302, as last amended by Laws of Utah 2011, Chapter 366

78A-2-303, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-2-304, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-2-305, as last amended by Laws of Utah 2010, Chapter 226
78A-2-306, as renumbered and amended by Laws of Utah 2008, Chapter 3
78A-2-309, as last amended by Laws of Utah 2009, Chapter 146
78A-2-705, as last amended by Laws of Utah 2019, Chapter 326
78A-2-803, as renumbered and amended by Laws of Utah 2021, Chapter 261
78B-5-825, as renumbered and amended by Laws of Utah 2008, Chapter 3
78B-6-205, as last amended by Laws of Utah 2011, Chapter 367

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

Section 1. Section **30-3-11.3** is amended to read:

30-3-11.3. Mandatory educational course for divorcing parents -- Purpose -- Curriculum -- Reporting.

(1) The Judicial Council shall approve and implement a mandatory course for divorcing parents in all judicial districts. The mandatory course is designed to educate and sensitize divorcing parties to their children's needs both during and after the divorce process.

(2) The Judicial Council shall adopt rules to implement and administer this program.

(3) (a) As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their children's needs after filing a complaint for divorce and receiving a docket number, unless waived under Section 30-3-4. If that requirement is waived, the court may permit the divorce action to proceed.

(b) With the exception of a temporary restraining order pursuant to Rule 65, Utah Rules of Civil Procedure, a party may file, but the court may not hear, a motion for an order related to the divorce until the moving party completes the mandatory educational course for divorcing parents required by this section.

(4) The court may require unmarried parents to attend this educational course when those parents are involved in a visitation or custody proceeding before the court.

(5) The mandatory course shall instruct both parties:

(a) about divorce and its impacts on:

(i) their child or children;

(ii) their family relationship; and

(iii) their financial responsibilities for their child or children; and

(b) that domestic violence has a harmful effect on children and family relationships.

(6) The course may be provided through live instruction, video instruction, or an online provider. The online and video options must be formatted as interactive presentations that ensure active participation and learning by the parent.

(7) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts and organize the program in each of Utah's judicial districts. The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties, pursuant to Subsection (9).

(8) A certificate of completion constitutes evidence to the court of course completion by the parties.

(9) (a) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course. A fee of $8 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account, described in Section 51-9-408.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of [~~impecuniosity~~] indigency as evidenced by an affidavit of [~~impecuniosity~~] indigency filed in the district court in accordance with Section 78A-2-302. In those situations, the independent contractor shall be reimbursed for [~~its~~] the independent contractor's costs from the appropriation to the Administrative Office of the Courts for "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce may be entered, the court shall make a final review and determination of [~~impecuniosity~~] indigency and may order the payment of the costs if so determined.

(10) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (9)(b).

(11) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided if requested by the Judiciary Interim Committee.

Section 2. Section **30-3-11.4** is amended to read:

30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose -- Curriculum -- Reporting.

(1) There is established a mandatory divorce orientation course for all parties with minor children who file a petition for temporary separation or for a divorce. A couple with no minor children is not required, but may choose to attend the course. The purpose of the course is to educate parties about the divorce process and reasonable alternatives.

(2) A petitioner shall attend a divorce orientation course no more than 60 days after filing a petition for divorce.

(3) (a) With the exception of a temporary restraining order pursuant to Rule 65, Utah Rules of Civil Procedure, a party may file, but the court may not hear, a motion for an order related to the divorce or petition for temporary separation, until the moving party completes the divorce orientation course.

(b) Notwithstanding Subsection (3)(a), both parties shall attend a divorce orientation course before a divorce decree may be entered, unless waived by the court under Section 30-3-4.

(4) The respondent shall attend the divorce orientation course no more than 30 days after being served with a petition for divorce.

(5) The clerk of the court shall provide notice to a petitioner of the requirement for the course, and information regarding the course shall be included with the petition or motion, when served on the respondent.

(6) The divorce orientation course shall be neutral, unbiased, at least one hour in

duration, and include:

(a) options available as alternatives to divorce;

(b) resources available from courts and administrative agencies for resolving custody and support issues without filing for divorce;

(c) resources available to improve or strengthen the marriage;

(d) a discussion of the positive and negative consequences of divorce;

(e) a discussion of the process of divorce;

(f) options available for proceeding with a divorce, including:

(i) mediation;

(ii) collaborative law; and

(iii) litigation; and

(g) a discussion of post-divorce resources.

(7) The course may be provided in conjunction with the mandatory course for divorcing parents required by Section 30-3-11.3.

(8) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts.

(9) The course may be through live instruction, video instruction, or through an online provider.

(10) (a) A participant shall pay the costs of the course, which may not exceed $30, to the independent contractor providing the course at the time and place of the course.

(b) A petitioner who attends a live instruction course within 30 days of filing may not be charged more than $15 for the course.

(c) A respondent who attends a live instruction course within 30 days of being served with a petition for divorce may not be charged more than $15 for the course.

(d) A fee of $5 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account described in Section 51-9-408.

(e) [~~A participant who is unable to pay the costs of the course may attend without payment and request an Affidavit of Impecuniosity from the provider to be filed with the~~

~~petition or motion. The provider~~] Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of indigency as evidenced by an affidavit of indigency filed in the district court in accordance with Section 78A-2-302. The independent contractor shall be reimbursed for [~~its~~] the independent contractor's costs by the Administrative Office of the Courts. A petitioner who is later determined not to meet the qualifications for [~~impecuniosity~~] indigency may be ordered to pay the costs of the course.

(11) Appropriations from the General Fund to the Administrative Office of the Courts for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is determined to be [~~impecunious~~] indigent as provided in Subsection (10)(e).

(12) The Online Court Assistance Program shall include instructions with the forms for divorce that inform the petitioner of the requirement of this section.

(13) A certificate of completion constitutes evidence to the court of course completion by the parties.

(14) It shall be an affirmative defense in all divorce actions that the divorce orientation requirement was not complied with, and the action may not continue until a party has complied.

(15) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided if requested by the Judiciary Interim Committee.

Section 3. Section **41-6a-518** is amended to read:

41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost -- Indigency -- Fee.

(1) As used in this section:

(a) "Commissioner" means the commissioner of the Department of Public Safety.

(b) "Employer verification" means written verification from the employer that:

(i) the employer is aware that the employee is an interlock restricted driver;

(ii) the vehicle the employee is operating for employment purposes is not made available to the employee for personal use;

(iii) the business entity that employs the employee is not entirely or partly owned or controlled by the employee;

(iv) the employer's auto insurance company is aware that the employee is an interlock restricted driver; and

(v) the employee has been added to the employer's auto insurance policy as an operator of the vehicle.

(c) "Ignition interlock system" or "system" means a constant monitoring device or any similar device certified by the commissioner that prevents a motor vehicle from being started or continuously operated without first determining the driver's breath alcohol concentration.

(d) "Probation provider" means the supervisor and monitor of the ignition interlock system required as a condition of probation who contracts with the court in accordance with Subsections 41-6a-507(2) and (3).

(2) (a) In addition to any other penalties imposed under Sections 41-6a-503 and 41-6a-505, and in addition to any requirements imposed as a condition of probation, unless the court determines and states on the record that an ignition interlock system is not necessary for the safety of the community and in the best interest of justice, the court shall require that any person who is convicted of violating Section 41-6a-502 and who is granted probation may not operate a motor vehicle during the period of probation unless that motor vehicle is equipped with a functioning, certified ignition interlock system installed and calibrated so that the motor vehicle will not start or continuously operate if the operator's blood alcohol concentration exceeds .02 grams or greater.

(b) If a person convicted of violating Section 41-6a-502 was under the age of 21 when the violation occurred, the court shall order the installation of the ignition interlock system as a condition of probation.

(c) (i) If a person is convicted of a violation of Section 41-6a-502 within 10 years of a prior conviction as defined in Subsection 41-6a-501(2), the court shall order the installation of the interlock ignition system, at the person's expense, for all motor vehicles registered to that person and all motor vehicles operated by that person.

(ii) A person who operates a motor vehicle without an ignition interlock device as required under this Subsection (2)(c) is in violation of Section 41-6a-518.2.

(d) The division shall post the ignition interlock restriction on the electronic record available to law enforcement.

(e) This section does not apply to a person convicted of a violation of Section 41-6a-502 whose violation does not involve alcohol.

(3) If the court imposes the use of an ignition interlock system as a condition of probation, the court shall:

(a) stipulate on the record the requirement for and the period of the use of an ignition interlock system;

(b) order that an ignition interlock system be installed on each motor vehicle owned or operated by the probationer, at the probationer's expense;

(c) immediately notify the Driver License Division and the person's probation provider of the order; and

(d) require the probationer to provide proof of compliance with the court's order to the probation provider within 30 days of the order.

(4) (a) The probationer shall provide timely proof of installation within 30 days of an order imposing the use of a system or show cause why the order was not complied with to the court or to the probationer's probation provider.

(b) The probation provider shall notify the court of failure to comply under Subsection (4)(a).

(c) For failure to comply under Subsection (4)(a) or upon receiving the notification under Subsection (4)(b), the court shall order the Driver License Division to suspend the probationer's driving privileges for the remaining period during which the compliance was imposed.

(d) Cause for failure to comply means any reason the court finds sufficiently justifiable to excuse the probationer's failure to comply with the court's order.

(5) (a) Any probationer required to install an ignition interlock system shall have the

system monitored by the manufacturer or dealer of the system for proper use and accuracy at least semiannually and more frequently as the court may order.

(b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the court or the person's probation provider.

(ii) The report shall be issued within 14 days following each monitoring.

(6) (a) If an ignition interlock system is ordered installed, the probationer shall pay the reasonable costs of leasing or buying and installing and maintaining the system.

(b) A probationer may not be excluded from this section for inability to pay the costs, unless:

(i) the probationer files an affidavit of [~~impecuniosity~~] indigency in accordance with Section 78A-2-302; and

(ii) the court enters a finding that the probationer is [~~impecunious~~] indigent.

(c) In lieu of waiver of the entire amount of the cost, the court may direct the probationer to make partial or installment payments of costs when appropriate.

(d) The ignition interlock provider shall cover the costs of waivers by the court under this Subsection (6).

(7) (a) If a probationer is required in the course and scope of employment to operate a motor vehicle owned by the probationer's employer, the probationer may operate that motor vehicle without installation of an ignition interlock system only if:

(i) the motor vehicle is used in the course and scope of employment;

(ii) the employer has been notified that the employee is restricted; and

(iii) the employee has employer verification in the employee's possession while operating the employer's motor vehicle.

(b) (i) To the extent that an employer-owned motor vehicle is made available to a probationer subject to this section for personal use, no exemption under this section shall apply.

(ii) A probationer intending to operate an employer-owned motor vehicle for personal use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock system shall notify the employer and obtain consent in writing from the employer to install a

system in the employer-owned motor vehicle.

(c) A motor vehicle owned by a business entity that is all or partly owned or controlled by a probationer subject to this section is not a motor vehicle owned by the employer and does not qualify for an exemption under this Subsection (7).

(8) (a) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner shall make rules setting standards for the certification of ignition interlock systems.

(b) The standards under Subsection (8)(a) shall require that the system:

(i) not impede the safe operation of the motor vehicle;

(ii) have features that make circumventing difficult and that do not interfere with the normal use of the motor vehicle;

(iii) require a deep lung breath sample as a measure of breath alcohol concentration;

(iv) prevent the motor vehicle from being started if the driver's breath alcohol concentration exceeds .02 grams or greater;

(v) work accurately and reliably in an unsupervised environment;

(vi) resist tampering and give evidence if tampering is attempted;

(vii) operate reliably over the range of motor vehicle environments; and

(viii) be manufactured by a party who will provide liability insurance.

(c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or independent laboratory tests relied upon in certification of ignition interlock systems by other states.

(d) A list of certified systems shall be published by the commissioner and the cost of certification shall be borne by the manufacturers or dealers of ignition interlock systems seeking to sell, offer for sale, or lease the systems.

(e) (i) In accordance with Section 63J-1-504, the commissioner may establish an annual dollar assessment against the manufacturers of ignition interlock systems distributed in the state for the costs incurred in certifying.

(ii) The assessment under Subsection (8)(e)(i) shall be apportioned among the

manufacturers on a fair and reasonable basis.

(f) The commissioner shall require a provider of an ignition interlock system certified in accordance with this section to comply with the requirements of Title 53, Chapter 3, Part 10, Ignition Interlock System Program Act.

(9) A violation of this section is a class C misdemeanor.

(10) There shall be no liability on the part of, and no cause of action of any nature shall arise against, the state or its employees in connection with the installation, use, operation, maintenance, or supervision of an interlock ignition system as required under this section.

Section 4. Section **78A-2-302** is amended to read:

78A-2-302. Indigent litigants -- Affidavit.

(1) [~~For purposes of~~] As used in Sections 78A-2-302 through 78A-2-309:

(a) "Convicted" means:

(i) a conviction by entry of a plea of guilty or nolo contendere, guilty with a mental illness, no contest[~~,~~]; and

(ii) a conviction of any crime or offense.

(b) "Indigent" means an individual who is financially unable to pay fees and costs or give security.

[~~(b)~~] (c) "Prisoner" means [~~a person~~] an individual who has been convicted of a crime and is incarcerated for that crime or is being held in custody for trial or sentencing.

[~~(2) As provided in this chapter, any person may institute, prosecute, defend, and appeal any cause in any court in this state without prepayment of fees and costs or security, by taking and subscribing, before any officer authorized to administer an oath, an affidavit of impecuniosity demonstrating financial inability to pay fees and costs or give security.~~]

[~~(3) The affidavit shall contain complete information on the party's:~~]

(2) An individual may institute, prosecute, defend, or appeal any cause in a court in this state without prepayment of fees and costs or security if the individual submits an affidavit demonstrating that the individual is indigent.

(3) A court shall find an individual indigent if the individual's affidavit under

Subsection (2) demonstrates:

(a) the individual has an income level at or below 150% of the United States poverty level as defined by the most recent poverty income guidelines published by the United States Department of Health and Human Services;

(b) the individual receives benefits from a means-tested government program, including Temporary Assistance to Needy Families, Supplemental Security Income, the Supplemental Nutrition Assistance Program, or Medicaid;

(c) the individual receives legal services from a nonprofit provider or a pro bono attorney through the Utah State Bar; or

(d) the individual has insufficient income or other means to pay the necessary fees and costs or security without depriving the individual, or the individual's family, of food, shelter, clothing, or other necessities.

(4) An affidavit demonstrating that an individual is indigent under Subsection (3)(d) shall contain complete information on the individual's:

(a) identity and residence;

(b) amount of income, including any government financial support, alimony, or child support;

(c) assets owned, including real and personal property;

(d) business interests;

(e) accounts receivable;

(f) securities, checking and savings account balances;

(g) debts; and

(h) monthly expenses.

[~~(4)~~] (5) If the [~~party~~] individual under Subsection (3) is a prisoner, [~~he~~] the prisoner shall [~~also~~] disclose the amount of money held in [~~his prisoner~~] the prisoner's trust account at the time the affidavit under Subsection (2) is executed [~~as provided in~~] in accordance with Section 78A-2-305.

[~~(5) In addition to the financial disclosures, the affidavit~~] (6) An affidavit of indigency

under this section shall state the following:

I, [~~A B~~] (insert name), do solemnly swear or affirm that due to my poverty I am unable to bear the expenses of the action or legal proceedings which I am about to commence or the appeal which I am about to take, and that I believe I am entitled to the relief sought by the action, legal proceedings, or appeal.

Section 5. Section **78A-2-303** is amended to read:

78A-2-303. False affidavit -- Penalty.

(1) [~~A person~~] An individual may assert by affidavit that an affidavit of [~~impecuniosity~~] indigency under Section 78A-2-302, action, or appeal is:

(a) false;

(b) frivolous or without merit; or

(c) malicious.

(2) Upon receipt of an affidavit in accordance with Subsection (1), the court may notify the affiant of the challenge and set a date, not less than five days from receipt of the notice, requiring the affiant to appear and show cause why the affiant should not be required to:

(a) post a bond for the costs of the action or appeal; or

(b) pay the legal fees for the action or appeal.

(3) The court may dismiss the action or appeal if:

(a) the affiant does not appear;

(b) the affiant appears and the court determines the affidavit is false, frivolous, without merit, or malicious; or

(c) the court orders the affiant to post a bond or pay the legal fees and the affiant fails to do so.

Section 6. Section **78A-2-304** is amended to read:

78A-2-304. Effect of filing affidavit -- Nonprisoner.

(1) (a) Upon the filing of [~~the oath or affirmation with any Utah court~~] an affidavit of indigency under Section 78A-2-302 by a nonprisoner, the court shall review the affidavit and make an independent determination based on the information provided whether court costs and

fees should be waived entirely or in part.

(b) Notwithstanding the party's statement of inability to pay court costs, the court shall require a partial or full filing fee where the financial information provided demonstrates an ability to pay a fee.

(2) (a) In instances where fees or costs are completely waived, the court shall immediately file any complaint or papers on appeal and do what is necessary or proper as promptly as if the litigant had fully paid all the regular fees.

(b) The constable or sheriff shall immediately serve any summonses, writs, process and subpoenas, and papers necessary or proper in the prosecution or defense of the cause, for the [~~impecunious person~~] indigent individual as if all the necessary fees and costs had been fully paid.

(3) (a) [~~However, in cases where an impecunious affidavit~~] In cases where an affidavit of indigency under Section 78A-2-302 is filed, the [~~judge shall question the person~~] court shall question the individual who filed the affidavit at the time of hearing the cause as to [~~his~~] the individual's ability to pay. [~~If the judge~~]

(b) If the court opines that the [~~person~~] individual is reasonably able to pay the costs, the [~~judge~~] court shall direct the judgment or decree not be entered in favor of that [~~person~~] individual until the costs are paid.

(c) The order may be cancelled later upon petition if the facts warrant cancellation.

Section 7. Section **78A-2-305** is amended to read:

78A-2-305. Effect of filing affidavit -- Procedure for review and collection.

(1) (a) Upon receipt of [~~the oath or affirmation~~] an affidavit of indigency under Section 78A-2-302 filed with any Utah court by a prisoner, the court shall immediately request the institution or facility where the prisoner is incarcerated to provide an account statement detailing all financial activities in the prisoner's trust account for the previous six months or since the time of incarceration, whichever is shorter.

(b) The incarcerating facility shall:

(i) prepare and produce to the court the prisoner's six-month trust account statement,

current trust account balance, and aggregate disposable income; and

(ii) calculate aggregate disposable income by totaling all deposits made in the prisoner's trust account during the six-month period and subtracting all funds automatically deducted or otherwise garnished from the account during the same period.

(2) The court shall:

(a) review both the affidavit of [~~impecuniosity~~] indigency and the financial account statement; and

(b) based upon the review, independently determine whether or not the prisoner is financially capable of paying all the regular fees and costs associated with filing the action.

(3) When the court concludes that the prisoner is unable to pay full fees and costs, the court shall assess an initial partial filing fee equal to 50% of the prisoner's current trust account balance or 10% of the prisoner's six-month aggregate disposable income, whichever is greater.

(4) (a) After payment of the initial partial filing fee, the court shall require the prisoner to make monthly payments of 20% of the preceding month's aggregate disposable income until the regular filing fee associated with the civil action is paid in full.

(b) The agency having custody of the prisoner shall:

(i) garnish the prisoner's account each month; and

(ii) once the collected fees exceed $10, forward payments to the clerk of the court until the filing fees are paid.

(c) Nothing in this section may be construed to prevent the agency having custody of the prisoner from withdrawing funds from the prisoner's account to pay court-ordered restitution.

(5) Collection of the filing fees continues despite dismissal of the action.

(6) The filing fee collected may not exceed the amount of fees permitted by statute for the commencement of a civil action or an appeal of a civil action.

(7) If the prisoner is filing an initial divorce action or an action to obtain custody of the prisoner's children, the following procedures shall apply for review and collection of fees and costs:

(a) (i) [~~Upon filing an oath or affirmation~~] Upon a filing of an affidavit of indigency under Section 78A-2-302 with any Utah court by a prisoner, the court shall review the affidavit and make an independent determination based on the information provided whether court costs and fees should be paid in full or be waived in whole or in part.

(ii) The court shall require a full or partial filing fee when the prisoner's financial information demonstrates an ability to pay the applicable court fees or costs.

(b) (i) If a prisoner's court fees or costs are completely waived, and if the prisoner files an appeal, the court shall immediately file any complaint or papers on appeal and complete all necessary action as promptly as if the litigant had paid all the fees and costs in full.

(ii) If a prisoner is [~~impecunious~~] indigent, the constable and sheriff shall immediately serve any summonses, writs, process and subpoenas, and papers necessary in the prosecution or defense of the cause as if all the necessary fees and costs had been paid in full.

(c) (i) If a prisoner files an affidavit of [~~impecuniosity~~] indigency, the judge shall question the prisoner at the time of the hearing on the merits of the case as to the prisoner's ability to pay.

(ii) If the judge determines that the prisoner is reasonably able to pay court fees and costs, the final order or decree shall be entered, however the prisoner may not seek enforcement or modification of the decree or order until the prisoner has paid the fees or costs in full.

(iii) A judge may waive the restrictions placed on the prisoner in Subsection (7)(c)(ii) upon a showing of good cause.

Section 8. Section **78A-2-306** is amended to read:

78A-2-306. Notice of filing fee -- Consequence of nonpayment.

(1) When an affidavit of [~~impecuniosity~~] indigency under Section 78A-2-302 has been filed and the court assesses an initial filing fee, the court shall immediately notify the litigant in writing of:

(a) the initial filing fee required as a prerequisite to proceeding with the action;

(b) the procedure available to challenge the initial filing fee assessment as provided in Section 78A-2-307; and

(c) the [~~inmate's~~] prisoner's ongoing obligation to make monthly payments until the entire filing fee is paid.

(2) The court may not authorize service of process or otherwise proceed with the action, except as provided in Section 78A-2-307, until the initial filing fee has been completely paid to the clerk of the court.

Section 9. Section **78A-2-309** is amended to read:

78A-2-309. Liability for fees if successful in litigation.

(1) Nothing in this part shall prevent a justice court judge, clerk, constable, or sheriff from collecting [~~his or her~~] regular fees for all services rendered for the [~~impecunious person~~] indigent individual, in the event the [~~person~~] indigent individual is successful in litigation.

(2) All fees and costs shall be regularly taxed and included in any judgment recovered by the [~~person~~] indigent individual.

(3) The fees and costs shall be paid to a justice court judge, clerk, constable, or sheriff.

(4) If the [~~person~~] indigent individual fails in the action or appeal, [~~then~~] the costs of the action or appeal [~~shall~~] may be adjudged against the [~~person~~] indigent individual.

Section 10. Section **78A-2-705** is amended to read:

78A-2-705. Private attorney guardian ad litem -- Appointment -- Costs and fees -- Duties -- Conflicts of interest -- Pro bono obligation -- Indemnification -- Minimum qualifications.

(1) The court may appoint an attorney as a private attorney guardian ad litem to represent the best interests of the minor in any district court action when:

(a) child abuse, child sexual abuse, or neglect is alleged in any proceeding, and the court has made a finding that an adult party is not indigent as determined under Section 78B-22-202; or

(b) the custody of, or parent-time with, a child is at issue.

(2) (a) The court shall consider the limited number of eligible private attorneys guardian ad litem, as well as the limited time and resources available to a private attorney guardian ad litem, when making an appointment under Subsection (1) and prioritize case

assignments accordingly.

(b) The court shall make findings regarding the need and basis for the appointment of a private attorney guardian ad litem.

(c) A court may not appoint a private attorney guardian ad litem in a criminal case.

(3) (a) If the parties stipulate to a private attorney guardian ad litem, the office shall assign the stipulated private attorney guardian ad litem to the case in accordance with this section.

(b) If, under Subsection (3)(a), the parties have not stipulated to a private attorney guardian ad litem, or if the stipulated private attorney guardian ad litem is unable to take the case, the court shall appoint a private attorney guardian ad litem in accordance with Subsection (3)(c).

(c) The court shall state in an order that the court is appointing a private attorney guardian ad litem, to be assigned by the office, to represent the best interests of the child in the matter.

(d) The court shall send the order described in Subsection (3)(c) to the office, in care of the Private Attorney Guardian ad Litem program.

(4) The court shall:

(a) specify in the order appointing a private attorney guardian ad litem the specific issues in the proceeding that the private attorney guardian ad litem shall be involved in resolving, which may include issues relating to the custody of the child and a parent-time schedule;

(b) to the extent possible, bifurcate the issues described in Subsection (4)(a) from the other issues in the case in order to minimize the time constraints placed upon the private attorney guardian ad litem; and

(c) except as provided in Subsection (6), issue a final order within one year after the day on which the private attorney guardian ad litem is appointed in the case:

(i) resolving the issues described in Subsection (4)(a); and

(ii) terminating the private attorney guardian ad litem from the appointment to the case.

(5) The court shall issue an order terminating the appointment of a private attorney guardian ad litem made under this section if:

(a) after receiving input from the private attorney guardian ad litem, the court determines that the minor no longer requires the services of the private attorney guardian ad litem; or

(b) there has been no activity in the case for a period of six consecutive months.

(6) A court may issue an order extending the one-year period described in Subsection (4)(c) for a specified amount of time if the court makes a written finding that there is a compelling reason that the court cannot comply with the requirements described in Subsection (4)(c) within the one-year period.

(7) When appointing a private attorney guardian ad litem under this section, a court may appoint the same private attorney guardian ad litem who represents the minor in another proceeding, or who has represented the minor in a previous proceeding, if that private attorney guardian ad litem is available.

(8) (a) Upon receipt of the court's order, described in Subsections (3)(c) and (d), the office shall assign the case to a private attorney guardian ad litem, if available, in accordance with this section.

(b) (i) If, after the initial assignment of a private attorney guardian ad litem, either party objects to the assigned private attorney guardian ad litem, that party may file an objection with the court within seven days after the day on which the party received notice of the assigned private attorney guardian ad litem.

(ii) If, after the initial assignment of a private attorney guardian ad litem, either attorney for a party discovers that the private attorney guardian ad litem represents an adverse party in a separate matter, that attorney may file an objection with the court within seven days after the day on which the attorney received notice of the private attorney guardian ad litem's representation of an adverse party in a separate matter.

(iii) Upon receipt of an objection, the court shall determine whether grounds exist for the objection, and if grounds exist, the court shall order, without a hearing, the office to assign

a new private attorney guardian ad litem, in consultation with the parties and in accordance with this section.

(iv) If no alternative private attorney guardian ad litem is available, the office shall notify the court.

(9) (a) When appointing a private attorney guardian ad litem, the court shall:

(i) assess all or part of the private attorney guardian ad litem fees, court costs, and paralegal, staff, and volunteer expenses against the parties in a proportion the court determines to be just; and

(ii) designate in the order whether the private attorney guardian ad litem shall, as established by rule under Subsection (17):

(A) be paid a set fee and initial retainer;

(B) not be paid and serve pro bono; or

(C) be paid at a rate less than the set fee established by court rule.

(b) If a party claims to be [~~impecunious~~] indigent, the court shall follow the procedure and make a determination, as described in Section 78A-2-302, to set the amount that the party is required to pay, if any, toward the private attorney guardian ad litem's fees and expenses.

(c) The private attorney guardian ad litem may adjust the court-ordered fees or retainer to an amount less than what was ordered by the court at any time before being released from representation by the court.

(10) Upon accepting the court's appointment, the assigned private attorney guardian ad litem shall:

(a) file a notice of appearance with the court within five business days of the day on which the attorney was assigned; and

(b) represent the best interests of the minor until released by the court.

(11) The private attorney guardian ad litem:

(a) shall be certified by the director of the office as meeting the minimum qualifications for appointment; and

(b) may not be employed by, or under contract with, the office unless under contract as

a conflict private attorney guardian ad litem in an unrelated case.

(12) The private attorney guardian ad litem appointed under the provisions of this section shall:

(a) represent the best interests of the minor from the date of the appointment until released by the court;

(b) conduct or supervise an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;

(c) interview witnesses and review relevant records pertaining to the minor and the minor's family, including medical, psychological, and school records;

(d) (i) personally meet with the minor, unless:

(A) the minor is outside of the state; or

(B) meeting with the minor would be detrimental to the minor;

(ii) personally interview the minor, unless:

(A) the minor is not old enough to communicate;

(B) the minor lacks the capacity to participate in a meaningful interview; or

(C) the interview would be detrimental to the minor;

(iii) to the extent possible, determine the minor's goals and concerns regarding custody or visitation; and

(iv) to the extent possible, and unless it would be detrimental to the minor, keep the minor advised of:

(A) the status of the minor's case;

(B) all court and administrative proceedings;

(C) discussions with, and proposals made by, other parties;

(D) court action; and

(E) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;

(e) unless excused by the court, prepare for and attend all mediation hearings and all court conferences and hearings, and present witnesses and exhibits as necessary to protect the

best interests of the minor;

(f) identify community resources to protect the best interests of the minor and advocate for those resources; and

(g) participate in all appeals unless excused by the court.

(13) (a) The private attorney guardian ad litem shall represent the best interests of a minor.

(b) If the minor's intent and desires differ from the private attorney guardian ad litem's determination of the minor's best interests, the private attorney guardian ad litem shall communicate to the court the minor's intent and desires and the private attorney guardian ad litem's determination of the minor's best interests.

(c) A difference between the minor's intent and desires and the private attorney guardian ad litem's determination of best interests is not sufficient to create a conflict of interest.

(d) The private attorney guardian ad litem shall disclose the intent and desires of the minor unless the minor:

(i) instructs the private attorney guardian ad litem to not disclose the minor's intent and desires; or

(ii) has not expressed an intent and desire.

(e) The court may appoint one private attorney guardian ad litem to represent the best interests of more than one child of a marriage.

(14) In every court hearing where the private attorney guardian ad litem makes a recommendation regarding the best interest of the minor, the court shall require the private attorney guardian ad litem to disclose the factors that form the basis of the recommendation.

(15) A private attorney guardian ad litem appointed under this section is immune from any civil liability that might result by reason of acts performed within the scope of duties of the private attorney guardian ad litem.

(16) The office and the Guardian ad Litem Oversight Committee shall compile a list of attorneys willing to accept an appointment as a private attorney guardian ad litem.

(17) Upon the advice of the director and the Guardian ad Litem Oversight Committee, the Judicial Council shall establish by rule:

(a) the minimum qualifications and requirements for appointment by the court as a private attorney guardian ad litem;

(b) the standard fee rate and retainer amount for a private attorney guardian ad litem;

(c) the percentage of cases a private attorney guardian ad litem may be expected to take on pro bono;

(d) a system to:

(i) select a private attorney guardian ad litem for a given appointment; and

(ii) determine when a private attorney guardian ad litem shall be expected to accept an appointment pro bono; and

(e) the process for handling a complaint relating to the eligibility status of a private attorney guardian ad litem.

(18) (a) Any savings that result from assigning a private attorney guardian ad litem in a district court case, instead of an office guardian ad litem, shall be applied to the office to recruit and train attorneys for the private attorney guardian ad litem program.

(b) After complying with Subsection (18)(a), the office shall use any additional savings to reduce caseloads and improve current practices in juvenile court.

Section 11. Section **78A-2-803** is amended to read:

78A-2-803. Appointment of attorney guardian ad litem -- Duties and responsibilities -- Training -- Trained staff and court-appointed special advocate volunteers -- Costs -- Immunity -- Annual report.

(1) (a) The court:

(i) may appoint an attorney guardian ad litem to represent the best interest of a minor involved in any case before the court; and

(ii) shall consider the best interest of a minor, consistent with the provisions of Section 62A-4a-201, in determining whether to appoint a guardian ad litem.

(b) In all cases where an attorney guardian ad litem is appointed, the court shall make a

finding that establishes the necessity of the appointment.

(2) An attorney guardian ad litem shall represent the best interest of each minor who may become the subject of an abuse, neglect, or dependency petition from the earlier of:

(a) the day on which the minor is removed from the minor's home by the division; or

(b) the day on which the abuse, neglect, or dependency petition is filed.

(3) The director shall ensure that each attorney guardian ad litem employed by the office:

(a) represents the best interest of each client of the office in all venues, including:

(i) court proceedings; and

(ii) meetings to develop, review, or modify the child and family plan with the division in accordance with Section 62A-4a-205;

(b) before representing any minor before the court, be trained in:

(i) applicable statutory, regulatory, and case law; and

(ii) nationally recognized standards for an attorney guardian ad litem;

(c) conducts or supervises an ongoing, independent investigation in order to obtain, first-hand, a clear understanding of the situation and needs of the minor;

(d) (i) personally meets with the minor, unless:

(A) the minor is outside of the state; or

(B) meeting with the minor would be detrimental to the minor;

(ii) personally interviews the minor, unless:

(A) the minor is not old enough to communicate;

(B) the minor lacks the capacity to participate in a meaningful interview; or

(C) the interview would be detrimental to the minor; and

(iii) if the minor is placed in an out-of-home placement, or is being considered for placement in an out-of-home placement, unless it would be detrimental to the minor:

(A) to the extent possible, determines the minor's goals and concerns regarding placement; and

(B) personally assesses or supervises an assessment of the appropriateness and safety

of the minor's environment in each placement;

(e) personally attends all review hearings pertaining to the minor's case;

(f) participates in all appeals, unless excused by order of the court;

(g) is familiar with local experts who can provide consultation and testimony regarding the reasonableness and appropriateness of efforts made by the division to:

(i) maintain a minor in the minor's home; or

(ii) reunify a minor with a minor's parent;

(h) to the extent possible, and unless it would be detrimental to the minor, personally or through a trained volunteer, paralegal, or other trained staff, keeps the minor advised of:

(i) the status of the minor's case;

(ii) all court and administrative proceedings;

(iii) discussions with, and proposals made by, other parties;

(iv) court action; and

(v) the psychiatric, medical, or other treatment or diagnostic services that are to be provided to the minor;

(i) in cases where a child and family plan is required, personally or through a trained volunteer, paralegal, or other trained staff, monitors implementation of a minor's child and family plan and any dispositional orders to:

(i) determine whether services ordered by the court:

(A) are actually provided; and

(B) are provided in a timely manner; and

(ii) attempt to assess whether services ordered by the court are accomplishing the intended goal of the services; and

(j) makes all necessary court filings to advance the guardian's ad litem position regarding the best interest of the minor.

(4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers Act, trained paralegals, and other trained staff to assist in investigation and preparation of

information regarding the cases of individual minors before the court.

(b) A volunteer, paralegal, or other staff utilized under this section shall be trained in and follow, at a minimum, the guidelines established by the United States Department of Justice Court Appointed Special Advocate Association.

(5) The attorney guardian ad litem shall continue to represent the best interest of the minor until released from that duty by the court.

(6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

(i) all costs resulting from the appointment of an attorney guardian ad litem; and

(ii) the costs of volunteer, paralegal, and other staff appointment and training.

(b) The court shall use funds appropriated by the Legislature for the guardian ad litem program to cover the costs described in Subsection (6)(a).

(c) (i) When the court appoints an attorney guardian ad litem under this section, the court may assess all or part of the attorney fees, court costs, and paralegal, staff, and volunteer expenses against the minor's parents, parent, or legal guardian in a proportion that the court determines to be just and appropriate, taking into consideration costs already borne by the parents, parent, or legal guardian, including:

(A) private attorney fees;

(B) counseling for the minor;

(C) counseling for the parent, if mandated by the court or recommended by the division; and

(D) any other cost the court determines to be relevant.

(ii) The court may not assess the fees or costs described in Subsection (6)(c)(i) against:

(A) a legal guardian, when that guardian is the state; or

(B) consistent with Subsection (6)(d), a parent who is found to be an indigent individual.

(d) For purposes of Subsection (6)(c)(ii)(B), if an individual claims to be an indigent individual, the court shall:

(i) require the individual to submit an affidavit of [~~indigence~~] indigency as provided in

Section 78A-2-302; and

(ii) follow the procedures and make the determinations as provided in Section 78A-2-304.

(e) The minor's parents, parent, or legal guardian may appeal the court's determination, under Subsection (6)(c), of fees, costs, and expenses.

(7) An attorney guardian ad litem appointed under this section, when serving in the scope of the attorney guardian's ad litem duties as guardian ad litem is considered an employee of the state for purposes of indemnification under Title 63G, Chapter 7, Governmental Immunity Act of Utah.

(8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

(b) If the minor's wishes differ from the attorney's determination of the minor's best interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in addition to presenting the attorney's determination of the minor's best interest.

(c) A difference between the minor's wishes and the attorney's determination of best interest may not be considered a conflict of interest for the attorney.

(d) The guardian ad litem shall disclose the wishes of the minor unless the minor:

(i) instructs the guardian ad litem to not disclose the minor's wishes; or

(ii) has not expressed any wishes.

(e) The court may appoint one attorney guardian ad litem to represent the best interests of more than one minor of a marriage.

(9) The division shall provide an attorney guardian ad litem access to all division records regarding the minor at issue and the minor's family.

(10) (a) An attorney guardian ad litem shall conduct an independent investigation regarding the minor at issue, the minor's family, and what is in the best interest of the minor.

(b) An attorney guardian ad litem may interview the minor's child welfare worker, but may not:

(i) rely exclusively on the conclusions and findings of the division; or

(ii) except as provided in Subsection (10)(c), conduct a visit with the client in

conjunction with the visit of a child welfare worker.

(c) (i) An attorney guardian ad litem may meet with a client during a team meeting, court hearing, or similar venue when a child welfare worker is present for a purpose other than the attorney guardian ad litem's meeting with the client.

(ii) A party and the party's counsel may attend a team meeting in accordance with the Utah Rules of Professional Conduct.

(11) (a) An attorney guardian ad litem shall maintain current and accurate records regarding:

(i) the number of times the attorney has had contact with each minor; and

(ii) the actions the attorney has taken in representation of the minor's best interest.

(b) In every hearing where the attorney guardian ad litem makes a recommendation regarding the best interest of the minor, the court shall require the attorney guardian ad litem to disclose the factors that form the basis of the recommendation.

(12) (a) Except as provided in Subsection (12)(b), and notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, all records of an attorney guardian ad litem are confidential and may not be released or made public upon subpoena, search warrant, discovery proceedings, or otherwise.

(b) Consistent with Subsection (12)(d), all records of an attorney guardian ad litem:

(i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers; and

(ii) shall be released to the Legislature.

(c) (i) Except as provided in Subsection (12)(c)(ii), the Legislature shall maintain records released in accordance with Subsection (12)(b) as confidential.

(ii) Notwithstanding Subsection (12)(c)(i), the Office of the Legislative Auditor General may include summary data and nonidentifying information in the office's audits and reports to the Legislature.

(d) (i) Subsection (12)(b) is an exception to Rules of Professional Conduct, Rule 1.6, as provided by Rule 1.6(b)(4), because of:

(A) the unique role of an attorney guardian ad litem described in Subsection (8); and

(B) the state's role and responsibility to provide a guardian ad litem program, and as parens patriae, to protect minors.

(ii) A claim of attorney-client privilege does not bar access to the records of an attorney guardian ad litem by the Legislature, through legislative subpoena.

Section 12. Section **78B-5-825** is amended to read:

78B-5-825. Attorney fees -- Award where action or defense in bad faith -- Exceptions.

(1) In civil actions, the court shall award reasonable attorney fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The court, in [~~its~~] the court's discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:

(a) finds the party has filed an affidavit of [~~impecuniosity~~] indigency under Section 78A-2-302 in the action before the court; or

(b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).

Section 13. Section **78B-6-205** is amended to read:

78B-6-205. Judicial Council rules for ADR procedures.

(1) To promote the use of ADR procedures, the Judicial Council may by rule establish experimental and permanent ADR programs administered by the Administrative Office of the Courts under the supervision of the director of Dispute Resolution Programs.

(2) The rules of the Judicial Council shall be based upon the purposes and provisions of this part. Any procedural and evidentiary rules adopted by the Supreme Court may not impinge on the constitutional rights of any parties.

(3) The rules of the Judicial Council shall include provisions:

(a) to orient parties and their counsel to the ADR program, ADR procedures, and the rules of the Judicial Council;

(b) to identify types of civil actions that qualify for ADR procedures;

(c) to refer to ADR procedures all or particular issues within a civil action;

(d) to protect persons not parties to the civil action whose rights may be affected in the resolution of the dispute;

(e) to ensure that no party or its attorney is prejudiced for electing, in good faith, not to participate in an optional ADR procedure;

(f) to exempt any case from the ADR program in which the objectives of ADR would not be realized;

(g) to create timetables to ensure that the ADR procedure is instituted and completed without undue delay or expense;

(h) to establish the qualifications of ADR providers for each form of ADR procedure including that formal education in any particular field may not, by itself, be either a prerequisite or sufficient qualification to serve as an ADR provider under the program authorized by this part;

(i) to govern the conduct of each type of ADR procedure, including the site at which the procedure is conducted;

(j) to establish the means for the selection of an ADR provider for each form of ADR procedure;

(k) to determine the powers, duties, and responsibilities of the ADR provider for each form of ADR procedure;

(l) to establish a code of ethics applicable to ADR providers with means for its enforcement;

(m) to protect and preserve the privacy and confidentiality of ADR procedures;

(n) to protect and preserve the privacy rights of the persons attending the ADR procedures;

(o) to permit waiver of all or part of fees assessed for referral of a case to the ADR program on a showing of [~~impecuniosity~~] indigency or other compelling reason;

(p) to authorize imposition of sanctions for failure of counsel or parties to participate in

good faith in the ADR procedure assigned;

(q) to assess the fees to cover the cost of compensation for the services of the ADR provider and reimbursement for the provider's allowable, out-of-pocket expenses and disbursements; and

(r) to allow vacation of an award by a court as provided in Section 78B-11-124.

(4) The Judicial Council may, from time to time, limit the application of its ADR rules to particular judicial districts.