

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

**Summary Minutes – September 27, 2023
In-Person and via Webex**

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Vice-Chair	X		Bryson King, Staff
Lauren DiFrancesco, Chair	X		Keri Sargent
Judge Kent Holmberg		X	Crystal Powell
James Hunnicutt	X		Rachel Sykes
Trevor Lee	X		
Ash McMurray	X		
Michael Stahler	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		
Commissioner Catherine Conklin	X		
Giovanna Speiss		X	
Jonas Anderson	X		
Heather Lester	X		
Jensie Anderson	X		
Judge Ronald Russell	X		
<i>Emeritus</i> Seats Vacant			

(1) INTRODUCTIONS

The meeting started at 4:06 p.m. after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests. Previous and New Committee members introduced themselves.

(2) APPROVAL OF MINUTES

Ms. DiFrancesco asked for approval of the June 2023 Minutes subject to amendments noted by the Minutes subcommittee. Judge Russell moved to adopt the Minutes as amended. Judge Cornish seconded. The Minutes were unanimously approved.

(3) RULE 104. DIVORCE DECREE UPON AFFIDAVIT

Ms. Susan Vogel reintroduced the work of the Self-Help Center and presented a brief update on the work done on creating the online assistance program and MyCase as well as how they work. She noted that there are many forms that persons must file on any given issue including with divorce. Specific to Rule 104, Ms. Vogel summarized that the amendments she has been working on will allow the Declaration of Jurisdiction and Grounds to be a part of the final divorce papers rather than a separate document. She noted that this is in keeping with the Center’s mission of trying to make it easier for self-represented persons to understand the necessary documents for divorces and to retire the use of separate declarations of jurisdiction and grounds as it is difficult to understand all the papers to be filed and the order in which to file them. She also summarized the concerns of Judges Cornish and Stone in ensuring the initial petition that was served and the final order are consistent in default divorce cases. The Self-Help team with the input of other stakeholders are continuing to address the Rule and will present a proposed Rule at the October 2023 meeting.

(4) RULE 101. LANGUAGE CHANGE FROM OSC TO “MOTION TO ENFORCE ORDER AND FOR SANCTIONS”

Mr. Jim Hunnicutt reported that only one small section is being updated in Rule 101. He explained that beginning at Rule 100, the Rules only deal with family law, and Rule 101 is only about family law where there are domestic commissioners. He noted that a few years ago language was changed in the Rules from “motion for order to show cause” to “motion to enforce order and for sanctions.” The amendment will correct an oversight in the language of Rule 101(k) to match the previous amendments. Judge Cornish moved to approve the amendment. Mr. Michael Stahler seconded. The motion passed unanimously.

(5) RULE 56. MSJ DEADLINE FEEDBACK FROM UTAH SUPREME COURT

Ms. Lauren DiFrancesco summarized the issue on Motion for Summary Judgment proposal. The Supreme Court agrees with the proposal, and it has been sent out for public comment but there is a concern that with no procedural deadline, cases might go on indefinitely. The Supreme Court would like to see more comprehensive language or time guides to ensure that cases are moving forward. Specifically, to consider modifying the language of subparagraph (b) to include that judges may set deadlines for motions for summary judgment, certificates of readiness for trial, or any language that would establish a timeline to move the case forward. Ms. DiFrancesco will send the proposal back to the Subcommittee before it is discussed generally.

(6) RULE 7A AND 37. MOTIONS TO ENFORCE DISCOVERY ORDERS

Ms. DiFrancesco gave a brief overview on behalf of Mr. Clint Hansen who was unable to attend the meeting. She summarized that the issue Mr. Hansen brought to the Committee is that he has attempted to use Rule 37 to enforce a statement of discovery issues order after the opposing party failed/refused to participate in discovery; but the judge rejected it under Rule 7A noting that the procedure was incorrect. He has experienced this more than once. Ms. DiFrancesco invited discussion from the Committee but noted that ultimately a Subcommittee will be needed to work on the issue.

Mr. Jim Hunnicutt discussed the history of Rule 7A and 37 amendments and volunteered to be on the Subcommittee. He noted that he sees where more clarity would be appropriate. Judge Cornish volunteered to chair the Subcommittee. Judge Russell also volunteered to sit on the Committee.

(7) RULE 3(a)(2)—PREFILING SERVICE OF COMPLAINT

Mr. Trevor Lee explained the issue for the new members however no action was taken on this Rule to allow for more stakeholder feedback particularly from debtor representatives. He also expressed that another way forward might be to invite stakeholders to the next meeting.

Ms. Vogel also explained the history of the proposals where Utah has one of the nation's highest level of indebtedness by persons with most of the debt being medical debt. She noted that Utah has a procedure where a complaint can be served without first filing a complaint. Therefore, creditors are serving persons with debt collection complaints and telling them to call the court to see if a case was filed. Many times, the case cannot be found for reasons such as an incorrect spelling of the party's name and the debtor defaults on the suit. She recounted examples of people having default judgments against them when they have made many efforts to find the case against them. Ms. Vogel noted that all the creditors have

attorneys while only about 2% of the debtors have legal representation. The Committee discussed some of the appropriate stakeholders to seek input from such as volunteer Clinics, and pro-bono attorneys that volunteer for the debt collection calendar.

Mr. Michael Stahler questioned what the purpose is for initiating a suit by service whether it was for only debt collection or for other types of cases. He also asked for clarification on the time for response from the time of summons.

(8) REVIEW OF SUBCOMMITTEES

Ms. Di Francesco explained the general mandate of the various Subcommittees for the new members. Each Subcommittee chair gave an overview of their members and the status of assignments that the Subcommittee has undertaken. The Committee members got the opportunity to discuss the subcommittee memberships and volunteer for Subcommittees.

(9) RULE 65C. APPOINTMENT OF COUNSEL IN POST CONVICTION RELIEF PROCEEDINGS

Mr. Ian Quiel introduced himself and his organization, the Utah Indigent Postconviction Division (IAPD) to the Committee. He explained that the legislature amended the Post-Conviction Remedies Act last year to create his office and allow the court to appoint IAPD to represent plaintiffs in post-conviction proceedings. He noted that the statute and Rule 65C(j) now conflicts. He suggested adding the appointment language from the statute as well as the factors that a court should look at when appointing counsel. He explained that the Rule lists only two of the five factors listed in the statute that may be considered by the court when deciding whether to appoint counsel and suggested referencing the statute in the Rule.

Ms. DiFrancesco opened the discussion and asked Mr. Quiel whether the reference to the statute is necessary as the Committee generally does not reference specific statutes in the Rules due to the rapid cycle of legislative amendments. Ms. Jensie Anderson expressed that she supports the proposal to make the Rule consistent with the statute. The Committee generally discussed the factors the court should look at when appointing counsel in post-conviction relief cases. Ms. Jensie moved to accept the proposal without the inclusion of the statutory reference. Ms. Susan Vogel seconded the motion. The motion passed unanimously.

(10) DECEMBER MEETING

Ms. DiFrancesco notified the Committee that the December meeting will be held on December 6, 2023, at 4:00 p.m. There will be no meeting in November.

(11) ADJOURNMENT.

The meeting was adjourned at 5:47 p.m. The next meeting will be October 25, 2023, at 4:00 p.m.