

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

Meeting Minutes April 25, 2018

PRESENT: Chair Jonathan Hafen, Judge Amber Mettler, Judge Kate Toomey, Rod Andreason, Trystan Smith, Michael Petrogeorge, Susan Vogel, Katy Strand (Recording Secretary), Barbara Townsend, Jim Hunnicutt, Lauren DiFrancesco, Judge Andrew Stone, Heather Sneddon, Judge Kent Holmberg, Timothy Pack, Judge Laura Scott, Dawn Hautamaki (phone), Paul Stancil, Judge James Blanch

EXCUSED: Judge Clay Stucki, Leslie Slaugh, Lincoln Davies, Justin Toth

GUESTS: Katie Gregory, Shane Bahr, Patricia Owen

STAFF: Nancy Sylvester

(1) WELCOME AND APPROVAL OF MINUTES.

Jonathan Hafen welcomed everyone to the meeting and requested a motion on the March minutes. Judge Toomey moved to approve the minutes, Rod Andreason seconded, and the motion passed unanimously.

(2) RULE 4. STANDARDS FOR ELECTRONIC ACCEPTANCE OF SERVICE: DISCUSSION OF ASSIGNMENT TO SUBCOMMITTEE.

Mr. Hafen and Nancy Sylvester introduced Rule 4 and reminded the committee that Justin Toth, Susan Vogel, Judge Scott and Lauren DiFrancesco comprised the subcommittee that would study this item. The Board of District Court Judges requested that there be some standards placed in Rule 4 with respect to electronic acceptance of service. The Board, along with the Supreme Court, also requested that there be a disclaimer that the person affecting service is not from the court. Judge Stone asked that the standards include what proof of service should look like. He had seen some proofs of service that were misleading, appearing to come from the court, and also being unclear as to whether the person had been served or had accepted service. He also noted that in speaking to an attorney who used one of the providers, the companies do have a good ability to guarantee the identity of the person accepting service, but they have not been including that information in the proof of service. He asked that the standards include the companies' processes for verifying the identity of the party being served. The attorney with whom Judge Stone spoke indicated that this process better engaged litigants than traditional service but cost the same amount.

(3) RULE 5, ORDERS SERVED BY THE COURT, NEW CJA RULE 4-511, MANDATORY EMAIL ADDRESS, AND RULE 10, CONFORMING AMENDMENTS.

Ms. Sylvester reported that the committee had received feedback from the Board of Juvenile Court Judges indicating that requiring the court to serve all orders will not work for them. Katie Gregory

reported the concerns of the Board. The Board was worried about the substantial amount of work required in tracking down contact information for juvenile court litigants, many of whom are pro se. Ms. Gregory pointed out that these individuals have difficulty maintaining an email or point of contact. She also stated that in juvenile court having accurate service is problematic as the case number follows a child forever, and there may be parties who should not be served in the next matter. Currently the courts rely upon the attorneys to determine who should be served. The Board of Juvenile Court Judges would like to have the juvenile courts exempted from this rule, and would probably change their rules to reflect that. Judge Blanch expressed concern that exempting the juvenile court would create a system where no one would be serving the orders, unless the Rules of Juvenile Procedure also changed. Judge Laura Scott pointed out that Rule 4 would also need to be changed.

Michael Petrogeorge provided language for the new rule which would include memorandum decisions, but not minute entries. Judge Holmberg proposed including a committee note to discuss what can come from a court and what should be included. Judge Stone proposed that anything signed by the court should be served, but only by email with preference that it be done automatically. Jim Hunnicutt reported that commissioners generally give oral recommendations so the parties instantly receive notice. When a commissioner takes a matter under advisement and issues a written recommended order it is the court that mails it out. Ms. Vogel pointed out that pro se litigants don't know if something has happened if they don't get an order. Jonathan Hafen questioned whether receiving everything from the court would be helpful. Susan Vogel believed this would help. Dawn Hautamaki said she wouldn't be concerned about that so long as the clerks did not have to search for whether something needed to be emailed or mailed. Programming to assist with that would be crucial. She expressed concern that attorneys would receive too many emails and would not pay attention to the ones that mattered. Judge Blanch proposed that the email would state that something had happened but not include the actual documents, and this would parallel how financial companies send information. Lauren DiFrancesco argued that this may not be service unless some document was attached. Judge Blanch said we may need to change how we think of service. The system would provide the official document and that would be a better way to view the information. Heather Sneddon pointed out that this is how the federal courts work. Judge Scott proposed having the links and numbers be similar to the federal court.

Lauren DiFrancesco asked what problem the committee was trying to solve. Committee members said the problem to solve is pro se litigants not receiving orders. The question then became whether over-notification would be a bigger problem than parties not being notified.

Mr. Petrogeorge and Ms. Sneddon opined that the courts should over- rather than under-include what is sent. Judge Blanch said the burden would then be on the receiving party to do email filtering. Trystan Smith said for people with a large case load there would be too many emails. Mr. Petrogeorge pointed out that the burden on the recipient is small as they can use rules within their email program to deal with that.

Mr. Hafen asked if the first question was whether the court should move to mandatory email with exceptions, before changing this rule. No one on the committee was opposed to mandatory email.

Mr. Hafen and Ms. Sylvester asked if this should be tabled until MyCase is available. MyCase is a portal that will allow litigants to access their case filings and the docket. This technology will involve in-bound communications, but having the ability to both email court decisions and allow litigants to access their case filings in the docket will be the best option.

Jonathan Hafen proposed inviting those in charge of MyCase to the next meeting so that the committee can have a full picture of the technology before making any decisions.

(4) LEGISLATIVE UPDATES: SB 188 (RULES 4(E), 11(A)(2), 55(B)(1)(D), 63(B)(1)), SB 171 (RULE 24), SB 92 (RULE 73).

Nancy Sylvester informed the committee of SB 188 (2018) and the need for updates to the rules. This bill enacted the Uniform Unsworn Declarations Act, which repealed and replaced Utah Code section 78B-5-705. The bill came from the Uniform Law Commission. Although the act replaced the prior unsworn declaration language with a more robust statutory scheme, no substantive changes were needed in the affected rules, only conforming amendments. Rules 4, 11, 55, and 63 all referred to Utah Code section 78B-5-705. Judge Stone said the rules should reflect the new act, rather than a specific section. The proposed language came directly from the bill: “unsworn declaration as described in Title 78B, Chapter 18a, Uniform Unsworn Declarations Act.”

Lauren DiFrancesco moved to approve the changes as set forth in the materials. Judge Mettler seconded the motion and it passed unanimously.

Ms. Sylvester explained that SB 171, which deals with intervention by the Legislature, may impact Rule 24. A subcommittee is already assigned to Rule 24, so that group will be looking at whether to amend the rule based on the bill. Ms. Sylvester did not believe that this was urgent and proposed waiting until the subcommittee had evaluated it.

Ms. Sylvester then explained that SB 92 dealt with the awarding of reasonable attorney fees as provided by Supreme Court rule. Nancy Sylvester did not believe that this required any rule amendments since Rule 73 already addresses this topic.

(5) ADJOURNMENT

The committee adjourned at 6 p.m. The next meeting will be held on May 23, 2018 in the Judicial Council Room of the Matheson Courthouse.