

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – April 24, 2024
via Webex

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Vice-Chair	X		Stacy Haacke, Staff
Lauren DiFrancesco, Chair	X		Keri Sargent
Trevor Lee	X		Crystal Powell, Recording Secretary
Ash McMurray	X		Mr. Jonathan Hanks
Michael Stahler	X		Mr. Nathaneal Player
Timothy Pack	X		Ms. Lacey Cherrington
Loni Page	X		
Bryan Pattison		X	
Judge Clay Stucki		X	
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel		X	
Tonya Wright	X		
Judge Rita Cornish	X		
Commissioner Catherine Conklin	X		
Giovanna Speiss		X	
Jonas Anderson		X	
Heather Lester		X	
Jensie Anderson		X	
Judge Blaine Rawson		X	
Judge Ronald Russell	X		
Rachel Sykes	X		
Judge Laura Scott, <i>Emeritus</i>	X		
James Hunnicutt, <i>Emeritus</i>	X		

(1) INTRODUCTIONS

The meeting began at 4:05 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee Members.

(2) APPROVAL OF MINUTES

Ms. Di Francesco asked for approval of the March 2024 Minutes subject to amendments noted by the Minutes Subcommittee. Commissioner Conklin moved to adopt the Minutes as amended. Mr. Ash McMurray seconded. The Minutes were unanimously approved.

(3) UPDATE ON NEW REMOTE HEARINGS RULE

Ms. DiFrancesco gave an update on the new remote hearings Rule. It will be going out for public comments. There are questions on where it should be placed in the Rule. Judge Pohlman suggested it goes into Part 10 under the general rules with a new proposed Rule 87 unless there is a strong reason to place it somewhere else.

(4) RULE 5

Ms. Loni Page continued the discussion from the March meeting on Rule 5 as follows:

1. 5(a)(1). (Documents that must be served). One additional amendment was made according to the style guide. The Committee did not discuss and decided to accept the change. No vote was taken.
2. 5(b)(5)(C). (Who serves). This subparagraph was added to provide that every document signed by the court that was initially prepared and submitted by a party or attorney must be served by the party who prepared it. Every party or attorney preparing a judgment must promptly serve a copy of the signed judgment on the other parties. Ms. DiFrancesco questioned the use of “submitted” vs. “filed” and whether the party might be able to simply email it to the court. The language was changed from “submitted” to “filed.” Ms. Page queried the use of “promptly” and suggested removing it. Ms. DiFrancesco questioned whether judgments needed to be specifically addressed. Ms. Keri Sargent suggested changing the language to documents so that it captures all types including decrees. Ultimately the second sentence was removed entirely. Judge Andrew Stone wondered if the Rule was

in the right place. He expressed that he doesn't mind the placement but questioned whether a clarification needed to be included that this Rule does not negate the provisions of Rule 7 that a judgment is effective regardless of when the notice of judgment is served. The Committee generally discussed the appropriate language based on various scenarios/experience. The Committee agreed upon language that "service under this rule does not alter the effectiveness." Mr. Trevor Lee moved to adopt the changes. Mr. Justin Toth seconded. The motion passed unanimously.

3. 5(d) (Certificate of service). Ms. Page included a provision for safeguarded contact/locating information. Mr. Ash McMurry moved to approve the amendments. Commissioner Conklin seconded the motion. The motion passed unanimously.
4. 5(e). (Filing). The suggested amendments make it clear how a self-represented party who is not an attorney may file. The options are by email, mail, the court's MyCase, or in person. Ms. Tonya Wright motioned to approve the change. Mr. Justin Toth approved. The motion unanimously.
5. 5(f). (Filing an affidavit or declaration). The Committee checked whether the amendments were cleared with Mr. McMurray who chairs the Affidavit or Declaration Subcommittee. Mr. Ash McMurray moved to approve the amendments. The motion was seconded by Mr. Toth. The motion passed unanimously.
6. The Committee reviewed the Advisory Committee Notes. Ms. DiFrancesco questioned whether the adoption notation needs to be included at all or whether it may be removed. Ms. Wright moved to approve the removing the adoption notation. Mr. Toth seconded. The motion passed unanimously.

Ms. DiFrancesco thanked the Subcommittee for their diligent and hard work over the years on this Rule.

(5) RULE 3(a)(2). FILING OF COMPLAINT AFTER SERVICE

Mr. Trevor Lee reviewed the complaints that he has received from persons who have received the ten-day summons when a case has not been filed. Some of those included confusion on the summons that they receive in the mail, stating that a lawsuit has been filed when it has not been; defendants believing that they have 10 days to file an answer when it is the complaint that is due in 10 days; the direction to call the court to find out if a complaint has been filed which usually only shows up in the docketing system after day 13 beyond the

10 day limit; and the filing fee in many cases being larger than the debt. He also noted the issues the courts have expressed concerning when the opposing party files an answer within the timeframe but there is no case to attach it to since none had yet been filed.

Mr. Lee relayed that the Subcommittee's suggestions are: (1) to take off the 10-day summons and extend the time to serve from 120 days to 150 days, and (2) Waiving the filing fee until default judgment which would allow the debt collection bar to resolve low dollar debts without incurring a filing fee if they can't settle. Mr. Lee noted that if the Rule wanted to waive the filing fee until judgment, then that would require a legislative change as there is law that states that the fee must be paid at the time the clerk accepts the filing.

Mr. Jonathan Hanks who is a debt collection attorney noted that the current proposal from the perspective of the debt collection bar, though he was not speaking for everyone, seems like a workable solution to all parties. He expressed one concern of a pushback on the no filing fee until the judgment or order in the case. Ms. DiFrancesco clarified if the debt collection bar agreed with the amendments so long as the amendment on the filing fee was also included. Mr. Hanks noted that he believes it is a good solution and it is the consensus of those from the debt collection bar with whom he has spoken but the debt collection bar does not have the mechanism to speak as a unit and so he would note that he does not speak for all.

Mr. Nathaneal Player from the Self-Help Center noted that the Self-Help Center generally supports the proposal and believes it is workable. He questioned whether a legislative change would be needed and put forward that it seems the Judicial Council would have that power under the Code of Judicial Administration. He noted that Rules 4 (b), 4(c)(1)(F) and 4(c)(2) might also need amendments which he didn't see in the materials and recommended that the Subcommittee look at that. The Committee compared the Federal Rules in discussing those changes. Ms. DiFrancesco questioned the definition of the term debt collection cases as applied in a broader sense in comparison to certain contract claims. Judge Scott explained that there is a case type which the attorney must select, and Ms. Wright also explained how the selection in e-filing works. Ms. DiFrancesco clarified she is wondering where the definition is that specifies which case falls under which selection. Mr. Hanks noted he hasn't seen such a definition in e-filing but expressed a common definition.

Ms. Stacy Haacke pointed out that there might be a conflict if a Rule was amended that changed the filing fee statutes under 78A-2-301(1)(e) and 78A-2-306(2). Judge Scott notes that under the Code of Judicial Administration the court is allowed to waive the fee and brainstormed whether the judge might sign an order deferring the payment of the filing fee and if that was an option then it might be a viable solution. Mr. Lee questioned whether it would be a standing order. Judge Scott noted that perhaps it might be a form filed with the case and signed off by the clerk rather than the judge. The Committee also generally

discussed whether the potential fee deferment should be based on the value of the debt. The Committee agreed that the Rule still needs more consideration before its implementation.

The Committee voted on whether to adopt the Rule as is without a monetary threshold. Seven Committee members agreed with a monetary threshold. The Committee then further discussed what the monetary threshold would look like and referred to Judge Parker's threshold in debt collection court and the tiers for damages under Rule 26.

Mr. Lee questioned whether Rule 3(a)(1) is being used for high value debt collection cases. Ms. Lacey Cherrington noted that the Bar has done research on debt collection over the past few years and that could be a source of information for some of the concerns raised in the discussions. The Committee generally discussed what is filed in the debt collection case after an answer is filed. Ms. Cherrington noted that if the debt is paid in full then the case is dismissed; however, if the debt is not paid in full then the debt collector will file to continue the action. Ms. DiFrancesco asked for a vote on the concept of the Rule going to the Supreme Court. Mr. Rod Andreason motioned. Mr. Toth seconded. The motion passed unanimously.

(6) ADJOURNMENT

With no more time for new discussions, the meeting was adjourned at 5:58 p.m. The next meeting will be May 22, 2024, at 4:00 p.m.