

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes August 24, 2022

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

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason	X		Stacy Haacke, Staff
Lauren DiFrancesco, Chair		X	Keri Sargent
Judge Kent Holmberg	X		Brent Salazar Hall
James Hunnicutt		X	Tim Clark
Trevor Lee	X		Judge Amy Oliver
Ash McMurray	X		
Kim Neville	X		
Timothy Pack	X		
Loni Page	X		
Bryan Pattison		X	
Judge Laura Scott	X		
Judge Clay Stucki	X		
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Tonya Wright	X		
Vacant Academic Seat			
Vacant Academic Seat			
Vacant Judicial Seat			
<i>2 Emeritus Seats</i>			

(1) INTRODUCTIONS

Rod Andreason welcomed the Committee and guests. There are currently two academic seats and two emeritus seats open on the committee. Also, the May meeting was the final meeting for Judge Mettler. Nick Stiles is working on getting her position filled. Stacy Haacke will have an email sent directly to law schools with the notice of the vacancies. The Committee previously discussed a court

commissioner be a member of the committee and Stacy Haacke will work with Lauren DiFrancesco in putting together a letter to the justices to request for nomination of a court commissioner.

(2) APPROVAL OF MINUTES

Rod asked for approval of the Minutes as presented. Susan Vogel moved to adopt as presented. Judge Stucki seconded. The Minutes were unanimously approved.

(3) RULE 3(A)(2)

Tim Clark was invited to address the committee in regards to rule 3(a)(2). Due to a recent personal experience as the defendant on a case, Mr. Clark does not believe the rule has a purpose and recommends removing that section from rule 3. Rule 3(a)(2) allows for a complaint to be filed or service by summons to be issued. Mr. Clark also notes that if a complaint is served, but not filed, it becomes ambiguous with the due date to file within 10 days. If a person does not receive notice they then need to call the clerk to inquire about the summons and then only have a 7 days remaining to file a response.

The committee discussed that the provisions in the rule are difficult for a pro se litigant to navigate and at times is confusing for all parties involved. The rule does not benefit the court processes as a whole. However, as the rule is a legislative provision, the committee does not have authority to remove the rule. The rule would require a legislative review and recommendation for removal. The committee discussed several options for amendments to the rule, one being to move the date of filing and response to 21 days. The other being to move the rule from the justice court level to the small claims court level. The committee discussed that additional discussion and research is needed to determine the best recommendation for a revision and clarity to the rule. The committee recommended a subcommittee be formed and that a member of the debt collection bar be invited to participate in the discussions. Susan Vogel, Trevor Lee, Judge Stucki, Keri Sargent, and Tonya Wright will participate as members of the subcommittee. Ms. Wright will reach out to the debt collection bar to invite someone from the group to participate in the subcommittee. The committee will provide a report at a future meeting.

(4) PUBLIC COMMENTS TO RULE 76, 4, 41, 42, 43, 26.1

The public comment period has closed as rules 76, 4, 41, 42, 43, and 26.1. Rules 76, 41, and 43 did not receive any comments. Rule 26.1 had a recommendation for a minor modification to the language in domestic cases. Rule 4 received on comment and decides to leave the change from “will” to “may” in place and proceed to final approval by the Supreme Court.

The comments in rule 42 ask that the language be amended to clarify that a motion may be filed in either case to be consolidated and by any party to either of the actions to be consolidated. The committee discussed that the language could be clarified so a Motion to Intervene was not necessary. The committee recommended that language be added to line 21 to include “. . . to either action to be

consolidated . . .” Keri Sargent noted that there is a workaround available that may be not be accurately reflecting what is happening in the case, but this is something that can be fixed to ensure that judges and JA’s are seeing an accurate history of the motions that are filed.

Following further discussions, Judge Stone moved to approve the language as amended in rule 42 and to send the rule to the Supreme Court for approval for an additional 45-day comment period. Tim Pack seconded the motion. The motion unanimously passed.

(5) NOTICE OF EVENT DUE DATES

Notice goes out on domestic cases when an answer is filed and include the wrong date for some cases. The new releases of the notices will take affect October 1. Ms. Sargent is working with the IT group to have the notices corrected prior to that Ms. Sargent recommends a disclaimer be added to the notice that rule 26 still applies regardless of when the notice goes out. Ms. Sargent will work with Ms. Haacke to correct the dates on the notices. No further action needed by the committee.

(6) STANDARD PROTECTIVE ORDERS

The committee met and proposed language for the rule and standard protective order for discovery. The proposed language models the federal standard and edited to conform to state rules. The rule would not require a separate order of the court and would carve out cases that did not apply. Any party could petition the court to address any items that is not part of the case. The name of the rule is proposed to be changed to “Standard Protective Order for Discovery.” The rule does not carve out debt collection cases, personal injury cases, and other cases already exempt under rule 26.1, 26.2, and 26.4. There are already similar provisions in family law. Judge Oliver recommends that a new subsection be added to rule 26 either under subsection (g) or under subsection (b)(2) or (b)(2)(h).

The committee noted that the language within the protective order is good to have in place, especially in the event that there is dispute amongst the parties involved, however, perhaps a standard order is more suited for resolution in these matters. The committee recommends that subcommittee review the proposed amendments to determine if a notice of filing form or a standard form is needed for the standard protective order. The committee also recommended that service of the order, whether the parties are represented or not, should be included.

The subcommittee will provide a report at a future meeting.

(7) RULE 53

The proposed amendments to rule 26 are a result of a legislative audit that was conducted several years ago. Judge Holmberg asked Brent Salazar-Hall to look into the rule and create a special master to the rule. Mr. Salazar-Hall proposes language for a special master in domestic cases. The

proposals have been discussed with the standing committee and the family law procedures subcommittee.

The committee discussed Mr. Salazar-Hall’s proposed language. Not citing any major concerns with the rule, the committee commended minor language changes. The title of the rule was changed to “Special Masters for Child Related Issues in Domestic Cases.” Section (k) was amended to “Use of Special Masters for Other Issues.” The definition was modified to include “For purposed of this rule, . . . “

Following further discussions, Judge Stone moved to approve the language as amended in rule 53 and to send the rule to the Supreme Court for approval for an additional 45-day comment period. Susan Vogel seconded the motion. The motion unanimously passed.

(8) ADJOURN

Meeting adjourned at 6:03 pm. The next meeting will be on September 28, 2022, at 4:00 p.m.