

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

**Summary Minutes – September 28, 2022**

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

<b>Committee members</b>	<b>Present</b>	<b>Excused</b>	<b>Guests/Staff Present</b>
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		Judge Amy Oliver
Ash McMurray	X		Kara North
Kim Neville		X	Brandon Baxter
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		
Judge Rita Cornish	X		
Vacant Commissioner Seat			
Vacant Academic Seat			
Vacant Academic Seat			
Vacant Self-Rep Perspective Seat			
Vacant Self-Rep Perspective Seat			
2 Emeritus Seats Vacant			

**(1) INTRODUCTIONS**

The meeting started at 4:01 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests. The Committee members introduced themselves to each other and

welcomed the new members. The Committee was informed that the Supreme Court has approved for a commissioner to join the Committee.

**(2) APPROVAL OF MINUTES**

Ms. DiFrancesco asked for approval of the Minutes subject to minor amendments noted by the Minutes subcommittee. Mr. Rod Andreason moved to adopt the Minutes as amended. Mr. Jim Hunniucutt seconded. The Minutes were unanimously approved.

**(3) STANDARD PROTECTION ORDERS**

Judge Oliver updated the Committee on a second draft of the proposed Rule 26(g) Standard Protective orders. The Committee accepted the redraft and passed it unanimously.

**(4) EVICTION EXPUNGEMENT**

Ms. Stacy Haacke reviewed the civil rules to see if any changes need to be made to facilitate the law on automatic expungements for evictions. The Committee discussed a scenario of multiple defendant cases, where only one defendant stipulating to an expungement may have or cause administrative difficulties in expunging that record where other parties may have a judgment. The Committee discussed whether a separate rule needs to be created to facilitate the law. The Committee formed a subcommittee to address the law. Judge Clay Stucki; Lauren DiFrancesco; and Tonya Wright will serve on the subcommittee.

**(5) RULES 5 SERVICE AND FILINGS OF PAPERS**

*Rule 5(a)(1). Papers that must be served.* Ms. Loni Page presented on the changes made to the Rule regarding service to self-represented parties. Of note, Ms. Page explained the edits made were to anticipate the expanded use of MyCase and resolve the feedback received from the Clerks of Court in the various court districts across the state. Major edits included adding MyCase as an acceptable electronic filing account under Rule 5(b)(3)(A). Ms. Susan Vogel thanked the Committee for the work that has been done on the rule.

The Committee discussed amendments to Rule 5(a)(1)(E) to ensure the substance of the Rule was correct. Ms. DiFrancesco also relayed that she received a request for discussion from the Bar Foundation regarding serving parties in default and suggested tabling Rule 5(a)(1) for discussion at another meeting.

*Rule 5(a)(2). Serving Parties in Default.* Ms. DiFrancesco asked the Rule 5 subcommittee to examine Rule 5(a)(2) for amendments that would help self-represented parties who are in default but never answered a suit, and then there is no address to serve the default judgment. The Committee discussed various examples of experiences with this issue and the methods used to mitigate, as well

as, Utah Code 78B-6-811 which deals with the court/plaintiffs' responsibilities towards tenants where there is a judgment for restitution, damages or rent.

*Rule 5(b)(1). How Service is made.* The Committee accepted the changes made and had no other comments.

*Rule 5(b)(3) Methods of Service.* Ms. Haacke informed the Committee that this section would not be ready for the November effective date due to the time needed for public comments. The Committee tabled the issue.

*Rule 5(b)(5) Who serves.* The Committee discussed that a revised edition of a proposed order is not usually served by the court where the court did not prepare the revised proposed order. The Committee discussed keeping "prepared" in the draft language to require the court to serve papers prepared by the court. The subcommittee will work on this rule further.

## **(6) RULES 26. GENERAL PROVISIONS GOVERNING DISCLOSURE AND DISCOVERY.**

Judge Stucki reported on the work for this rule. He corrected the issue of the committee comments in the Rule not matching correctly to the appropriate Rule paragraph. The Committee discussed whether a legislative note in a rule that has been amended substantially should remain in the comments or if it could be removed. The Committee will refer the question to the legislative liaison for the courts for guidance.

## **(7) SELF-REPRESENTED PERSONS ON THE URCP COMMITTEE**

The Supreme Court has asked the Committee to address specific Rules that may pose a barrier to access to justice for self-represented parties and to expand the Committee to include two new members that bring in the perspective of self-represented litigants, whether self-represented litigants or someone in a position to offer the relevant perspective. The Committee discussed how to fill the spots on the Committee to allow for greater participation and representation by self-represented persons. The Self-Help Center noted that they don't believe that they are best suited to fill that role, but perhaps an advocate or leader from an appropriate community organization. Ms. DiFrancesco also advised that the Supreme Court has opened the possibility that the representative could be an attorney from a legal clinic. The Committee will actively scout appropriate representatives.

## **(8) RULE 12(A)(1). DEFENSES AND OBJECTIONS.**

The Supreme Court has requested the Committee to address whether adding the requirement in the rule that the answer be filed would reduce the number of cases ending in default. The Rule 5 subcommittee volunteered to work on issue as it is similar to the efforts they are making with regards to Rule 5.

**(9) RULE 47. ATTORNEY-CONDUCTED VOIR DIRE**

Ms. Kara North and Mr. Brandon Baxter were invited to present their proposal on Rule changes to make the voir dire practice across the state more uniform where they propose attorney-conducted voir dire. The Committee discussed the positives and negatives surrounding the proposal and ultimately requested that more stakeholder consultation be conducted to ensure that all voices are represented before more fully discussing proposed changes to the voir dire process.

**ADJOURNMENT.**

The next meeting will be on October 26, 2022, at 4:00 p.m. The Committee will adopt a hybrid meeting pattern of being in person every other month. 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. The meeting adjourned at 6:02 p.m.