

UTAH SUPREME COURT ADVISORY COMMITTEE
ON RULES OF CIVIL PROCEDURE

Summary Minutes – May 25, 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		Crystal Powell, Recording Secretary
Judge Kent Holmberg	X		Keri Sargent
James Hunnicutt	X		Jacqueline Carlton
Trevor Lee	X		
Ash McMurray		X	
Judge Amber M. Mettler	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			
2 Emeritus Seats			

(1) INTRODUCTIONS

The meeting started at 4:03 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the Minutes subject to minor amendments noted by the minutes subcommittee. Judge Clay Stucki moved to adopt the Minutes as amended. Mr. Justin Toth seconded. The Minutes were unanimously approved.

(3) RULE 26(a)(1)(A)(ii)

Mr. Tim Pack summarized case law *Johansen v. Johansen*, 2021 UT App 130, and its impact on Rule 26(a) (1)(A)(ii). Mr. Pack wondered if the Committee should consider removing the adverse party exception to the requirement to disclose testimony summary for case-in-chief witnesses. Ms. DiFrancesco questioned if it relates to initial disclosures or final pretrial disclosures. Ms. Vogel questioned whether the lack of initial disclosures wouldn't come up in a meet and confer, but Mr. Pack explained that it is not required. Judge Holmberg reviewed the advisory committee note when the Rule was adopted which discusses the scope and level required for initial disclosures. After a full discussion on how the rule would affect various types of cases, Mr. Pack expressed that he was not intending to propose a rule change at this time, but merely wanted to raise the issue. Judge Stone suggested that the Committee wait on more case law before looking at changing the Rule.

(4) RULES 26 ADVISORY COMMITTEE NOTES

Ms. Stacy Haacke, referred the issue raised by Rep. Todd Weiler to the Committee concerning the Advisory Committee Notes having some references that do not correspond the rules that they refer to in the printed version of Lexis Nexis. After examining the Rule, Judge Clay Stucki offered that he would do a redline of the comments and give recommendations for harmonizing/correcting the references.

(5) RULES 7B, 109, AND 7A(h) - MOTIONS TO ENFORCE

Judge Amber Mettler related that the issue is whether Rule 7B(i) regarding motions to enforce apply to the domestic relations injunction issued pursuant to Rule 109 where the Rule 7B(i) provides that it does not apply to orders issued at the court's initiative which would then include domestic relations. Mr. Jim Hunniucut explained that the Rule relates to attorneys and not judges but now sees know the rule can be misread and suggested to remove the sentence from the Rule. Ms. Vogel expressed her appreciation for Rule 109 and the positive impact it has had for pro se parties seeking to enforce orders. Judge Stone suggested that it does need to be clear that the Rule does not apply to the court seeking to enforce its own order. The Committee discussed draft language. Ms. DiFrancesco added that the same amendments would be included for Rule 7A(h). Judge Stone moved to approve the draft amendment. Mr. Toth Seconded. The motion was unanimously approved.

(6) Rule 7(l)(1) - MOTIONS THAT CAN BE ACTED UPON WITHOUT WAITING FOR A RESPONSE

Mr. Rod Andreason suggested adding motions to expedite under Rule 7(l)(1) as motions that can be acted on without waiting for a response. He expressed this is the type of motion that can be easily added to this list and could be beneficial to parties. Ms. Vogel and Ms. DiFrancesco wondered whether there was an idea of what types of hearings that would be expedited as there could be potential for abuse of the rule. Mr. Andreason noted that such a situation currently exists with the other types of motions listed but it is ultimately the judge's discretion. Judge Stone raised a hypothetical of whether the motion could be used to shorten a party's response time and disagreed with having a rule that lessens a party's rights in responding to an issue. He suggested that the proper procedure would

be to have a scheduling conference with the judge to discuss the briefing schedule with the parties. Mr. Andreason expressed that the steps in getting a status conference might result in the reason for requesting the expedite becoming moot, but he is open to the compromise. Ms. Vogel questioned what the reason for expediting might be in the absence of another motion such as a temporary restraining order and wondered how the revised rule would impact family law cases. Judge Holmberg agreed with Judge Stone regarding not impacting party rights.

The Committee discussed various types of issues that might arise; the general reluctance to grant requests without hearing from the other side; and the general impact on motion practice and case management. The Committee also discussed the role of Rule 16 conferences in expediting cases/issues. Based on the discussion Mr. Andreason moved to add Rule 16 conferences under Rule 7 as the mechanism to expedite hearings rather than a formal motion to expedite. Judge Stone seconded. The motion passed unanimously.

(7) RULE 7 AND 37. WORD LIMITS

Mr. Trevor Lee presented on the revised drafts of Rules 7 and 37 based on feedback from previous meetings. Ms. Vogel thanked him for his hard work and asked him if there is a word limit for attachments and exhibits. He responded there wasn't and that although Rule 101 does have an overall page limit, that is something else to be addressed. Ms. Vogel also noted that the word 'brief' is not usually very common with pro se parties and questioned whether more descriptive or common words could be used such as a 'paper' or 'document.' Judge Stone reminded the Committee that they had landed on the word 'paper' in a previous meeting.

Judge Holmberg expressed that many times in motions for summary judgment, a party doesn't repeat in the motion the facts that they are opposing which makes the motion extremely difficult to read. He finds it useful to include that the page limit would not include repeating the facts being opposed in motions for summary judgment. He noted that he gets a lot of requests for overlength motions for summary judgment. Judge Holmberg also raised whether the rule would be using the word limit or page limit and the effect that might have on pro se parties who may be using court forms. Ms. Vogel answered that it becomes difficult to use word limits especially when parties are using handwritten briefs or are using court forms because it's very tedious to count the words. Mr. Lee suggested he could work on the proposal a bit more to iron out some of those potential issues. The Committee edited the language of the table to make it clearer. Mr. Lee moved to adopt the draft changes to the table. Mr. Andreason seconded. The motion unanimously passed.

(8) URCP SUBCOMMITTEES

Ms. Lauren Di Francesco asked the Committee to confirm the list of subcommittees to ensure that none are forgotten. The Committee discussed the mandate of each subcommittee and a general status of work.

Ms. Vogel summarized some of the work that has been done on some of the subcommittees that will make the system easier to navigate. Ms. Powell asked to join the terminology subcommittee and was accepted.

Ms. DiFrancesco reminded the Committee that Judge Blanch and Mr. Slauch were emeritus, and their positions can only be filled emeritus. Ms. Haacke reached out to all members whose terms are expiring and all who can serve a second term have accepted to do so. Ms. DiFrancesco raised whether to ask a non-attorney representative to join the Committee. Ms. Vogel suggested someone that assists pro se parties to fill out forms. Some Members expressed that Ms. Vogel already brings a breadth of knowledge and representation that a lay person may not be able to contribute. Ms. DiFrancesco suggested that a subcommittee would be a more appropriate place. Ms. Vogel also suggested perhaps a subcommittee where feedback of layperson may be gained on certain issues and gave the example of a study done by the University of Utah that shows that persons are frustrated with the layout of the court website and find it somewhat difficult to use.

(9) ADJOURNMENT.

The next meeting will be on August 24, 2022, at 4:00 p.m. The Chair encouraged Committee members to reach out to her and Ms. Haacke if the pipeline issues will not be ready for the next Committee meeting and thanked everyone for their time and effort. She wished everyone a great summer. The meeting adjourned at 5:56 p.m.