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		Stacy Haacke, Staff
Justin T. Toth, Vice Chair	X		Keri Sargent
Ash McMurray	X		
Michael Stahler		X	
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, *Emeritus*	X		
James Hunnicutt, *Emeritus*		X	

(1) INTRODUCTIONS

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

(2) APPROVAL OF MINUTES

Mr. Andreason noted he had reviewed the minutes and found only a minor typo on page four, second paragraph, regarding a word at the end of a sentence. He indicated that with Jim Hunnicutt absent, they couldn't rely on his usual editing. Mr. Justin Toth moved to approve the minutes. Mr. Tyler Lindley seconded the motion. A vote was held, and the motion to approve the minutes passed unanimously.

(3) RULES BACK FROM PUBLIC COMMENT - RULES 7, 30, 37, AND 45

Mr. Andreason introduced Rules 7, 30, 37, and 45, which were returning from public comment. He recalled from the previous month's minutes that there had been discussion on these rules. Mr. Toth confirmed that based on where the discussion left off, the rules were ready for a vote to be approved as final and sent back to the Supreme Court. Ms. Stacy Haacke affirmed this understanding, stating that a committee vote was needed to submit them to the Supreme Court as final before an effective date could be set. Mr. Andreason inquired if any committee members who participated in the previous month's discussion or reviewed the materials for the current meeting noticed anything requiring further discussion. Hearing none, he called for a motion regarding the proposed rule changes.

Mr. Trevor Lee moved to approve the rule changes as submitted in their current form. Judge Catherine Conklin seconded the motion. Mr. Andreason asked for further discussion. The motion was approved unanimously.

(4) RULE 87 – REQUEST FROM SUPREME COURT

Mr. Andreason introduced Rule 87, a request from the Supreme Court. He noted the materials included an initial statement from Ms. Haacke and some further items. Ms. Haacke explained that Rule 87, the manner of appearance rule, was worked on extensively after coming up in the previous year's legislative session and again in the current session. The justices requested the committee look at the language of the rule with the potential of making amendments to all procedural rules concerning manner of appearance, requested appearances, and the judges' considerations when setting a hearing format. Specifically, they asked the committee for suggestions or recommendations regarding a judge taking into consideration any preferences stated in statute for a particular hearing type. Ms. Haacke provided an example from the most recent legislative session where statute

articulated how certain case types, potentially guardianship cases, can or should be held, whether virtually or in person. The justices wanted to highlight in the procedural rule that judges should consider statutory requirements about hearing format, even when a specific format isn't requested by a party. Ms. Haacke explained she pulled language from sub paragraph (d)(2)(A) of the current rule and added it to a new sub paragraph (b)(11) for the committee's consideration, noting this was her adaptation, not a suggestion from the court, to initiate discussion. Ms. Haacke confirmed the focus was on whether a particular hearing format articulated in statute should be considered by the court when setting a hearing.

Chair Andreason questioned if the articulation in the statute meant the court was considering inviting parties to articulate the statutory requirement. Ms. Haacke clarified that it refers to existing statutory provisions, citing a potential example in guardianship cases. Ms. Keri Sargent raised her hand to provide insight regarding SB 199, the severe intellectual disability guardianship bill. She stated that the bill mentions a preference for remote appearance via WebEx for the respondent, which should be considered by the judge. However, she questioned if "statutory right" in Ms. Haacke's proposed language might be too strong a term, given the legislative intent seemed to lean towards preference. Mr. Andreason wondered if a more general term than "right," such as "directive," was needed to encompass preferences. Ms. Haacke clarified that the proposed language is currently within the motion aspect of the rule, where parties cite constitutional or statutory rights as a factor in their request for a particular appearance format. The Supreme Court's request is whether this factor should also be considered by the court when initially setting the hearing format, independent of a party's motion. Judge Conklin reminded the committee that Rule 87 was changed in September, and parties can now request remote appearance via email, although some judges still require a motion. She noted the court website no longer offers a specific motion form for this.

The committee discussed the conceptual merit of the court considering constitutional or statutory requirements when initially setting hearings. There was general agreement that the concept was good and fair, as sought by the Supreme Court. Discussion turned to the specific statutory reference. Mr. Andreason asked if the statute in question was specifically about guardianship cases and where it could be found. Ms. Sargent confirmed it was Utah Senate Bill 199 regarding severe intellectual disability guardianship. The discussion returned to the specific language proposed, which copied phrasing from (d)(2)(A). Mr. Andreason suggested modifying the language from "constitutional or statutory right" to something like "constitutional or statutory directive" or "provision". He

reasoned this broader language would allow the court to consider legislative intent expressed as preferences or other forms, not just declared rights.

Judge Conklin expressed concern that the second clause in the proposed (b)(11) language seemed more applicable to constitutional rights than statutory provisions and might not sound right when applied to infringing on a statutory provision. She agreed with removing that second part. Mr. Andreason concurred, suggesting the first clause was sufficient to alert courts and parties to consider applicable statutes without needing to define the status. He felt the latter part was unnecessary duplication or backstop. Other committee members agreed that the highlighted language (the second clause and associated phrases) could be deleted as it didn't seem to add anything.

The discussion then considered whether the revised language in (b)(11) should mirror the language in (d)(2)(a). Rod Andreason questioned whether D2A should remain restricted to only considering "constitutional or statutory rights" when finding good cause to deny a request, or if it should be broadened like (b)(11) to include preferences and other provisions, giving the court more flexibility. Several members felt that judges should consider statutory preferences as well, not just rights. Ash McMurray noted the history of Rule 87's changes, suggesting they were possibly a compromise to prevent the legislature from imposing a rule via joint resolution. Stacy Haacke confirmed the Supreme Court acted with its committees to craft the rule instead of letting the legislature impose it. She wasn't sure if any statutory provisions on hearing format existed when the original language was drafted, suggesting the recent bills might be the first. She noted the criminal rules committees particularly wanted a right to appear in a certain way, which may have influenced the language.

It was suggested that the committee could propose the (b)(11) language to the justices and ask if (d)(2)(A) should mirror it, letting the justices decide. Mr. Andreason felt a recommendation from the committee would carry more weight. Mr. Tyler Lindley and Judge Rawson agreed that the provisions should probably mirror each other due to the similarity of the terminology and concepts. Mr. Ash McMurray played devil's advocate, questioning if broadening from "right" to "provision" might lead to lazy legislative drafting and make it harder for courts to determine how much weight to give such provisions. Rod Andreason responded that if the court can permissively look at legislative intent based on the statute, even if it's not a defined right, it expands the potential grounds for the court's ruling, which he did not mind. Ash McMurray conceded that "provision" might be better, especially if statutes include factors for courts to consider rather than just strict rights.

Judge Conklin also found the second clause problematic, suggesting it was superfluous or perhaps intended to refer to a separate right not adequately protected by remote appearance. She also noted the language "by appearing remotely" in (d)(2)(A) was too narrow, as any format could potentially diminish or infringe rights. She suggested removing the word "remotely".

Mr. McMurray moved to change both (b)(11) and (d)(2)(A) to mirror each other using the revised language discussed. Judge Corum seconded. Chair Rod Andreason asked for discussion. The motion passed unanimously.

(5) RULE 42 CONSOLIDATION OF CASES

Ms. Page provided an overview, explaining the committee had reviewed Rule 42 multiple times since late 2023. A decision was made to use a single case number for consolidated cases instead of a new one, which the committee approved and the Supreme Court found acceptable. The Supreme Court sent the rule back with requests for additional amendments, specifically wanting clarity that parties did not need to file a motion to intervene before moving to consolidate. Concurrently, the committee discussed inherent problems with consolidating cases of differing case types, which might have different access levels under the code of judicial administration. A subcommittee was formed to address the Supreme Court's suggested language regarding motions to consolidate or intervene and the issues judges faced with differing case access. Ms. Page mentioned the subcommittee, which included Judge Stone initially (explaining his redlines), Judge Scott, Ms. Sargent, and Mr. Chambers, also reviewed the rule for conformity with plain language, the style guide, and other rules. She noted the packet included a cleaned-up version to aid review of the numerous revisions.

Mr. Andreason asked for clarification on which redlines represented new changes versus those previously approved. Ms. Page clarified that only the change from "new" to "single" case number on line 37 had been approved by the committee at large. Most of paragraph (a)(2) (starting line 22) had been reviewed, but the Supreme Court provided alternative language (starting line 27) that the subcommittee considered. The blue markings indicated new subcommittee work, while redlining (strikeouts) might represent changes seen before.

Ms. Page noted the change on line 9 from "transferee court" to "receiving court" was a plain language update, as "transferee" was not plain language. Mr. Andreason questioned if "transferee" had legal significance from case law or other rules that warranted keeping it despite the plain language preference. Loni Page found it mentioned in Rule 65B regarding a person's identity, not a court. She noted "transfer of proceedings" also appears

earlier in the rule, suggesting some merit to keeping "transferee". Plain language was the primary reason for the proposed change. The committee did not object to this change.

Ms. Page explained a new factor was added to the list of considerations for the court when deciding on a motion to consolidate: "whether the cases have differing public access levels or records classifications". This addition was intended to prompt the court to consider potential administrative issues related to differing case access. She described it as a gentle, informative change that adds a meaningful factor. No committee members objected to adding this factor.

Ms. Page explained that most of subsection (a)(2) had been in the rule since 2021. The Supreme Court offered two alternatives for the language: the existing version (lines 22-23) and an alternative (starting line 27). The subcommittee recommended the existing language (lines 22-23) as simpler to understand. Rod Andreason raised the issue of more than two cases being consolidated. Judge Laura Scott stated it happens very infrequently. She said the more common concern the committee addressed was consolidating different case types that can't be consolidated but could be reassigned to the same judge. In her 10 years on the bench, she could not recall a request to consolidate more than two cases. Judge Corum recalled it happening perhaps once, finding it very unusual.

The committee returned to comparing the subcommittee's preferred language (lines 22-27 with blue text) and the Supreme Court's alternative (lines 27-31). Rod Andreason leaned towards the subcommittee's version. Judge Conklin suggested the alternative language on lines 28-29 ("The movement must file in each other action notice of the motion and notice of the order denying or granting the motion") seemed more streamlined as it combined the notice requirements for the motion and the order. She also found the phrase "and any party may file" on line 26 superfluous, arguing any party can file whatever they want. Ms. Page explained the phrase meant another attorney could file the notice if the movant did not, and it was present in the current rule. Rod Andreason acknowledged it was legacy language and might not be meaningful enough to keep. Judge Conklin felt it undermined the requirement that the movant must file the notice.

Ms. Page mentioned prior committee discussion considered simply filing a copy of the motion or order in the other cases, but this was administratively confusing for clerks and the record. She felt having a proper notice specific to each case number was preferable for clerical purposes. Rod Andreason suggested a hybrid approach: keep the first part of the subcommittee's preferred language (lines 22 through the first half of 25) and then use the alternative language's structure for the notice requirements, excluding the word "other". This would result in language similar to: "The movement must file in each action notice of the motion and notice of the order denying or granting the motion.".

Ms. Page reviewed the next amended paragraph containing Judge Stone's draft language and subsequent subcommittee revisions. She noted the existing rule states that upon consolidation, a new case number is used. The proposed change is to use a single case number instead of a new one. She clarified that in practice, this typically means using the lower or first-filed case number.

The committee reviewed the default language (lines 33-35): "If the court orders consolidation, the consolidated case will be heard by the judge assigned at the first action filed, unless otherwise ordered by the presiding judge or agreed upon by the originally assigned judges." Mr. Andreason preferred "first action filed" as more plain language than "first filed action." He asked about the provision allowing the presiding judge or originally assigned judges to deviate from the default. Judge Scott explained this language embodies the current practice where judges often communicate when cases are consolidated, and the judge with the later-filed case might take it if, for example, their case is further progressed. She felt this flexibility was necessary and reflected what they already do. The remaining sentences in the paragraph were discussed for clarity and deletion.

Next Ms. Page stated all of subsection (b) and the addition of a new sub paragraph (b)(2) came from Judge Stone and aimed to address circumstances like separate trials and severing cases. The introductory phrase "to provide convenience or to avoid prejudice" was discussed. Judge Conklin preferred "for convenience or to avoid prejudice." Ms. Tonya Wright commented in the chat about "judicial economy" as a factor focusing on the judge's side, noting "convenience" is broader. Mr. Andreason did not mind giving judges broad discretion with "convenience" and noted it might be more understandable to pro se litigants than "judicial economy." The committee agreed on "for convenience or to avoid prejudice" as the start of the new subparagraph.

Judge Conklin suggested deleting the first "or" on line 45 and "of any" on line 46 to make the structure parallel between singular claims/issues and plural claims or issues. She then suggested consolidating both clauses by saying "a separate trial be held on one or more claims, cross claims, counter claims, third party claims, or separate issues." The committee appeared to agree with this revised phrasing for (b)(1). The committee agreed the word "may" in the introductory sentence of (b) meant "or" fit between the subsequent options.

The new sub paragraph in (b) proposed the court could "order that the consolidated matters be severed at any point and provide that the matters be treated as separate actions going forward including that the severed matters be tried by either the judge in the consolidated matter or the originally assigned judge." Ms. Page explained this addresses the practice of severing cases after consolidation, which wasn't previously contemplated in the rule, providing clarity for clerks. Mr. Andreason suggested changing the title of

subsection (b) to "Consolidation; Severance" if this subsection were kept. He questioned if (b)(1) was needed if (b)(2) allowed severance at any point, potentially making severance the means to achieve separate trials. Ms. Page believed that consolidation did not automatically mean trying cases together; cases maintain their separate character. Judge Corum confirmed that even if consolidated under one number, cases keep their separate procedural and legal identities, especially with different case types (e.g., eviction and divorce) with different governing rules. He felt (b)(1) had value because trying cases together is not the default.

Ms. Page stated this proposed sub paragraph (c) was new and contributed by Judge Scott. It addresses situations where consolidation would be appropriate conceptually but is administratively impossible due to differing case types or record classifications (e.g., private vs. public access). In such cases, it proposes that the judge assigned to the first action, with consent of the parties and other originally assigned judges, could order reassignment of the other actions to the first judge. This keeps the cases with the same judge even if they can't be formally consolidated under one number. Judge Scott added this scenario also covers retention issues, like probate matters that must be retained indefinitely.

Mr. Andreason asked if the committee was ready to vote. Judge Corum moved to accept the language for Rule 42 as set forth with the agreed-upon amendments during the discussion. Judge Conklin seconded. The motion passed unanimously.

(6) ADJOURNMENT

The meeting was adjourned at 6:03 p.m. The next meeting will be May 28, 2025, at 4:00 p.m.