

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

**Summary Minutes – March 23, 2022**

**DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY  
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>
Robert Adler	<b>X</b>		Stacy Haacke, Staff
Rod N. Andreason	<b>X</b>		Crystal Powell, Recording Secretary
Lauren DiFrancesco, Chair	<b>X</b>		Keri Sargent
Judge Kent Holmberg		<b>X</b>	Chris Williams
James Hunnicutt	<b>X</b>		
Judge Linda Jones		<b>X</b>	
Trevor Lee	<b>X</b>		
Ash McMurray	<b>X</b>		
Judge Amber M. Mettler		<b>X</b>	
Kim Neville		<b>X</b>	
Timothy Pack	<b>X</b>		
Loni Page	<b>X</b>		
Bryan Pattison	<b>X</b>		
James Peterson		<b>X</b>	
Judge Laura Scott		<b>X</b>	
Leslie W. Slaugh	<b>X</b>		
Paul Stancil		<b>X</b>	
Judge Clay Stucki	<b>X</b>		
Judge Andrew H. Stone	<b>X</b>		
Justin T. Toth	<b>X</b>		
Susan Vogel	<b>X</b>		
Tonya Wright	<b>X</b>		

**(1) MEMBER INTRODUCTIONS**

The meeting started after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests to the meeting. It was discussed that Mr. Leslie Slaugh will be resigning from the Committee after the April meeting, and Judge Blanch will be resigning as well.

**(2) APPROVAL OF MINUTES**

Ms. Lauren DiFrancesco asked for approval of the Minutes subject to minor amendments noted by the Minutes subcommittee. Susan Vogel moved to adopt the minutes as amended. Jim Hunnicutt seconded. The minutes were unanimously approved.

**(3) RULE 26 AND HB0344**

Ms. Lauren DiFrancesco informed the committee that the Legislature issued and passed a rule on medical candor with amendments to Rule 26. This is really just for the Committees information. The effective date of the amended rule will be May 4, 2022.

**(4) RULE 45**

*Comment to Rule 45 regarding LPPs.*

Ms. Tonya Wright has prepared a comment for Rule 45 regarding LPPs. Mr. Hunnicutt likes the explanation, but notes the preference for no comments to the rules and that the Supreme Court has asked the Committee to review notes to either delete them or amend the rule to be more clear. Mr. Leslie Slaugh mentions the exception to preference for no committee notes is if the comment is meant to educate practitioners on a temporary basis. Otherwise the rules should be clear on their own. Judge Stucki concurs with Mr. Slaugh's explanation, and that this particular comment would fall within such an exception. The second sentence is useful in educating attorneys. Ms. Vogel mentions the language "sign and issue." Ms. DiFrancesco indicates there was a discussion surrounding "sign and issue" at the last meeting. Mr. Rod Andreason mentions trying to internally calendar a "sunset" of comments to a rule.

Judge Stucki moves to approve the comment. Mr. Justin Toth seconds the motion. The comment is unanimously approved.

*Foreign Subpoenas.*

Mr. Tim Pack has proposed an amendment to paragraph (k) regarding foreign subpoenas. There is discussion surrounding Rule 30(h) and uniformity. Mr. Hunnicutt mentions the federal rules stop at paragraph (g). Ms. DiFrancesco mentions that foreign subpoenas are typically signed by an attorney or clerk. Mr. Pack raises the matter of jurisdiction when an outside attorney tries to conduct a deposition of someone in Utah. Mr. Slaugh believes the statute is broader. In terms of which court

hears an objection the statute is unclear which is why Rule 45(k) was drafted. Ms. DiFrancesco references statutory provision with similar language in Utah Code section 78B-17-204. If another state does not follow the Act, would 30(h) be useful and then would you need a subpoena? Ms. Vogel mentions the court website and what is listed as required. Mr. Pack states that is a lot of procedure that is not listed in the rule, and may want to just allow the statute to dictate the procedure. Ms. Vogel would like to see instruction in the rule. This may be a forms issue. Ultimately, the proposed amendment for Rule 45(k) is withdrawn, and Rule 30(h) remains untouched.

*Prior submissions for requests on Rule 45.*

These are requests sent to the Committee that have not been thoroughly addressed. Mr. Hunnicutt, Ms. Vogel, and Ms. Wright volunteer to take on these requests for review. Mr. Slauch mentions the timing issue raised by Mr. Hafen is 4 days pursuant to the federal rule. May also want to request guidance from Ms. Jenifer Tomchak.

**(5) RULES 7 AND 101**

The Committee left off on this issue with discussing Rule 101 as presented by Mr. Trevor Lee. Ms. Vogel mentions the “or in the alternative” language and request an addition of “whichever is shorter” be included because someone could use one word over 5,000 pages. In response to this Mr. Bryan Pattison mentions the formatting requirements found in Rule 10(b). Ms. Vogel suggests a table to explain the limits in each rule. Mr. Hunnicutt states the latest he’s heard from court commissioners is that they would not be excited about the idea of word limits. The practice is hard enough with page limits where a lot of parties are pro se. Presenting word limits in this area would be idealistic. Mr. Lee mentions the certification needed to use word limits on a filing versus page limits. Mr. Andreason asks how the limit of 400 words was calculated because there are usually 300 words per page. Mr. Lee indicates he reviewed the federal and appellate rules, averaged their limits and then just rounded the number. There tends to be a little more argument available with the word count than the page count. Mr. Andreason states he would prefer comparable accuracy over rounded numbers. Mr. Lee will take another look at the rules that mention length of brief and return to the Committee.

**(6) RULE 26**

Judge Stone brings the issue of an increase in third party financing in plaintiff’s cases to the Committee and questions whether this should be disclosed similar to defendant’s insurance. Judge Stone has done some research on the issue. Hedge funds are buying an interest in cases and buying a piece of the recovery. Mr. Slauch asks what the line would be in terms of disclosing “lines of credit,” contingent fees, or financing of costs. Judge Stone mentions defendant’s insurance as a party of interest, where on the other hand there are a number of medical experts claiming large medical fees which are increased based upon an agreement with the plaintiff. Judge Stone will circulate a few articles for the Committee to review and the Committee can return to the issue for further discussion.

**(7) LEGAL TERMINOLOGY**

The issue of legal terminology used in the rules is presented by Ms. Vogel and the subcommittee. President Nixon ordered the use of layman’s terms as the trend in people representing themselves began. When Susan was practicing in the 90’s and wrote a paper on how people were happy with simple words and others thought they were being coddled. Trend in self represented litigants is tied to economic disparities. Subcommittee has re-named themselves the “Plain Language Subcommittee” and includes Mr. Ash McMurray, Mr. Trevor Lee, and Mr. Leslie Slaugh.

Mr. McMurray states he is half Korean and family members are immigrants. For the first part of their lives here things were difficult. Had an uncle who was an attorney at Kirton McConkie, otherwise it would have been difficult on their own. Many interactions with the Korean community, and his background includes philosophy of language. Mr. Lee states he has an interest in making sure legal writing is easy to use and understand. Law is really hard and the writing should not make it harder. We want to balance understandability and readability with words that have been embedded in the rules and law. Mr. Slaugh finds himself as the nay-sayer. He is all about simplified language, but would request we not scrap words that have an established meaning just to make it more easily understood. There is a lengthy guide included in materials, on page 23. The group is looking to simplify the processes along with simplifying words. The rules have become longer, but if we shorten or simplify we may see more diversity in decisions from judges.

Different ideas are being considered by the Subcommittee, including hyperlinking words, explanations linked to words, or a glossary. The group may collect data on which terms are causing the most confusion based upon click rates. Judge Stone mentions there are algorithms that will tell you average grade levels. Ms. Vogel states the goal is a 6<sup>th</sup> grade reading level. The Committee can expect to see a lot of challenge from the Subcommittee when it comes to words being used. They are going to take the changes as they come, and can share a spreadsheet with the Committee.

**(8) ADJOURNMENT.**

The next meeting will be on April 27, 2022. The Chair thanked everyone for their time and effort and wished everyone a great month. The meeting adjourned at 6:00 p.m.