

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

Summary Minutes – January 25, 2023

**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	Jace Willard, Staff
Lauren DiFrancesco, Chair	X		Crystal Powell, Recording Secretary
Judge Kent Holmberg	X		Keri Sargent
James Hunnicutt	X		
Trevor Lee	X		
Ash McMurray	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 <i>Emeritus</i> Seats Vacant			

(1) INTRODUCTIONS

The meeting started at 4:02 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 October and November Minutes subject to amendments noted by the Minutes subcommittee. Judge Clay Stucki moved to adopt the Minutes as amended. Mr. Jim Hunnicutt seconded. The Minutes were unanimously approved.

(3) RULE 41. PUBLIC COMMENTS (DISMISSAL OF ACTIONS; VOLUNTARY DISMISSAL)

This rule would be amended to allow a plaintiff to dismiss a part of a claim. Ms. DiFrancesco reported to the Committee on the public comments and opened to discussion to the Committee. One issue raised was whether an amendment according to the public comment would allow a situation where one defendant has answered in a multi-defendant action, the plaintiff may then voluntarily dismiss the other defendants which may affect the answering party's rights such as in cross claims and joinders. The Committee discussed how other motions could fix those issues.

Ms. Vogel also offered that the rule should make it easy for plaintiffs to dismiss defendants that should not have been sued. For example, a landlord should be able to dismiss a child or other defendant inadvertently named as a defendant in an eviction case.

The Committee discussed edits to Rule 41(a)(1)(A)(ii) to ensure the language does not raise confusion or ambiguity on who a party to a case is. Ms. DiFrancesco referred to other state and federal rules for guidance on the language as well as how the term party is used at various stages of litigation. Ultimately, the Committee questioned whether the proposed rule change should be halted. Ms. DiFrancesco explained that the Committee must act based on the stage of the rule-making procedures and gave a summary of the history of the amendments on the rule and the rationale. After greater analysis the Committee decided to remove the further suggested amendments and refer the initial proposed rule amendments unchanged to the Supreme Court for final approval. The motion was made by Mr. Jim Hunnicutt, seconded by Judge Rita Cornish, and passed unanimously.

(4) RULE 59. PUBLIC COMMENTS (ALTERING OR AMENDING A JUDGMENT)

There were no public comments. Due to inadvertence, no vote was taken on referral of the Rule to the Supreme Court for final approval. This item will be on the February agenda.

(5) RULE 10(d). SIZE OF TOP MARGINS

This proposed Rule would change the top margin for filed papers to 1-inch from 1 ½ -inches under Rule 10(d). Ms. Keri Sargent explained that the forms will still be accessible and readable with the margin change even though it will decrease the space available for the judge’s signature. She also noted that in situations where the judge and commissioner must sign, the signatures will be narrower, but the system will not reject the form and the form will still be legible. The Committee discussed how the signatures appear on various orders. The Committee also noted that the Utah Appellate rules require a 1-inch margin all around however the appellate courts rarely issue orders. The Committee discussed whether current forms would need to be reformatted but decided they did not need to be based on the language of the rule. Judge Stucki moved to adopt the amendment. Mr. Trevor Lee seconded the motion. The motion passed by majority with seven in favor, three opposed, and one abstained.

(6) RULE 45. SUBPOENA

Ms. DiFrancesco relayed the comments of the Supreme Court to the Committee whether a Committee Note was necessary to clarify whether Licensed Paralegal Practitioner (LPPs) may sign subpoenas under Rule 45(e)(4)(A). The Supreme Court advised that the Committee Note was not necessary and may create the suggestion that other actions allowable by LPPs are not allowed because they are not accompanied by a Committee Note.

Ms. DiFrancesco tabled discussion on Rule 45(e)(3) until she receives further clarification from Justice Pohlman.¹ Ms. Vogel suggested a language change to “say that an objection may be made” rather than a “motion to quash” where many regular people do not know the legal terminology “motion to quash.” DiFrancesco suggested the issue be tabled until next month to discuss further.

(7) RULE 100A. CASE MANAGEMENT OF DOMESTIC RELATIONS ACTIONS

Mr. Hunnicutt presented on the proposed amendment. The Office of Recovery Services (ORS) asked to be exempted from the requirements of the Rule because of the burden the rule imposes; however, the Committee questioned whether the proposed change would add a new burden on the Clerk of Court where they may need IT assistance respecting case management conferences. The Committee amended subsection (a) of the Rule to exempt the ORS. Mr. Hunnicutt motioned to adopt the changes. The motion was seconded by Judge Stone. The motion was unanimously passed.

(8) RULE 26. GENERAL PROVISIONS GOVERNING DISCLOSURE AND DISCOVERY (COMMITTEE NOTE)

¹ Following the meeting, Ms. DiFrancesco reviewed her notes again and refreshed her recollection. She determined that it will not be necessary to consult further with Justice Pohlman at this time.

Ms. DiFrancesco noted that the response from the Administrative Office of the Courts' legislative liaison is that the legislative note may be removed. The Committee discussed whether to remove it in its entirety or to remove it with a note that it has been removed. Judge Stucki moved to remove the legislative note in its entirety. Judge Cornish seconded. The motion unanimously passed.

(9) RULE 26. STANDARD PROTECTIVE ORDER IN CIVIL DISCOVERY

Mr. Ash McMurray presented on the plain language subcommittee review of the standard protective order form. Ms. DiFrancesco noted that the idea behind the plain language subcommittee looking at the form was to allow the Supreme Court to know what is being approved when Rule 26 goes into effect. The Forms Committee wanted to have the plain language subcommittee review the form before they approved the form. Mr. McMurray summarized the work that the subcommittee undertook. Given the time constraint in the meeting and to respond to the Forms Committee, the subcommittee was instructed to send out the final suggestions to the Committee for approval via email.²

Ms. Vogel raised again whether the Standard Protective Order should be called a protective order where the naming may take away from the efficacy of other abuse protective orders. The Committee voted on the various suggestions for renaming the order between Standard Protective Order for Civil Discovery or Standard Civil Discovery Protective Order. The Committee decided on Standard Civil Discovery Protective Order.

(10) ADJOURNMENT

The meeting adjourned at 6:00 p.m.

² Following the meeting, the Committee voted by email. Judge Stucki moved to approve the Form. Ms. Tonya Wright seconded. The Committee approved for the form to be submitted to the Forms Committee for further review and action.