

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

**Summary Minutes – August 28, 2024
via Webex**

THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX

Committee members	Present	Excused	Guests/Staff Present
Rod N. Andreason, Chair	X		Stacy Haacke, Staff
Justin T. Toth, Vice Chair	X		Keri Sargent
Ash McMurray	X		Crystal Powell, Recording Secretary
Michael Stahler	X		Bret Randall, Guest
Timothy Pack		X	
Loni Page	X		
Bryan Pattison	X		
Trevor Lee		X	
Laurel Hanks	X		
Tonya Wright		X	
Judge Rita Cornish	X		
Commissioner Catherine Conklin	X		
Giovanna Speiss		X	
Jonas Anderson		X	
Heather Lester	X		
Brett Chambers	X		
Judge Blaine Rawson		X	
Judge Ronald Russell		X	
Rachel Sykes	X		
Michael Young	X		
Laurel Hanks	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—the new Chair—welcomed the Committee Members. Mr. Andreason introduced himself. Mr.

Andreason also thanked Ms. Stacy Haacke from the Administrative Office of the Courts for her dedication to the Committee. He described the work of the Committee to the new members as well as the process of amending the civil rules.

(2) APPROVAL OF MINUTES

Mr. Rod Andreason asked for approval of the May 2024 Minutes subject to amendments noted by the Minutes subcommittee. Judge Cornish moved. Ms. Rachel Sykes seconded. The Minutes were unanimously approved.

(3) INTRODUCTIONS FROM MEMBERS

Committee Members introduced themselves including, how long they have served what areas of law they work in; advice for new members; and information about themselves. Mr. Andreason also highlighted the Subcommittees and the work that they have been doing. He asked the new members to consider which subcommittees they would wish to work on, especially where someone has left that Subcommittee.

(4) SUPREME COURT STYLE GUIDE

Mr. Andreason went through brief reminders from the Supreme Court Style Guide (The Guide) in preparing the work of the Committee this year. He asked the Committee to revise and get familiar with The Guide and to revisit them periodically.

(5) NEW URCP RULE 87, EFFECTIVE SEPT. 1, 2024

Mr. Andreason informed the Committee that Rule 87 regarding in-person, hybrid, or remote hearings, is effective September 1, 2024.

(6) RULES 65D AND 65E – ADMINISTRATIVE PROCEDURES

Mr. Bret Randall introduced the issue by summarizing the article he co-authored in the Utah Bar Journal regarding administrative procedures. He noted that he has been with the Attorney General’s Office (AG’s) for several years, though he is not presenting today in any official capacity. The AG’s has an administrative law committee and while putting together a CLE on Utah Administrative Procedures Act (UAPA), it was realized that not a whole lot of information was available beyond the original working group that worked on

the law. He, along with a colleague, put together information and diagramming to summarize how the law is implemented.

The new rules he is proposing address—

1. Civil Enforcement under Utah Code section 63G-4-501 in two new Rules 65D and 65E. Rules 65D would define a procedure that is as similar to Rule 7A as possible, while also complying with the statutory requirements of Section 501 in the form of declaratory or injunctive relief. Rule 65E provides monetary remedies as final agency orders where issues have already been adjudicated under UAPA but other litigation to enforce those orders are necessary.
2. Procedural clarity in various areas such as: (1) the scope of “review by trial de novo” following an informal agency adjudication under Section 63G-4-402; (2) judicial enforcement of administrative subpoenas; and (3) the nature and scope of appeals under the Utah Administrative Rulemaking Act.

Mr. Andreason opened the floor for discussion. Mr. Stahler suggested that feedback be sought from the district court judges on their experience with the lack of rules and if the proposed Rules would help or not. Mr. Andreason noted that the proposed Rules are well drafted. Judge Scott questioned where these cases are mainly filed. Mr. Randall noted that he would make a connection between the prosecutors mainly filing these cases and Judge Scott to get their input on their experiences to Judge Scott. Mr. Andreason suggested having a Subcommittee look at it more carefully and then submit the draft proposal to the Supreme Court for guidance before the Committee works on it for approval. The Subcommittee Members are Michael Stahler, Loni Page, and J. Brett Chambers who will serve ex-officio.

(7) RULE 26.4 RECODIFICATION OF PROBATE STATUTES, NEED TO UPDATE RULE

Judge Scott presented on this issue and noted it is just a numbering issue based on the recent recodification of the probate statutes to reference “Title 75, 75A, and 75B of the Utah Code” in 26.4(a) Scope; (b) Definition; and (c)(4)(B). Ms. Haacke confirmed it was ready for a vote. No comments were made from the Committee. Commissioner Conklin moved to adopt the revisions. Mr. Ash McMurray seconded. The revision was approved unanimously.

(8) RULES OF PROFESSIONAL CONDUCT STANDARDS IN THE CIVIL RULES

Ms. Haacke explained that the Rules of Professional Conduct Advisory Committee had formed a subcommittee to look at the standards of professionalism and civility and whether any of the standards needed to be incorporated into these Rules. Standard 16 was identified. Standard 16 states: Lawyers shall not cause the entry of a default without first

notifying other counsel whose identity is known, unless their clients' legitimate rights could be adversely affected.

Ms. Sykes questioned what the experience has been that raised this proposed Rule for incorporation into these Rules. Ms. Haacke noted that the proposed Rule did not originate from a problem per se. Mr. Stahler noted that the Self-Help Center may have an interest in how this Rule would impact self-represented persons. Judge Scott questioned how it would affect service under Rule 5 where persons cannot be found to be served. Judge Scott noted that a solution should not be difficult since the vast minority of non-represented parties are impossible to find. After further discussion, Ms. Haacke noted that she would seek more concrete answers to the questions raised from that committee. Commissioner Conklin also suggested a replacement chair for the Rule 5(a)(2) Serving Parties in Default Subcommittee. Ms. Laurel Hanks will chair the Rule 5(a)(2) Serving Parties in Default Subcommittee.

(9) RULE 63A. HJR008 – JOINT RESOLUTION AMENDING RULES OF CIVIL PROCEDURE ON CHANGE OF JUDGE AS A MATTER OF RIGHT

Mr. Andreason informed that the Legislature amended the Rules to define when a judge can be changed as a matter of right, notice of the change, exceptions, and matters unaffected. He summarized that each side has one opportunity to change judges as a matter of right in civil actions in a county with seven or more districts court judges. The Rule goes into effect January 1, 2025.

Mr. Keri Sargent noted that they are in the process of writing up programming for how this Rule will work where it is the clerks of court who will have to implement the Rule. Mr. Stahler noted that it will not apply in many counties.

(10) RULE 35. MEDICAL EXAMINER LANGUAGE

Ms. Haacke explained the reason for this amendment. It came out of a footnote from the Utah Court of Appeals in *Stage Department Store v. Labor Commission*, 2024 UT App 85. The footnote reads:

Footnote 8 Still, we recognize that the reasons that the advisory committee gave for moving away from identifying adverse medical exams as independent, *see* Utah R. Civ. P. 35 advisory committee's note to 2017 amendment, may also be relevant here, although the chance of prejudice is far more removed in a proceeding before an ALJ or the Commission than it would be before a jury. The Commission might be well-served to adopt a rule using different nomenclature for such exams.

This decision was flagged for the Committee by Nick Stiles, the appellate court administrator. It was requested that the Committee review the opinion and Rule 35 to

determine if amendments were necessary. Ms. Sykes relayed that she deals with this Rule very often though not in the context of workers' compensation suits (which was the context of the case). She noted that it also needed to be addressed in Worker's Compensation Rules but may not warrant a change to the Civil Rules. Ms. Sykes noted that the Rules address this already but because of long standing practice, the wording still finds its way into pleadings, motions, and court reference. The Committee did not see a need to amend the Rules on this issue.

(11) ADJOURNMENT

Mr. Andreason thanked everyone for their work and noted he is looking forward to the work that is coming up. With no more agenda items, the meeting was adjourned at 5:51 p.m. The next meeting will be 25 September 2024 at 4:00 p.m.