

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

**Summary Minutes – February 26, 2020**

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<b>Committee members &amp; staff</b>	<b>Present</b>	<b>Excused</b>	<b>Appeared by Phone</b>
Jonathan Hafen, Chair	<b>X</b>		
Rod N. Andreason	<b>X</b>		
Judge James T. Blanch	<b>X</b>		
Lauren DiFrancesco	<b>X</b>		
Judge Kent Holmberg	<b>X</b>		
James Hunnicutt	<b>X</b>		
Larissa Lee	<b>X</b>		
Trevor Lee	<b>X</b>		
Judge Amber M. Mettler	<b>X</b>		
Timothy Pack	<b>X</b>		
Bryan Pattison			<b>X</b>
Michael Petrogeorge	<b>X</b>		
Judge Clay Stucki	<b>X</b>		
Judge Laura Scott	<b>X</b>		
Leslie W. Slauch	<b>X</b>		
Trystan B. Smith	<b>X</b>		
Heather M. Sneddon	<b>X</b>		
Paul Stancil	<b>X</b>		
Judge Andrew H. Stone	<b>X</b>		
Justin T. Toth	<b>X</b>		
Susan Vogel	<b>X</b>		
Brooke McKnight	<b>X</b>		
Ash McMurray, Recording Secretary		<b>X</b>	
Nancy Sylvester, Staff	<b>X</b>		

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## **(1) WELCOME AND APPROVAL OF MINUTES**

Jonathan Hafen welcomed the committee and asked for approval of the minutes as amended. Jim Hunnicutt moved to adopt the minutes. The minutes were approved unanimously.

## **(2) LEGISLATIVE ITEMS**

Rule 83: Lauren DiFrancesco described her meeting with Senator Henderson and her constituents who would like to see more teeth added to Rule 83. Rule 83 specifically exempts litigants who are represented by attorneys. Rule 83 tends to favor people who can afford lawyers because there is no punishment for their using the court process to harass. Rule 11 is one vehicle, but it is aimed at the lawyer, not the represented litigant. A simple fix to Rule 83 could be simply taking out "without legal representation" in the first paragraph. But more study is needed. Perhaps family law should have its own rule? A subcommittee was assigned: Lauren DiFrancesco, Jim Hunnicutt, Nancy Sylvester. (Nancy's note: the Appellate Courts have also asked for language clarifying when an order issued under this rule applies to other courts, so this rule will come back in any event.)

## **(3) ADDITIONAL REVISIONS TO RULE 64**

The Supreme Court approved gathering comment on amendments to Rule 64 that said, in essence, that the court must be satisfied that the debtor is truly avoiding the court process in order to issue a bench warrant for the debtor's arrest. But the rule still contained the term "Referee:" This is an antiquated term. Referees are specifically prohibited in Rule 3-202 of the Code of Judicial Administration. Court clerk is what is intended in paragraph (c)(1), so the Civil Rules Committee made that amendment and voted to recommend to the Supreme Court that it be made part of the other amendments already approved to circulate for comment. The committee also discussed the Board of District Court Judge's request to more clearly spell out the kind of post-judgment discovery that may be conducted. The committee will work on developing either a separate rule or some new language in Rule 64. The Civil Rules Committee will also explore ways to make the rule's language more reader friendly. The latter two discussion points will be part of future recommendations the committee brings to the Supreme Court (anticipated adoption date of May 1 for current recommendations; November 1 for post-judgment and plain language).

## **(4) RULES 4, 7, 36, 55**

Rule 4: The committee discussed personal service on infants and made some amendments to (d)(1)(B) as follows.

(d)(1)(B) Upon a minor under 14 years old by delivering a copy of the summons and complaint to the minor and also to the a parent or guardian of the minor's father, mother, or guardian or, if none can be found within the state, then to any person having the care and control of the minor, or with whom the minor resides, or by whom the minor is employed;

After some debate about the need for it, the committee (with Nathanael Player) discussed how to address providing more notice when certain documents require a response. The committee discussed that the Rule 7 amendments on caution language would apply for all dispositive motions. The committee also discussed requiring that all motions include the bilingual notice and that it be called Notice to Responding Party. The committee had a fairly lengthy debate about the language in Rule 36.

Rule 4: This rule wasn't really addressed on this topic, but given the discussion on Rule 7, it probably makes sense to require the applicable summons approved by the Judicial Council.

Rule 7:

**(c)(2) Caution language.** For all dispositive motions, the motion must include the following language on the first page of the document, to the right of the movant's name, in bold type: **This motion requires you to respond. Please see the Notice to Responding Party.**

**(c)(3) Bilingual notice.** All motions must include the bilingual Notice to Responding Party approved by the Judicial Council.

Rule 36: The committee revised paragraph (b) as follows:

**(b) Required notice on request for admission.** The following notice is required on all requests for admission. The notice must be on the top of the first page in bold print as follows: **You must respond to these requests for admissions within 28 days. If you do not respond within 28 days, the court will consider you to have admitted these requests as true.**

Rule 55: The committee did not address Rule 55 at this meeting.

The committee will finalize this discussion at the next meeting.

## **(5) RULE 65C**

The committee discussed concerns about clerk workload with respect to post-conviction cases and sending files to the AG's office. One comment was made during the comment period to add petitioners to those who get the files, but it was pointed out that petitioners already have those files since they are the defendant in the underlying criminal case. Plus, defendant prisoners wouldn't be able to use an electronic file drive. The committee moved to recommend the rule for final action

(Mike Petrogeorge-1; Brooke McKnight-2), with the caveat that the clerks of court take one last look at this rule for workload purposes and solutions.

**(6) RULE 5(a)(2)(D)**

The committee discussed the need for a citing reference correction in Rule 5. Paragraph (a)(2)(D) cites to Rule 58A(d) (Judge's signature), but should cite to Rule 58A(g), (Notice of judgment). The committee moved to recommend the rule amendment to the Court (Judge Holmberg-1; Justin Toth-2)

**(7) OTHER BUSINESS**

Volunteer to attend working group meeting on innovation in law practice: Trevor Lee.

**(8) ADJOURNMENT**

The meeting adjourned at 6:00 p.m.