

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

**Summary Minutes – November 20, 2024  
via Webex**

**THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX**

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<b>Committee members</b>	<b>Present</b>	<b>Excused</b>	<b>Guests/Staff Present</b>
Rod N. Andreason, Chair	<b>X</b>		Stacy Haacke, Staff
Justin T. Toth, Vice Chair	<b>X</b>		Jacqueline Carlton
Ash McMurray	<b>X</b>		Keri Sargent
Michael Stahler	<b>X</b>		Brent Salazar-Hall
Loni Page	<b>X</b>		
Bryan Pattison	<b>X</b>		
Trevor Lee		<b>X</b>	
Laurel Hanks	<b>X</b>		
Tonya Wright	<b>X</b>		
Judge Rita Cornish	<b>X</b>		
Commissioner Catherine Conklin	<b>X</b>		
Giovanna Speiss		<b>X</b>	
Jonas Anderson		<b>X</b>	
Heather Lester		<b>X</b>	
Brett Chambers	<b>X</b>		
Judge Blaine Rawson		<b>X</b>	
Judge Ronald Russell	<b>X</b>		
Rachel Sykes	<b>X</b>		
Michael Young		<b>X</b>	
Laurel Hanks	<b>X</b>		
Tyler Lindley	<b>X</b>		
Judge Laura Scott, <i>Emeritus</i>	<b>X</b>		
James Hunnicutt, <i>Emeritus</i>	<b>X</b>		

**(1) INTRODUCTIONS**

The meeting began at 4:02 p.m. after forming a quorum. Mr. Rod Andreason welcomed the Committee Members and guests.

**(2) APPROVAL OF MINUTES**

Mr. Rod Andreason asked for approval of the October 2024 Minutes subject to amendments noted by Mr. Jim Hunnicutt. Judge Rita Cornish moved. Mr. Justin Toth seconded. The Minutes were unanimously approved.

**(3) Rules 7, 37, 30, 45 OMNIBUS SUBCOMMITTEE**

Mr. Rod Andreason noted that the Omnibus Subcommittee which includes Rules 7, 30, 37, and 45 is on the agenda from the last session that the Committee had with the Supreme Court Justices after they reviewed the amendments the Committee proposed. Mr. Justin Toth reviewed the procedural history of the Omnibus Subcommittee. The subcommittee began with a discussion of Rule 45, aiming to resolve issues related to how parties and non-parties object to subpoenas and the procedural mechanisms to enforce and/or respond to an objection. As a result of those discussions, there were revisions to Rule 7, 30, and 37. All the revisions were sent to the Supreme Court for review. The Supreme Court had suggestions for revisions for Rules 30 and 45 and Mr. Toth gave a summary of proposed amendments to each as follows:

*Revisions under Rule 30:*

a. Rule 30(b)(6), while the Supreme Court approved the substance of the language, they thought the placement disrupted the flow of the rule. Mr. Justin Toth recommends moving the language over and adding it with the subsections under rule 30(b)(6).

b. Language was added to 30(b)(6)(A) to include how a party can raise an objection, addressing the Supreme Court's concern about the process for objections. While the Committee is not going to impose the time restrictions that federal rules do, there still needs to be a deadline on when the objection should be raised. And the objection should be in writing. If there are no objections, then the parties don't have to do anything, but if there are objections, the parties will have to meet and confer. Under part (c), if they are not able to resolve issues, either party can raise it with the court or under 45(e) for a nonparty. Under (d) the deposition may proceed but not on the objections.

c. Mr. Rod Andreason questioned whether (6)(C) and (D) are identical and if so, if they could be combined. The Committee agreed that they could be combined and made edits.

d. Ms. Tonya Wright asked about objections during the deposition. The Committee discussed that lawyers would address objections and topics early on and get them on the record.

e. The new subsections under (c) were renumbered according to the style guide.

f. The Committee discussed adding language about an objection during depositions to clarify and questioned whether the repetition is worth it for clarity. Mr. Bryan Pattison recommended changing the word to questioning, which makes it more specific.

g. The Committee questioned the 7-day objection and whether it provided sufficient time for parties to prepare a response and whether it was too rigid. The Committee discussed that 14 days might be more reasonable and consistent with Rule 45.

Mr. Michael Stahler moves that the changes provided by Mr. Justin Toth and as amended by the Committee be accepted as the new proposed rule to be submitted to the Utah Supreme Court. Mr. J. Brett Chambers seconds the motion. Motion passes unanimously.

#### *Revisions under Rule 45*

a. The Justices had a clarifying question on (e)(5)(B) and how it differs from the process that is described in (e)(4). The Committee realized it wasn't as clear as it could be and clarifies the language. It is more appropriate that Rule (e)(4) objections to a subpoena by a nonparty and (e)(5) includes objections to a subpoena being made by a party via a protective order through rule 37. If a party receives a Rule 30(b)(6) notice and they meet and confer and they cannot resolve it, they would move under Rule 37 for a statement of discovery issues for some type of protective order. The party must serve that request for protective order on all other parties, and this puts the burden on the requesting party. The subject of the subpoena may not be a party and wouldn't otherwise receive notice of it. Taking the language out of (e) above provides the nonparty a method of objecting to a 30(b)(6) notice. It also clarifies that the party issuing the subpoena serves the objection on the other parties.

b. Mr. James Hunnicutt notes that there is a stylistic goal of not referencing subparts in other rules and questions whether the Committee should reference Rule 45 instead of Rule 45(e)(4) not only as a style issue but a discipline issue because when the rules are edited sometimes items are moved around. Mr. Justin Toth notes that it isn't absolutely necessary to reference the subpart here, but it is helpful because there is so much confusion around non-party and party rights. By making it precise, we are making it clear we are talking about objections under Rule 45(e). Ms. Stacy Haacke states we can send it with a note that the precision gives a lot more clarity. The Committee reviewed the style guide and decided to keep the precise reference for clarity.

c. Mr. Michael Stahler suggested amendments to line 124 to include language of an objection under this rule. Mr. Rod Andreason asked if there were any other objections that could be made under this rule. Mr. Justin Toth explained that there would be no other objections because the rules carve out relevance, proportionality and any of those are objections owned by a party to litigation under Rule 26 which are ultimately vindicated through Rule 37. The objections that can be made as a non-party are far narrower. Mr. Toth further explained that they wanted to make clear that we were not expanding the rights of a nonparty.

Mr. Michael Stahler moves to send the changes to Rule 45 as they were presented and as edited by the Committee to the Utah Supreme Court. Prof. Tyler Lindsey seconds. Motion passes unanimously.

#### **(4) RULE 53A SPECIAL MASTERS FOR PARENTING DISPUTES IN DOMESTIC RELATIONS ACTIONS**

Mr. Brent Salazar-Hall reviews the history of the new rule. About 3 years ago the rule was brought to the Committee and then it was sent to the Supreme Court to go out for public comment. The Supreme Court sent it back with questions and has met several times with the groups working on the rule. The latest version comes from the Standing Committee on Children and Family Law, of which Mr. Brent Salazar-Hall is a member.

Commissioner Conklin had a question about the status of a previously discussed corollary rule in the Code of Judicial Administration that would address the qualifications the special master needed for appointment. Mr. Salazar-Hall noted there is a separate subcommittee being chaired by Ms. Aubrey Staples and they have progressed with the rule, but it is on its own path. Mr. Salazar-Hall can report that an appointed special master is only going to be an attorney, and the forms committee is working on a form so it would be a standardized appointment form.

The Committee made some edits to incorporate (c)(1) sentence into (c) because the subparagraph is no longer needed.

Ms. Tonya Wright motions to send the rule to the Supreme Court and to go out for public comment. Commissioner Conklin seconds the motion. Motions passes unanimously.

#### **(5) INTRODUCTION FROM NEW MEMBER**

Prof. Tyler Lindley introduces himself to the committee. Prof. Lindley recently started as an associate professor at the BYU Law School and in two years will be leaving to clerk for Justice Gorsuch.

**(6) SUBCOMMITTEE ASSIGNMENT**

There are a few folks who are still on the subcommittee list that have left the Committee. The Committee is in the process of editing the subcommittee list. Mr. Andreason states that anyone who has a subcommittee assignment that can prepare to bring the Committee back a report next month that would help us move things along.

**(7) ADJOURNMENT**

Mr. Andreason noted that the next meeting will need to be adjusted due to the holiday. The standard meeting schedule for 2025 was briefly reviewed and it was noted that there will probably be a need to amend the November and December 2025 dates as well.

Judge Russell mentions one issue that has come to his attention recently is the Statement of Discovery Issues in Rule 26.2(b)(8). This rule is specific to a personal injury action. The problem is 26(b)(5) was renumbered and the reference needs to be updated to 26(b)(6). Ms. Stacy Haacke noted that the Committee had some amendments to Rule 26 already started. Ms. Tonya Wright noted that there is already a subcommittee for Rule 56 which in a roundabout way is affecting Rule 26 and offered to shuffle that issue into the already formed subcommittee. Prof. Tyler Lindley will join the subcommittee.

Mr. Rod Andreason thanked everyone for their work on the Committee. With no more agenda items, the meeting was adjourned at 5:35 p.m. The next meeting will be December 18, 2024, at 4:00 p.m.