

**UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE**

**Summary Minutes – May 22, 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		Jacqueline Carlton
Michael Stahler	X		
Timothy Pack		X	
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 4:03 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 April 2024 Minutes subject to amendments noted by the Minutes subcommittee. Mr. Rod Andreason moved to adopt the Minutes as amended. Mr. Michael Stahler seconded. The Minutes were unanimously approved.

(3) UPDATE ON NEW REMOTE HEARINGS RULE

Ms. DiFrancesco gave an update on the new remote hearings Rule. She inquired whether it has been sent out for public comment and Ms. Stacy Hacke confirmed that it has been sent out as of May 21, 2024.

(4) RULE 18. JOINDER OF CLAMS AND REMEDIES

Ms. DiFrancesco summarized the feedback received from public comments. Mr. Leslie Slauch added the sole comment. He suggested that “will” in line 12 be replaced with “may.” The Committee generally discussed the removal of shall from the Rules and when to use “will” or “may” as directed by the Style Guide. Mr. Ash McMurray reminded the Committee of the Style Guide instructions. Ms. DiFrancesco noted that in this Rule, either word would mean the same thing however “may” is more deferential to the court. The Committee came to agreement to leave the word “will.” Ms. Susan Vogel questioned the use of “prosecuted” and that it might be confusing to self-represented persons who normally equate prosecution with criminal cases. Ms. Vogel noted that she would jot it down for consideration later.

Commissioner Conklin moved to approve the Rule without changes. Judge Cornish seconded the motion. The motion was unanimously approved.

(5) RULE 4.

Ms. DiFrancesco notified the Committee that there was a request indicating that the requirements for a person serving process found in Utah Code §78B-8-302(7) are not

found in the process outlined by URCP Rule 4. Those requirements include documenting the date and time of service on the front page of each document being served; the server's name, address, and telephone number; signing the return of service; the badge number if the server is a peace officer, sheriff, or deputy sheriff; the investigator's identification number if a private investigator. Ms. Haacke questioned whether this issue had before been assigned to Ms. Vogel. Ms. Vogel noted that it had not been, but she supplied draft language during the discussion.

The Committee discussed their experiences of receiving returns of service. Judge Stone noted that he agreed with the requirements being for every front page on the documents served to ensure that the full package is served. He noted he has frequent experience of people noting that they were not served the entirety of documents. The Committee noted that just the date and time is required for each paper. The Committee generally discussed process service, the statute, and edits to the draft language provided by Ms. Vogel. Ms. Vogel questioned whether this law is for non-process servers. Ms. Ash McMurray noted that the law was one of his projects and it was done in conjunction with the unsworn declarations statute to provide a uniform process compliant with that statute.

The Committee edited the numbering of the draft Rule. Ms. DiFrancesco opined that given the depth of drafting being done, it seems there needs to be a Subcommittee to organize the draft language. Ms. Rachel Sykes volunteered to chair the Subcommittee. Mr. Ash McMurray and Ms. Tonya Wright also volunteered. Ms. Vogel noted that the Rule will be a big change, but the change is welcomed. Others agreed with her.

(6) RULES 1 AND 81. BUSINESS AND CHANCERY COURT

Ms. Stacy Haacke summarized the change regarding the rule where the scope of the URCP needed to be amended to reflect the creation of separate procedural rules for the Business and Chancery Court. Mr. Ash McMurray intended to ask a question but withdrew it. Mr. Michael Stahler moved to approve the draft language. Ms. Wright seconded. The motion passed unanimously. Mr. Rod Andreason raised if Rule 81 was meant to replace the existing Rule 81(d). Judge Cornish noted that the Redline simply pushed it down in numbering.

(7) MOTION TO ENFORCE ORDER AND FOR SANCTIONS

Judge Cornish summarized the history of the amendment where persons filing motions for sanctions for failure to disclose were being told to file it under Rule 7. She noted that the Subcommittee did not make a lot of language changes. Limitations under Rule 7 (h) were clarified to include motions for sanctions filed under Rule 37(b). The

Committee discussed contempt of court and discussed whether Rule 37 (b)(6) should be deleted from the Rules. Ms. DiFrancesco noted that she read 37 (b)(6) to be a carve out that a person refusing to undertake a mental or physical examination would not receive contempt of court sanctions and whether that carve out would need to be placed somewhere else. Having discussed the changes, Commissioner Conklin moved to approve them. Judge Ronald Russell seconded. The motion passed unanimously.

(8) RULE 60. RELIEF FROM JUDGMENT OR ORDER. FRAUD ON COURT

Judge Rita Cornish summarized the Utah Supreme Court case that precipitated this rule change. Judge Cornish noted that the issue which was referred as never being addressed was indeed addressed before in Utah law, noting that it is impossible to differentiate between fraud on the court and fraud on the party. The Subcommittee raised the issue with the Supreme Court. The feedback from the Court was that the Subcommittee could make a clarification in the Rules if they felt the jurisprudence on the issue was not clear. The Subcommittee's opinion is that there is no distinction between intrinsic and extrinsic fraud and that the Supreme Court got it right originally and no language change was needed for that. The Subcommittee however had considered that they could make changes to the timeframe in the Rule such as 90 days after discovering the fraud not 90 days after the ruling if the larger Committee believes the deadline is too short. The Committee sought guidance on how to proceed as that was not under the original mandate.

Judge Cornish also related the history of trying to change the timeframe for relief in the 1990s. She noted that there was enough outcry from the public that the suggestion was abandoned and the 90- day Rule persisted. She noted that 20 years since, it might be worth revisiting now; but that the history is informative.

The Committee also discussed motions to reconsider, and which Rule those misnomer motions are addressed under. Judge Cornish noted that she usually uses Rule 60. Judge Scott noted that she has in the past used Rule 59 depending on the issue. Ms. Vogel noted that they have a form to vacate dismissal and reinstate for some scenarios such as a case being dismissed for lack of movement on the case.

Ms. DiFrancesco questioned whether 60(d) did not already have provisions for fraud on the court. She noted that she has never heard of a case for an independent action to set aside a judgment. Judge Cornish noted that it is a separate basis for relief by filing a new fraud case regardless of the judgment or ruling. Judge Russell noted that he reads 60(d) to mean that a motion in the present action must be done within the 90-day timeframe but a separate action is not limited by any timeframe other than the state of limitations. Judge Russell noted that there is a lot of case law on how to treat actions under 60(d) and doesn't believe that the language needs to be changed. Judge Cornish also noted

that the 90-day deadline does not apply to an independent action. Ms. DiFrancesco noted that the Rule should be clear enough to not need interpretation through case law; and that that constitutes a particular access to justice issue. Ms. Vogel wondered how it could be clarified. The Committee discussed their experience with independent actions to set aside judgments. Mr. Jim Hunnicutt noted that he has done such an action as a tort case and relayed that experience.

The Committee discussed renumbering the Rule to make it clearer. The Committee also deleted the last sentence that “The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.” Judge Cornish again clarified that additional changes are outside the scope of the instructions from the Supreme Court but that she is not against the recommendations for changes. Mr. Andreason moved to adopt the recommendation of making no changes to the Rule as instructed by the Supreme Court. Judge Cornish also motioned to submit further recommendations to the Supreme Court as discussed. Mr. Stahler seconded. The motions passed unanimously.

Ms. Wright questioned whether this Rule change would bar relief from a pro se person not knowing they have been divorced or if someone fraudulently signed their name or if they were never actually. Ms. Vogel noted that MyCase will lessen that occurrence and a big part of the issue is notice to the other party. The Committee discussed potential reliefs under the Rule for those scenarios.

(9) RULE 101

Mr. Jim Hunnicutt briefly summarized the amendments made to Rule 101. The Committee discussed the language changes under Rule 101 including minor typos. Mr. Hunnicutt noted that the Rules have not been out to public comments yet and the Committee will need to revisit them. Ms. Tonya Wright moved to approve the draft language. Commissioner Conklin seconded. The motion carried unanimously.

(10) ADJOURNMENT

Ms. DiFrancesco thanked the Committee for allowing her to serve and said her goodbyes. Mr. Rod Andreason will be the new Chair of the Committee. Committee members thanked her for her service. With no more time for new discussions, the meeting was adjourned at 5:56 p.m. The next meeting will be July 17 at 4:00 p.m.