

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

**Summary Minutes – March 22, 2023
In-Person and via Webex**

**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, Vice-Chair	X		Stacy Haacke, Staff
Lauren DiFrancesco, Chair	X		Keri Sargent
Judge Kent Holmberg	X		Brent Salazar-Hall
James Hunnicutt	X		Nicole Salazar-Hall
Trevor Lee	X		Nick Stiles
Ash McMurray	X		Lacey Cherrington
Michael Stahler	X		Greg Constantino
Timothy Pack	X		Quinn Kofford
Loni Page	X		Tim Clark
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		
Commissioner Catherine Conklin	X		
Giovanna Spiess	X		
Jonas Anderson		X	
Heather Lester	X		
Jensie Anderson	X		
<i>Emeritus Seats Vacant</i>			

(1) INTRODUCTIONS

The meeting started at 4:00 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests. Ms. DiFrancesco also announced the new Committee members. All current and new members introduced themselves.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the February Minutes subject to amendments noted by the Minutes subcommittee. There were a few small changes and misspelled names that were amended. Mr. Andreason moved to adopt the Minutes as amended. Mr. Hunnicutt seconded. The Minutes were unanimously approved.

(3) RULE 53A. SPECIAL MASTERS FOR CHILD-RELATED ISSUES IN DOMESTIC RELATIONS ACTIONS.

Mr. Salazar-Hall explained the current status of this new rule, the comments and changes that have been made recently. The Supreme Court Justices had a few suggestions that did not match Rule 7(b) and the subcommittee was going to make the change but the language “domestic relations actions” appears throughout the rules and the only place where “domestic law matters” shows up is in the title. Will need to explain to the Justices that we respectfully disagree with this requested change. If the Justices direct the change be made, then it should be made throughout the rules.

In regards to quasi-judicial immunity, the case law indicate this applies to special masters. A rule of procedure is not the best place for this, rather it should be per statute or case law, so this language was removed.

As to an administrative rule on training, education and ethical requirements, there were initially two subcommittees created per the legislative audit and this specific requirement was tasked to the other subcommittee. Mr. Salazar-Hall will follow up on this other subcommittee and whether an administrative rule for the Judicial Council is being crafted.

Judge Scott moved to send the rule to the Supreme Court and out for public comment. Mr. Hunnicutt seconded. All approve.

(4) SUBCOMMITTEES DISCUSSION.

Ms. DiFrancesco has sent emails to Committee members to either follow up on the current status of subcommittee work, or create new subcommittees. Ms. Lester and Ms. Spiess would like

to be added to the Rule 3 subcommittee. Judge Cornish is taking over the lead for the Rule 60 subcommittee. No further discussion.

(5) RULE 3(A)(2). COMMENCEMENT OF ACTION.

Mr. Lee begins the discussion and review of the changes made to Rule 3(a)(2). Quinn Kofford who represents some of the large debtors in the state, makes a few comments. In his experience it is the language in the summons that causes the confusion, not the process. He believes this new language is better, but it would be good for laypersons to look at it as well. On his cases they will attempt to contact individuals forty times via phone, email, and text before filing. Some will not respond to informal attempts to resolve these issues. When they serve people before filing, they are able to resolve forty percent of the cases. He does not agree with the “may” language because if the person does not respond, then they “will” file.

Greg Constantino and Lacey Cherrington also provide comments on the proposed changes to the rule. Ms. Cherrington will attempt to contact individuals multiple times and ways. Sometimes the only way to get a response is via filing. Her experience in talking to court clerks is that it is not a problem and they are not overwhelmed by phone calls by individuals calling to ask for phone numbers.

Susan Vogel states the Self-Help Center gets a lot of phone calls from individuals and questions how the court is supposed to send individuals information after a case is filed when they are so hard to track down for service of process. There is further discussion on the burden on the party filing to provide notice to the other party when a case is filed, whether that notice can be accomplished by sending it to the same place as service, and that notices is as of the date it was sent, not received.

Additional discussions on referrals to the MyCase program, whether certified mail is a good option and the amount of time and money spent on skip tracing to find individuals. Also, some people cannot receive mail where they are being served. There is a suggestion that a simple form answer be included when an individual is served, and that even if notice is sent, there should still be a burden on the person to timely file an answer and check on the status of their case.

The issues and amendments are sent back to the subcommittee for further discussion and review.

(6) RULE 5. SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS.

Loni Page reviews the history and amendments to this rule. The rule was sent out for comment at the end of 2021 and the subcommittee has been working on changes to the rule based upon comments and discussions. Changes are being made to MyCase, but this is not happening as quickly as the rule is being changed. Additionally, the subcommittee would like to be consistent in

the use of terminology. Also, a question that has arisen is what to do with an undeliverable email, and since there is a process currently being used by the court internally, the language in the rule has been removed.

Other issues discussed include who serves signed orders, whether subsection (2) is necessary regarding defaults when a plaintiff may not have an address for a respondent so they are being asked to do the impossible, and changing “appear” to “file and serve” may have unintended consequences in some cases where there may be a default after a party fails to appear. Furthermore, the Committee is being asked whether to use the language “licensed attorney or paralegal” throughout the rule or just “legal professional” given the language of Rule 86. The Committee prefers the language “licensed attorney and paralegal” or “attorney(s)” over the use of “legal professional,” and this terminology should be used throughout. Finally, Michael Stahler mentions the addition to (b)(5)(C) is good but some lawyers may not catch this change and should make sure they are aware.

There was a directive from the Supreme Court to address specific language and amendments so the Committee must either resolve the issue raised or explain why no changes is recommended. The rule will go back to the subcommittee for further discussion and review. Mr. Stahler is added to the Rule 5 subcommittee.

(7) ADJOURNMENT.

The meeting adjourned at 5:59 p.m.