

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

Summary Minutes – April 22, 2020

**DUE TO THE COVID-19 PANDEMIC AND STATE OF EMERGENCY
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX**

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

(1) WELCOME AND APPROVAL OF MINUTES

Jonathan Hafen welcomed the committee and asked for approval of the minutes as amended. Judge Clay Stucki moved to approve the minutes. Rod Andreason seconded the motion. The minutes were approved unanimously.

(2) RULES 4, 7, 8, 36

Rule 4: The committee considered whether to amend Rule 4 to require the use of the Judicial Council's form summons. Tim Pack raised the issue of what the consequences should be if the applicable form is not used. Leslie Slaugh suggested that the rule should require, not the use of the form itself, but that the summons be substantially similar to the form. The committee discussed whether Mr. Slaugh's proposal would require the summons to be bilingual. In the alternative, Mr. Slaugh suggested that if parties are required to use the Judicial Council's form, then the language in Rule 4 regarding the contents of the summons should be removed; Mr. Hafen commented that doing so may improperly defer the committee's rulemaking authority to the Forms Committee. The committee discussed the purpose of the amendment: to provide actual notice to individuals who do not speak or read English. After further discussion in light of the amendment's purpose, the committee agreed upon a new amendment to Rule 4 requiring the summons to contain the bilingual notice from the Judicial Council's form summons as follows:

- (c)(1) The summons must:
 - (c)(1)(A) contain the name and address of the court, the names of the parties to the action, and the county in which it is brought;
 - (c)(1)(B) be directed to the defendant;
 - (c)(1)(C) state the name, address and telephone number of the plaintiff's attorney, if any, and otherwise the plaintiff's address and telephone number;
 - (c)(1)(D) state the time within which the defendant is required to answer the complaint in writing;
 - (c)(1)(E) notify the defendant that in case of failure to answer in writing, judgment by default will be entered against the defendant; ~~and~~
 - (c)(1)(F) state either that the complaint is on file with the court or that the complaint will be filed with the court within 10 days after service; and
 - (c)(1)(G) include the bilingual notice set forth in the form summons approved by the Utah Judicial Council.

Rule 7: The committee discussed at length whether to include consequences for failure to include in a motion the caution language and bilingual notice required by the proposed Rule 7 amendments. Susan Vogel expressed support for including consequences because the caution language and bilingual notice are helpful to pro se litigants. Judge Andrew Stone commented that creating a requirement with strict consequences may create an additional obstacle for pro se litigants who do not use motion forms.

The committee discussed whether the requirement to include the caution language and bilingual notice, if adopted, should apply universally or only in cases involving pro se litigants. Mr. Pack noted that the additional requirements and consequences would create an additional burden on represented parties and suggested that the caution language and bilingual notice be required only in cases involving an unrepresented party. Mr. Slaugh noted that it would be easier administratively to require the caution language and bilingual notice language in all cases and recommended against creating a set of rules specific to cases involving unrepresented parties. Ms. Vogel noted that further clarification may be needed for cases involving limited scope representation and licensed paralegal practitioners.

Judge Kent Holmberg noted that the question of whether the caution language and bilingual notice should be required in all cases is a policy question regarding the extent to which the Rules of Civil Procedure should provide for unrepresented parties and, as such, may require further guidance from the Utah Supreme Court before the committee makes a final decision. Ms. Vogel commented that many individuals do not trust the judicial system because they are not informed of what they need to do, and that the requirement to include the caution language and bilingual notice would help build confidence in the judicial system. Judge Stucki voiced support of Ms. Vogel's comments with regard to the justice court system and agreed with Mr. Slaugh that the requirement, if adopted, should be applied universally despite the additional burden on represented parties. Nancy Sylvester read from a letter from the Utah Supreme Court requesting that the committee help make the judicial system more accessible to unrepresented individuals.

The committee discussed what, if any, consequences should be imposed on a party that fails to include the caution language and bilingual notice on a motion as required. Judge Stucki suggested that judges should have discretion to provide parties with more time to respond. Judge Stone and Trevor Lee expressed concern that represented parties might take advantage of Judge Stucki's proposal for more time. Judge Stucki responded that a judge would have discretion not to give additional time to prevent abuse. Mr. Slaugh noted that allowing additional time would be cumbersome for all parties and would create delay and disruption, especially in cases where the court has already ruled on the motion.

In the alternative, Mr. Slaugh suggested that the time to respond should not begin to run until the motion contains the proper caution language and bilingual notice. Judge Stone commented that doing so would be especially burdensome for judicial assistants and judges who would then be required to enforce compliance. Ms. Vogel commented that the new myCase system, once implemented, could resolve Judge Stone's concern.

Judge Stone proposed a different alternative that failure to include the proper caution language and bilingual notice could be considered as prima facie evidence for excusable neglect under Rule 60(b).

Judge Amber Mettler spoke against including a consequence provision, noting that represented parties could stipulate out of the requirement and that not specifying consequences would give greater discretion to judges to provide consequences as necessary and appropriate under the circumstances. Judge James Blanch commented in support of Judge Mettler's position.

After concluding discussion, the committee conducted a series of informal votes regarding whether consequences should be included in the rule for failure to provide the caution language and bilingual notice on a motion, what the consequences should be, and whether the consequences should be applicable in all cases or only in cases involving an unrepresented party. Finding no clear consensus, Mr. Hafen recommended that the committee seek further direction from the Utah Supreme Court and return to the issue at a later time. Mr. Hafen will request guidance from the Utah Supreme Court on whether to include consequences for failing to include the caution language and bilingual notice and whether the caution language and bilingual notice should be required when all parties are represented.

Rules 8 and 55: The committee discussed proposed amendments to Rule 55 requiring a party to provide no fewer than 14 days' notice to the other party that failure to answer a claim, cross-claim, or counter-claim may result in default judgment being entered against that party. Ms. Sylvester proposed an alternative amendment that would also require conspicuous notice on the first page of the document. The committee discussed whether the rule should apply in all cases or only in cases involving unrepresented parties; whether the 14-day notice requirement is necessary and what effect, if any, it might have on eviction proceedings in light of recent statutory changes; whether Rule 55 is the most appropriate place for the amendment; and what, if any, consequences should apply if the appropriate notice is not given. After the discussion, the committee elected to set aside the proposed changes to Rule 55 in favor of the following amendment to Rule 8(a):

(a) Claims for relief. An original claim, counterclaim, cross-claim or third-party claim must contain a short and plain: (1) statement of the claim showing that the party is entitled to relief; and (2) demand for judgment for specified relief. Relief in the alternative or of several different types may be demanded. A party who claims damages but does not plead an amount must plead that the damages are such as to qualify for a specified tier defined by Rule 26(c)(3). A pleading that qualifies for tier 1 or tier 2 discovery constitutes a waiver of any right to recover damages above the tier limits specified in Rule 26(c)(3), unless the pleading is amended under Rule 15. A pleading requesting relief must include the following language on the top of the first page in bold print:

If you do not respond to this document within applicable time limits, judgment could be entered [against you] as requested.

Mr. Hafen called for a vote to propose the amendment to the Utah Supreme Court with a request for further direction on whether to include consequences for failing to include notice and whether the notice should be required when all the parties are represented. Judge Mettler moved to send the language to the Court for additional guidance. Judge Stone seconded the motion. The motion passed with one abstention by Susan Vogel. Ms. Vogel explained that she abstained because

she did not know if the proposed language reflected the intention of the original proposed amendment to Rule 55.

Rule 36: The committee briefly discussed the following proposed amendment to Rule 36, which was discussed at the previous committee meeting in February:

(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.**

Ms. Vogel moved to send the proposed amendment to the Utah Supreme Court for additional guidance. Judge Stucki seconded the motion. The motion passed unanimously.

(3) ADJOURNMENT

The remaining items were deferred until May 27, 2020. The meeting adjourned at 6:02 p.m.