

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

Meeting Minutes – September 27, 2017

PRESENT: Chair Jonathan Hafen, Judge Andrew Stone, Judge James Blanch, Judge Kent Holmberg, Judge Laura Scott, Judge Kate Toomey, Judge Clay Stucki, Amber Mettler, Dawn Hatamaki, James Hunnicutt, Heather Sneddon, Rod Andreason, Michael Petrogeorge, Lauren DiFrancesco, Timothy Pack, Susan Vogel, Trystan Smith

EXCUSED: Lincoln Davies, Barbara Townsend, Leslie Slaugh, Justin Toth, Paul Stancil

STAFF: Nancy Sylvester, James Ishida

GUESTS: Chief Justice Matthew B. Durrant, Patricia Owen

(1) WELCOME, APPROVAL OF MINUTES

Chair Jonathan Hafen welcomed the committee to the meeting. Chief Justice Matthew B. Durrant thanked the committee members for their service, remarking on the departing members' contributions and the role new members, Judge Clay Stucki, Michael Petrogeorge, Lauren DiFrancesco, Timothy Pack, and Susan Vogel, have with the committee. Chairman Hafen invited all members of the committee to introduce themselves. Judge James Blanch then moved to approve the minutes; Heather Sneddon seconded. The motion passed unanimously.

(2) PRINCIPLES OF RULEMAKING

Chairman Hafen reviewed the committee's Principles of Rulemaking and invited comments and questions from the committee.

(3) UPDATE ON FRCP RULE 37(e). FAILURE TO PRESERVE ESI

Chairman Hafen then provided a brief history on the discussions and debate regarding proposed changes to Rule 37, including the Utah Supreme Court's response to the committee's prior suggestion. After the Utah Supreme Court considered the three proposed options sent by the committee, the Court decided not to make any changes to Rule 37.

(4) COMMENTS TO RULES 6, 26.3, 45

Nancy Sylvester explained the rule change and public comment period process, as well as introduced a new "public discussion period" process available to the committee to use for the purpose of eliciting public comments prior to Utah Supreme Court approval.

RULE 6

Ms. Sylvester presented comments to the rule on timing for unrepresented parties to respond to papers filed with the Court. The committee considered a number of additional changes to proposed Rule 6(d) and 6(e). The committee rested on the following language for Rule 6(d):

(d) Response time for an unrepresented party. When a party is not represented by an attorney, does not have an electronic filing account, and may or must act within a specified time after the filing of a paper, the period of time within which the party may or must act is counted from the service date and not the filing date of the paper.

Judge Blanch moved to approve the foregoing language; Timothy Pack seconded the motion. The motion was approved unanimously.

James Ishida presented a summary on the background of the prisoner mailbox rule, including the interplay between the prisoner mailbox rule in the Utah Rules of Civil Procedure and Utah Rules of Appellate Procedure. Ms. Sylvester presented comments to the proposed changes to the prisoner mailbox rule. The committee considered the proposed changes and decided to not make any further changes to proposed Rule 6(e). Judge Kate Toomey moved to approve the prisoner mailbox rule as written; Judge Blanch seconded. The committee passed the motion unanimously.

RULES 26.3 AND 45

Chairman Hafen presented on the two comments suggesting consistency edits to the proposed amendments in Rule 26.3 and noted that there were no comments to the proposed changes to Rule 45. Judge Andrew Stone moved to approve both rules without further changes; Judge Toomey seconded the motion. The motion was approved unanimously.

(5) INTRODUCTION OF RULE 73 AMENDMENTS

Chairman Hafen briefly addressed the proposed changes to Rule 73 and sought input from the committee on attorneys who represent defendants in debt collection that could be invited to next month's meeting. Mark Olson will present the plaintiff attorneys' perspective.

(6) ADJOURNMENT

The remaining matters were deferred, and the committee adjourned at 5:50 pm. The next meeting is scheduled for October 25, 2017 at 4:00 pm at the Administrative Office of the Courts, Level 3.