

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

**Summary Minutes – February 28, 2024
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, Recording Secretary
Ash McMurray	X		
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 began at 4:03 p.m. after forming a quorum. Mr. Rod Andreason welcomed the Committee members and chaired the meeting in Ms. Lauren DiFrancesco's absence.

(2) APPROVAL OF MINUTES

Mr. Andreason asked for approval of the January 2024 Minutes subject to amendments noted by the Minutes subcommittee and further revisions from Ms. Susan Vogel. Mr. Michael Stahler moved to adopt the Minutes as amended. Ms. Vogel seconded. The Minutes were unanimously approved.

(3) RULES 7, 37, 45, AND 30. OMNIBUS SUBPOENA OBJECTIONS

Mr. Justin Toth gave an overview of the expansion of the Omnibus Subcommittee's assignment from consolidating the revisions to subpoenas and objections to subpoenas under Rule 30(b)(6) to also include revisions under Rules 7, 37, and 45. He recalled the trigger for the expansion was finding a solution for objections to subpoenas made by non-parties. Essentially, under Rule 45(e) if someone is subject to a subpoena and wishes to object, they are directed to Rule 37 but Rule 37 contemplates discovery issues between parties. The overall goal is to make all the related rules consistent with each other. Mr. Toth gave a summary of amendment to each Rule as follows:

Revisions under Rule 45:

- a. Under Rule 45(e) a party or non-party subject to or affected by a subpoena is directed to Rule 37 but the bases for objection under Rule 37 are tied to Rule 26 but Rule 45 provides a different set of bases for objection than allowed under Rule 26.
- b. The requirement under Rule 45(e) that a person subject to a subpoena or a non-party affected by the subpoena would use Rule 37 to object was deleted. The reason is that the Rule 37 process contemplates a discovery dispute between parties.
- c. The substantive rights to object are now contained in Rule 45(e)(3) and objections must be made in writing and before the date of compliance.
- d. If an objection is made the steps to be taken are:
 - i. Party issuing the subpoena is not entitled to compliance on any topic for which an objection has been made but may request an order to compel compliance under Rule 37(a)
 - ii. The objection must be served on parties and the person subject to the subject to the subpoena.

- iii. If the party issuing the subpoena seeks to obtain compliance through Rule 37(a), the person who is subject to it or the non-party affected must respond under Rule 37(a)(3).

Revisions under Rule 37:

- a. Slight modifications were made to incorporate the concept of a third party being able to object to a subpoena.
- b. Add a new subsection 37(2)(E) that the statement of discovery issues has been served on the person subject to the subpoena or non-party affected if objection was made under Rule 45(e).
- c. Changes objection length and content to provide that if the person subject to the subpoena or a non-party affected by the subpoena timely filed an objection under Rule 45(e)(4), the person subject to the subpoena or a non-party affected by the subpoena may file an objection to the statement of discovery issues.
- d. Clarified that a person subject to the subpoena may object under Rule 45(e).
- e. Requires that the person subject to the subpoena or non-party affected must also submit a proposed order.

Revisions under Rule 7:

- a. Under Rule 7(b) a very small amendment that includes that a request for an order related to a subpoena under Rule 45 must follow Rule 37(a).

Revisions under Rule 30:

- a. There is now a process contemplated under Rule 30(b)(6), where prior to a deposition, the parties must confer in good faith about the matters for examination if any objections are raised and either party may seek resolution under Rule 37, or the non-party may seek resolution under Rule 45(e) and the deposition may go forward on only the matters not addressed by the statement of discovery issues.

Mr. Timothy Pack asked if the issue has not been resolved before the deposition, and the deposition goes forward, then the party that objects to a question, need not answer that question. He noted that his concern is that parties will raise a lot of objections leading to depositions becoming very complicated and introducing a potential for abuse of the process. Mr. Michael Stahler noted that it seems that the process set forth in Rule 30(b)(6) anticipates the parties to meet and confer to resolve any objections. It commands that the parties do that. It also provides for either party to raise the issue with the court before the deposition. Mr. Toth noted that of course, there may be things that come up later, but he thinks that the process would be to try to resolve it in the deposition and as a last resort before the court. Ms. Vogel commended the work done on the Rules and raised concerns about how burdensome it might be for self-represented people to understand. Mr. Toth

noted that he also gets a lot of questions even from other attorneys on the correct process of objecting, but this is the simplest version of bringing the Rules together.

The Committee members generally discussed solutions for making the connections between these Rules more understandable and as clear as possible. One suggestion was to have a flow-chart on the court website.

Mr. Timothy Pack questioned how Under Rule 45 a party's right to object to another party's subpoena to a non-party would be done. Mr. Toth clarified that if you are a party, Rule 37 will always be the governing Rule and the party would file a statement of discovery issues under Rule 37. Mr. Pack also asked whether a deposition could proceed on issues not addressed in the objection under Rule 30(b)(6). Judge Rita Cornish agreed that the language is not clear that the deposition may proceed on only matters for which objections have not been resolved.

Mr. Ash McMurray pointed out changes in relation to the Style Guide to make the Rules consistent.

Mr. Pack moved to approve all the changes except the amendments to Rule 30(b)(6). Ms. Toni Wright agreed with Mr. Pack that changes in Rule 30(6)(b) might be creating a fix for something that is not broken. After a lengthy discussion, the motion did not pass. Mr. Stahler raised a motion to adopt all the suggested changes. Judge Andrew Stone seconded the motion. The motion passed by the majority.

(4) RULE 42. FILINGS WHEN CASES ARE CONSOLIDATED

Ms. Stacy Haacke explained that the amendments to this Rule started with a change from "new" to "single" in 42(a)(3). She noted that the Rule change has been pending for some time and that the Supreme Court has sent it back for further amendments or discussions before public comments. Previous discussions and action from the Committee resulted in an addition made to 42(a)(2) that would allow that any party "to either action to be consolidated" could file or oppose a motion to consolidate. Ms. Haacke noted that the Supreme Court accepted these changes, along with the suggested language that a party need not seek to intervene. After the last comment period and discussion with the Justices, alternative language was proposed to be added to (a)(2), and this suggestion is being sent back to the Committee for consideration.

Ms. Vogel suggested changing the word "movant" to "party filing the motion" and "action" to "case" and suggested a third alternative: "The party filing the motion to consolidate must file it in the first case that was filed, and file copies of the motion in the cases they are asking to be consolidated into the first case. Once the court in the first case rules on the motion to consolidate, the party that asked for the consolidation must file a

copy of that court’s order in each of the other cases.” The Committee discussed this proposed language. Ms. Loni Page noted that filing a copy of the motion in the other cases might be confusing where it is not clear if that filing is the first action or that the motion is meant to be filed in that case rather than just a copy of the motion. Commissioner Conklin noted that currently the motion is typically only filed in the first case and the court has to refer the other cases.

Ms. Vogel flagged the word “lodging” as a word to revise under the plain language mandate.

Ms. Haacke reminded the Committee that the objective was to remove the need to file a motion to intervene before filing a motion to consolidate and thereby create a more streamlined process.

Judge Scott raised an issue of practice where parties might want to consolidate multiple types of cases involving the same party, but those cases may not be consolidated just because they are between the same parties. Judge Scott noted that one practice is to have the cases informally re-assigned to the same judge, but there is concern that the practice violates the Rules. Judge Stone also raised the informal practice of reassigning the case might need a more formal process to avoid problems and have the Rule reflect what the court believes is the right administrative way to do things. Mr. Andreason noted that with the judges’ concerns, which now expand the original mandate of the rule change, a subcommittee should be formed to examine the Rule more closely. The Subcommittee will comprise Ms. Keri Sargent, Ms. Loni Page, Judge Scott ex officio with input from Judge Stone as his calendar allows. No motion was taken on this Rule.

(5) RULE 4. PROCESS

The Committee tabled this matter. Ms. Vogel has some suggested amendments which she will send to Ms. Haacke.

(6) RULE 107. DECREE OF ADOPTION; ADOPTION RECORDS

Ms. Haacke reported to the Committee. She summarized that the Utah Code of Judicial Administration Rule 4-202.03 and Utah court website were recently amended to more accurately reflect the statute regarding access to adoption records (Utah Code §78B-6 141) and that the language in Rule 107(a) was also very similar to what was in the access rule and what was on the court website. The changes to Rule 107 more accurately reflect the current statute. She also noted that while putting together the amendment the Supreme Court also issued an opinion in *In re Adoption of M.A.*, which addresses adoption records and Rule 107, and the Court notes “extra-textual gloss” in footnote 5. Ms. Haacke’s suggestion was to amend Rule 107(a) or remove it entirely so the requirements in the

statute are not overlooked or confused. The suggested language was: 107(a)— Adoption records may be released by the court pursuant to the requirements of statute or court rule. Judge Ronald Russell noted that the language is superfluous as the Rule may only be implemented according to statute which is provided under 107(b). Judge Russell moved to remove paragraph (a) from the Rule. Mr. Stahler seconded. The motion passes unanimously.

(7) UPDATE ON NEW RULE ON REMOTE HEARINGS

Ms. Haacke gave an update on the proposed amendment suggested to the Justices on the new Rule for in person and remote hearings and noted that further requests for comments may be circulated by email.

(8) ADJOURNMENT

Having completed all the agenda items, Mr. Andreason thanked the Committee members for their contributions. The meeting was adjourned at 5:24 p.m. The next meeting will be March 27, at 4:00 p.m.