

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

**Summary Minutes – October 25, 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 | | Stacy Haacke, Staff |
| Lauren DiFrancesco, Chair | X | | Keri Sargent |
| Trevor Lee | | X | Crystal Powell |
| Ash McMurray | X | | Glenda Pittman |
| Michael Stahler | X | | |
| Timothy Pack | X | | |
| Loni Page | X | | |
| Bryan Pattison | 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 Blaine Rawson | X | | |
| Judge Ronald Russell | X | | |
| Rachel Sykes | X | | |
| Judge Laura Scott, <i>Emeritus</i> | X | | |
| James Hunnicutt, <i>Emeritus</i> | X | | |

(1) INTRODUCTIONS

The meeting started at 4:04 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 September 2023 Minutes subject to amendments noted by the Minutes subcommittee. Mr. Rod Andreason moved to adopt the Minutes as amended. Mr. Michael Stahler seconded. The Minutes were unanimously approved.

(3) AFFIDAVITS, DECLARATIONS, AND VERIFIED DOCUMENTS

Mr. Ash McMurray presented on the work his subcommittee has done in standardizing the use of the terms “affidavits,” “declarations,” and “verified documents” throughout the Rules in conformity with the Utah Unsworn Declarations Act which removes the distinction between the various types of sworn document. He noted that the subcommittee’s first objective was to create the least amount of language change throughout the Rules but that became very cumbersome as it required too many references to the statute. He noted that the subcommittee then decided to establish one consistent term to cover affidavits, declarations, and verified documents along with a definition to consolidate the meaning. The term decided was “declaration” consistent with the language in the Act. He also proposed the creation of the new Rule 87 which would contain a definition.

Ms. DiFrancesco questioned if the use of affidavit or unsworn declaration throughout the Rules is necessary given the proposed Rule 87 as it seems duplicative. Mr. McMurray clarified that Rule 87 includes the various definitions between sworn and unsworn declarations, and affidavits but only “declaration” is used throughout the Rules. Ms. Loni Page questioned whether the terms “Affiant” and “Declarant” were also consolidated in the Rules. Ms. McMurray noted that those terms were removed and consolidated. The Committee discussed language changes to draft Rule 87 under the definitions of “verified,” and “signed.” The Committee discussed creating a definition that doesn’t introduce a new term. The Committee discussed the impact of the amendment for self-represented persons to ensure that changes do not make self-representation more difficult.

The Committee also discussed the primary purpose of the Act in doing away with the need to notarize documents and providing for additional means to verify beyond an oath. Judge Andrew Stone expressed his concern that the Committee needs to ensure that changes are not overbroad where the notary also verifies the identity of the person signing documents which is critical in many types of cases such as parental rights and adoptions dealing with

voluntary relinquishment. The Committee generally discussed the language in specific laws in comparison to the language in the Rule to ensure that the Rule incorporates exceptions laid out in various rules statutes. Ms. DiFrancesco suggested that the Committee table the Rule to allow for research into more specific statutory examples. No motion was made or taken.

(4) RULE 60. FRAUD ON THE COURT

Judge Rita Cornish summarized the research memorandum circulated to the Committee on Rule 60(b)(3) (motion to set aside based on fraud on the court). She noted that the issue that the subcommittee is having is that the court's footnote in the background case law is based on a false premise where she noted that the Utah Supreme Court has repeatedly addressed that there should be no distinction between fraud on the court (extrinsic fraud) and fraud on a party (intrinsic fraud). The subcommittee suggested that the Committee seek further instructions from the Utah supreme court on how to proceed given the history of the case law and the instructions to the subcommittee. Ms. DiFrancesco suggested having an informal meeting with the Justices that participated in the opinion rather than having the issue on the formal conference calendar. No motion was made or taken.

(5) RULE 56. MOTION FOR SUMMARY JUDGMENT DEADLINE FEEDBACK FROM UTAH SUPREME COURT

Ms. DiFrancesco summarized the proposed amendment on the Motion for Summary Judgment deadline. The Utah Supreme Court agrees with the proposal, and the proposal has been sent out for public comment but there is a concern that with no procedural deadline, cases might go on indefinitely. The 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 104. DIVORCE DECREE UPON AFFIDAVIT

Ms. Susan Vogel updated the Committee that the work continues on this issue, but a draft is not ready yet and should be ready for the next meeting.

(7) RULE 76. UPDATING CONTACT INFORMATION AND MYCASE

Ms. Vogel addressed the status of the MyCase system and offered to present more specifically on it. She reported that the court is close to having functionality available in MyCase so that when a MyCase user updates their email address, their email address in CORIS updates automatically. When that happens, there will be a note entered in the case history. Rule 76 will need to be amended to avoid confusion. The amendment requires that attorneys and self-represented people must keep their contact information (address, email and phone number) current with the court and the notice must be presented to the other parties unless a court order provides otherwise such as in protective orders.

Judge Cornish noted that some of the civil rules apply in criminal cases and there is a concern for self-represented persons updating their information in MyCase which will not update the criminal courts. She encouraged taking a closer look at the Rule to ensure that the criminal system is not affected. Judge Stone questioned whether parties would be confined to using MyCase. Ms. Vogel explained that no Rule will require a party to use the MyCase system because even though it expands the options for persons with access to technology; such a Rule would limit the options of persons who do not have that access. No Motion was made or taken.

(8) DECEMBER MEETING AND ADJOURNMENT

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. The meeting was adjourned at 6:00 p.m.