

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

**Summary Minutes – March 26, 2025
via Webex**

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Chair		X	Keisa Williams, Staff
Justin T. Toth, Vice Chair	X		Paula Hannaford-Agor
Ash McMurray	X		Miriam Hamilton
Michael Stahler	X		Keri Sargent
Loni Page	X		
Bryan Pattison		X	
Trevor Lee		X	
Laurel Hanks	X		
Tonya Wright	X		
Judge Rita Cornish	X		
Judge Catherine Conklin	X		
Jonas Anderson	X		
Heather Lester		X	
Brett Chambers	X		
Judge Blaine Rawson		X	
Judge Ronald Russell		X	
Judge Patrick Corum	X		
Rachel Sykes		X	
Michael Young	X		
Tyler Lindley		X	
Judge Laura Scott, <i>Emeritus</i>	X		
James Hunnicutt, <i>Emeritus</i>	X		

(1) INTRODUCTIONS

The meeting began at 4:00 p.m. after forming a quorum. Mr. Justin Toth welcomed the Committee Members and guests.

(2) APPROVAL OF MINUTES

The minutes for the February meeting were not ready yet, so the Committee did not approve any minutes.

(3) NCSC Presentation on Rule 26 Survey

Guests from the National Center for State Courts, Miriam Hamilton and Paula Hannaford-Agor presented the results of their work on URCP Rule 26 for the Committee. After the 2011 amendments to this rule which incorporated proportionality into the discovery phase of civil litigation by creating three tiers based upon the amount in controversy, there was considerable interest from leadership in both state and federal courts. As a result the NCSC conducted evaluations and surveys to compare case characteristics and outcomes for cases filed before and after revising the rule. The presenters reviewed the study for the Committee.

(4) RULES BACK FROM PUBLIC COMMENT

Mr. Justin Toth reviewed the comments received on the proposed amendments to Rules 7, 30, 37, and 45. In reviewing the comments made by Mr. Jason McNeill regarding Rule 30, the view of the Committee is that the rule should stay as it is written with no amendments. In his comments on Rule 37 and the removal of (b)(6) on lines 93 and 94, Mr. McNeill expresses concern that the court is losing a valuable tool. The Committee recalls that a couple of years ago, it was decided to funnel how all contemptive court motions are handled, moving them out of Rule 37 and into Rule 7A. Whatever rights for contempt are available, they are available in rule 7A.

Mr. Clay Randall provided comments on Rule 45(e). The committee noted that it is correct that commissioners are denying objections to subpoenas because it's not the proper mechanism to make an objection to a subpoena if you are not a party. If you are a non-party and you want to object to a subpoena, you go to 37(a)(1)(c).

The Committee reviewed Mr. Daniel Young's comments about deleting the language "or those objections are waived" but noted that the goal of having the language included is to prevent the objecting party from sandbagging the noticing party and failing to meet and confer. If a party is going to make objections and then not meet and confer in a timely manner

as required by the rule, then the objections are going to be waived. If it is a non-party that has objected, the noticing party can file a statement of discovery issues, then the non-party's rights come back into rule 37 and they can file an objection to the statement of discovery issues filed by the noticing party. The language exists for a reason and is consistent with the presumption that if you are a party taking discovery, the burden of relevance and proportionality rests with you.

The Committee reviewed Mr. Alex Trumbo comments and noted that the rules still address his concerns. Rule 45(e)(5)(b) requires a party requesting a protective order to serve the protective order on the other parties and on the non-party objecting to the subpoena. The Committee understand his concerns to be largely about what is happening to the non-party and whether they're meeting a subpoena deadline. The non-party has an obligation to assert its rights under the rule. While at times a non-party may not fully understand, all that is required is that they make an objection. The committee agrees with Mr. Trumbo's comment regarding the language in Rule 37 that is inconsistent with the language in Rule 45. Rule 45 requires a non-party to make an objection in writing, not file an objection. Rule 37 requires that the non-party file an objection and for consistency, it should be changed to make an objection instead. The Committee reviewed the last issue Mr. Trumbo raises on Rule 45 and notes that all we are able to do is impose on the participants in the litigation the duty to give notice to the non-party of what's occurring, and the non-party has to follow their own path under Rule 45. The Committee doesn't think it is appropriate to have some language immunizing and protecting the non-party when it disregards the litigating party's objections. If the non-party chooses not to comply, then it does so at its own peril. They should not be immunized for potential misconduct.

Mr. Justin Toth will relay the comments and feedback received from the committee to Mr. Rod Andreason to receive guidance on the next steps.

(5) AFFIDAVIT & UNSWORN DECLARATIONS SUBCOMMITTEE

Mr. Ash McMurray reviewed the history of the affidavits and unsworn declarations subcommittee. The committee had lively discussions in the past about how affidavits, unsworn declarations and verified documents are referred to throughout the rules. The phrases are not well defined and somewhat inconsistent, so the Committee was tasked with making them consistent. Initially, the Committee attempted to preserve the references to Utah Code Title 78B, Chapter 18a (the "Act"). However, this inflated the language throughout the rules and our style guide expresses a preference against making external references. The Committee next proposed adopting the basic definition of the Act for an unsworn declaration. Ambiguity surrounding the term declaration became a point of concern, given the different types of declarations. This also led to inquiries regarding a potential underlying motive to discourage sworn declarations and how that might impact people under the rules. The subcommittee was asked to go back and investigate these issues.

Much of what the subcommittee found is included in the memo provided with the meeting materials. To summarize, the Act was passed in 2018 began as an unsworn foreign declarations act, implemented because individuals living abroad had difficulty getting notarized documents and the statute allowed them to simply sign under penalty of perjury without a notary. The statute was so well received, they decided to extend it to include rural areas to make it consistent. The subcommittee could find no other motive behind the intent to extend the statute than mostly a means of facilitating convenience for parties throughout Utah.

The subcommittee researched the effect on other rules and statutes and the ambiguity between different types of declarations. Our code is somewhat inconsistent depending on how and when it has been updated. The subcommittee thought these issues could be solved through drafting, avoiding applying the rule to statutory requirements and really limiting it to any place in the rules where an affidavit might be required. In

The proposed changes to Rule 11 and the new Rule 88 are included with the memo and the subcommittee welcomes feedback, especially on what to call these types of declarations. The Committee originally said declaration, but this word makes it a bit more circular because they refer inside themselves to unsworn declarations and sworn declarations and also raises the specter of other types of declarations, which could be legal acts like declaring candidacy. There is no confusion about what affidavit is, so there is the option to use that and broaden the definition of affidavit to include unsworn declarations. Mr. Ash McMurray's proposal to the Committee is to call it a "signed declaration".

Ms. Laurel Hanks suggested "signed statement" and wondered if there is a way to clarify that an affidavit or declaration doesn't have to be a separate document. Mr. Ash McMurray pointed to the proposed language in Rule 11(d) that includes the language "in the same document" so it's addressed there to some extent. Mr. Justin Toth raised the concern that giving it a new name might make people think it is something different or new. Judge Cornish noted that trying to put it in simpler language at times confuses people as well. The Committee decided to use "signed declaration".

While researching this issue, it was noted that Rule 30(e) states that a witness may sign a statement of changes to the form or substance of the transcript or recording. It is often the custom and practice but there is nothing in the rules that requires it. The subcommittee welcomes feedback on whether or not a statement of changes should be a verified document. The subcommittee will prepare specific proposed language and bring it back to the Committee.

(6) RULE 102 – MOTION AND ORDER FOR PAYMENT OF COSTS AND FEES.

This agenda item was deferred due to time constraints.

(6) ADJOURNMENT

Mr. Justin Toth thanked everyone for their work on the Committee. With no more agenda items, the meeting was adjourned at 5:57 p.m. The next meeting will be April 23, 2025, at 4:00 p.m.