

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

Summary Minutes – October 26, 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		
Trevor Lee	X		
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		
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.

(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) RULE 47. ATTORNEY VOIR DIRE

Ms. DiFrancesco reported to the Committee that the invited representatives are not finished consultations with the defense bar on this proposed rule change and will not present on the voir dire issue at this meeting. The Committee made some suggestions of other considerations they would like the proposal to address such as input from academia regarding equity and making sure that opposing viewpoints are selected objectively. The Committee discussed some practical issues regarding convening a jury pool by Webex versus in person across the various court districts and how the proposed rule change taking discretion away from judges would impact that.

(4) RULE 26. EDITS TO COMMENTS

Judge Clay Stucki reported the changes made in the comments of the Rule where the cross-references no longer match. Judge Stucki raised the issue of the legislative note that appears to be outdated. The Committee had previously reached out to the legislative liaison regarding how to address the legislative note. The Committee discussed whether the Committee has the authority to remove a legislative note from the comments. It was suggested that in transmitting the draft rule to the Supreme Court, the Committee would also include the draft comments omitting the legislative note along with a note on the reason for the deletion. Another suggestion was to resolve the outdated comment by deleting it and leaving a reference for the legislative history citing to the resolution originally adopting the legislative note. Ultimately, the Committee decided that it is the Supreme Court that should make the decision on how to resolve the expired legislative comment. Judge Stucki moved to refer the note with the suggestions to the Supreme Court for final decision. Judge Cornish seconded. The motion passed unanimously.

(5) NEW MEMBER SEATS

Lauren DiFrancesco advised the Committee that she and Ms. Susan Vogel will meet with Mr. Nick Stiles to further discuss best ways to recruit the desired representation.

(6) RULE 12(a)(1). SUPREME COURT DIRECTION TO REVIEW FILING AN ANSWER

The Rule 5 subcommittee is not yet prepared to present on this issue.

(7) RULE 26.1(h). SUPREME COURT DIRECTION TO CLARIFY WHEN DISCLOSURES ARE REQUIRED.

The Committee has sent out changes to the Rule for comments but have not made any draft changes to reflect the Supreme Court's concern to make it clear that disclosures are only required if the other party files an answer or otherwise disagrees with the petition but deadline to serve the disclosures is only triggered by the filing of the answers to the complaint. Ms. Vogel expressed that even though the deadlines are set, parties still get confused on whether they have to file disclosures where there had been a stipulation leading to the respondent not filing an answer. The Committee reviewed subpart 26.1 (b). Ms. Vogel suggested that the clarification be placed in 26.1(a) where the initial disclosures are not required if the claim is uncontested. Mr. Hunnicutt noted that it might be unclear to self-represented persons what it means for a case to be contested or uncontested when there is some agreement, but other information is still necessary such as financial disclosures relating to child support. The Committee also wondered if the clarification is best placed on the forms because the deadlines are clear in the rules. The committee decided without motion to discuss this issue more carefully with Nick Stiles before proceeding further.

(8) RULE 104. SUPREME COURT DIRECTION TO CONSIDER REPEALING OR CLARIFYING WHEN PLEADING WOULD SUFFICE FOR AFFIDAVIT (IN A DIVORCE).

Mr. Jim Hunnicutt reviewed how persons historically went to court in person to get their divorce finalized even if the divorce was settled. The modern rule no longer requires parties to physically go to court because jurisdiction is typically spelt out in the original petition. He expressed that this is not always the case when there are no minor children involved or in a default divorce. He explained that the issue in the Rule is to clarify whether an affidavit (declaration of jurisdiction and grounds) is needed to finalize a divorce or if a sworn pleading would suffice. Ms. Vogel also added that the majority of persons are using OCAP which provides a verified petition that then confuses many persons when they also have to do a findings of facts and conclusions. The Committee also considered that the party should swear to the court that the findings of fact has not been altered from the petition where there is a default divorce. The Committee also raised that amending Rule 104 to no longer require the affidavit, then Rule 7 may need to be changed also as in many situations there would no longer be a verification of jurisdiction. The Committee decided to table the issue and discuss further with Mr. Nick Stiles for more guidance.

(9) RULE 59 (e) AND UTAH CODE 78B-6-811 INCONSISTENCY

Ms. DiFrancesco relayed that an inconsistency was brought to the attention of the Committee where Utah Code 78B-6-811 allows for a modification of judgment within 180 days. The Committee suggested amending rule 59(e) to include “unless otherwise provided by statute or rule.” The Committee also discussed whether an augmented judgement was also a modification of a judgment and noted that those motions usually come well beyond 28 days outlined in Rule 59. Judge Stucki moved to approve the change. Ms. Tonya Wright seconded. The motion was passed by majority.

(10) 6(a)(6). ADDING JUNETEENTH HOLIDAY

The Utah government has a different rule on how to observe the holiday than the federal government. The Committee is asked to add Juneteenth to Rule 6 under the list of legal holidays. The concern on how to add it is that the state has designated it to be observed on a Monday; but under the Federal government it is observed on the day of or either the Friday or Monday depending on which weekend day it falls on. The Committee discussed whether it would create an ambiguity on which day should be followed or if both the State and Federal days would be observed. The issue would affect not the observation of the holiday but the filing deadlines in cases and how the deadline is calculated. The Committee also discussed that the courts should make this decision and referred the issue back to the Supreme Court.

(11) RULE 60. FINALITY AND WHETHER FRAUD ON THE COURT CAN BE EFFECTIVELY ADDRESSED

A subcommittee (preventing fraud on the court subcommittee) was created to look at the case law on the issue and report whether a Rule change is needed and the draft language. The subcommittee will comprise Judge Holmberg, Justin Toth, Susan Vogel and Judge Cornish.

(12) OTHER BUSINESS

Ms. DiFrancesco suggested pushing November meeting to 30th of November on the fifth Wednesday. The December meeting is cancelled. The Committee discussed briefly the status of pipeline issues

(13) ADJOURNMENT.

The meeting adjourned at 5:55 p.m.