

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

Summary Minutes – December 2, 2020

**DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX**

Committee members & staff	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair	X		
Robert Alder		X	
Rod N. Andreason	X		
Judge James T. Blanch	X		
Lauren DiFrancesco	X		
Judge Kent Holmberg	X		
James Hunnicutt	X		
Larissa Lee		X	
Trevor Lee	X		
Judge Amber M. Mettler	X		
Brooke McKnight	X		
Ash McMurray	X		
Timothy Pack	X		
Bryan Pattison	X		
Michael Petrogeorge		X	
Judge Clay Stucki		X	
Judge Laura Scott	X		
Leslie W. Slauch	X		
Trystan B. Smith	X		
Heather M. Sneddon		X	
Paul Stancil		X	
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Nancy Sylvester, Staff	X		
Kim Neville, Recording Secretary		X	

(1) WELCOME AND APPROVAL OF MINUTES

Jonathan Hafen welcomed the committee and asked for approval of the minutes as amended by comments of the committee. Jim Hunnicut moved to adopt the minutes as amended. Rod Andreason seconded the motion. The minutes were approved unanimously.

(2) RULES BACK FROM COMMENT

Rule 83. Vexatious litigant amendments.

Nancy Sylvester introduced comments concerning proposed amendments to Rule 83 and how the rule would apply if a U.S. district court entered a vexatious litigant order. Lauren DiFrancesco noted that because the proposed language in paragraph (b) would permit a court to enter an order requiring a vexatious litigant to abide by a pre-filing order requiring the vexatious litigant to obtain leave of the court before filing any future claim for relief in “any court,” the rule may raise concerns about infringing on the jurisdiction of federal courts. The committee discussed whether to modify the word “court” to appropriately limit its scope. Because the Utah Rules of Civil Procedure apply only to state courts, the committee ultimately decided against adding additional modifiers.

The committee then turned to a proposed change to paragraph (e), which would have required a presiding judge to consult with the judge who entered the vexatious litigant order prior to deciding whether to allow a new claim to be filed. Trevor Lee inquired whether the intent was to require consultation. Judge Andrew Stone commented that, from an efficiency and workload perspective, the judge who entered the order, rather than the presiding judge, would be better suited to decide based on their existing knowledge of the litigant’s file. Brooke McKnight noted that presiding judges face a high burden when faced with becoming familiar with the sometimes lengthy files of vexatious litigants.

Leslie Slaugh cautioned that, despite possible efficiencies, there may be concerns about requiring a judge to decide what occurs in another judge’s court. Judge Laura Scott observed that judges are often reluctant to enter vexatious litigant orders, and she expressed concern that a judge who enters a vexatious litigant order will be required to review every filing from that individual thereafter. Judge Amber Mettler raised a concern that requiring consultation may have problematic consequences when applied across different court levels. Mr. Lee suggested that the rule could be amended to give a presiding judge discretion to pass the decision to the judge who entered the order. Judge James Blanch commented that a judge would be unlikely to permit a vexatious litigant to file without scrutiny and that the easiest course of action would be to contact the judge who entered the order.

After further discussion, the majority of the judges on the committee expressed a preference to permit, but not require, the presiding judge to consult with the ordering judge regarding a vexatious litigant's new claim.

Rules 4, 7, 8, 36, 101. Notice amendments.

Ms. Sylvester introduced comments regarding the proposed notice requirements in Rules 4, 7, 8, 36, and 101, including comments expressing concern that the requirements to provide notices regarding consequences and resources would be overly burdensome, and that the requirements should apply only in cases where there is an unrepresented party. After considering the comments, the committee determined that requiring more notice would be a better policy because it is not always clear when a party is represented, noting that in some cases a limited scope attorney or licensed paralegal practitioner may be involved for only a part of the case.

Other comments.

With the remaining time the Committee reviewed the few comments made regarding proposed amendments to Rules 42 and 64. After some discussion, the committee agreed that comments to Rule 64 would benefit from additional review during the next committee meeting.

The committee voted unanimously to request the Supreme Court to publish as final Rule 42, 5, 109, 4, 7, 8, 36, 101, 7A, 7B, and 83.

(3) ADJOURNMENT

The remaining items were deferred until January 27, 2021. The meeting adjourned at 5:04 p.m.