

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

Summary Minutes – June 24, 2020

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

Committee members, staff & guests	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		
Chuck Conrad, Guest	X		

(1) WELCOME AND RULE 68 UPDATE

Jonathan Hafen welcomed and updated the committee on his meeting with the Utah Supreme Court regarding Rule 68. Mr. Hafen noted that the Court has an open mind about the rule but has asked that the rule be circulated from and through the Utah State Bar for discussion rather than from the Court itself. The committee will work with the Utah Association for Justice and Representative Brammer to collect feedback from the legal community regarding the potential change to Rule 68.

(2) APPROVAL OF MINUTES

Mr. Hafen asked for approval of the May 2020 minutes. Rod Andreason moved to approve the minutes. Jim Hunnicutt seconded the motion. The minutes were approved unanimously.

(3) RULE 101

Mr. Hunnicutt introduced proposed language that he prepared with Susan Vogel and Nathanael Player regarding family-law-specific amendments to Rule 101 to make it consistent with caution and consequences amendments to Rules 4, 7, 8, and 36. Leslie Slaugh noted that the proposed language may need to address that a written response may be required. The committee discussed Mr. Slaugh's comment and amended the proposed language. The committee also discussed how best to refer to the consequences for failure to include the cautionary language or bilingual notice. After the discussion concluded, Ms. Vogel moved to send the proposed amendments to the Utah Supreme Court for comment. Mr. Hunnicutt seconded the motion. The motion passed unanimously.

The committee approved the following proposed amendments to send to the Court:

Rule 101. Motion practice before court commissioners.

(a) Written motion required. An application to a court commissioner for an order must be by motion which, unless made during a hearing, must be made in accordance with this rule.

(a)(1) A motion must be in writing and state succinctly and with particularity the relief sought and the grounds for the relief sought. Any evidence necessary to support the moving party's position must be presented by way of one or more affidavits or declarations or other admissible evidence. The [moving party]motion may also [file]include a supporting memorandum.

(a)(2) All motions must include the bilingual Notice to Responding Party approved by the Judicial Council.

(a)(3) Each motion to a court commissioner must include the following cautionary language at the top right corner (immediately below the 1½ inch margin) of the first page of the document, in bold type: "This motion will be decided by the court commissioner at an upcoming hearing. If you do not appear at the hearing, the Court might make a decision against you without your input. In addition, you may also file a written response at least 14 days

before the hearing.” Failure to include this cautionary language or the bilingual Notice to Responding Party may be grounds to continue the hearing, or may provide the non-moving party with a basis to set aside the order resulting from the motion under Rule 60(b) for excusable neglect.

(4) RULE 24

Nancy Sylvester introduced comments suggesting amendments to Rule 24. The committee first discussed whether to expand the language of Rule 24(b)(2) to add “political subdivisions” or “state or local government entity.” The committee amended the proposed language to read as follows, but at Judge Kent Holmberg’s suggestion, the committee will return to the question of whether to use the term “political subdivision” rather than “agency”:

Rule 24. Intervention.

[...]

(b)(2) **By a Governmental Entity, Officer, or Agency.** On timely motion, the court may permit a federal, state, or local government, or its officer or agent, to intervene if a party’s claim or defense is based on:

(b)(2)(A) a statute or executive order administered by the officer or agency;
or

(b)(2)(B) any regulation, order, requirement, or agreement issued or made under the statute or executive order.

Turning to Rule 24(d), the committee corrected a typo in Rule 24(d)(3)(A). In Rule 24(d)(3)(A) and (B) the committee expanded the term “statutes” to also include “paper challenging constitutionality as set forth above” to capture other possible constitutional challenges:

(d)(3) Notification procedures.

(d)(3)(A) **Form and content.** The notice shall (i) be in writing, (ii) be titled “Notice of Constitutional Challenge Under URCP 24(d),” (iii) concisely describe the nature of the challenge, and (iv) include, as an attachment, the pleading, motion, or other paper challenging constitutionality as set forth above.

(d)(3)(B) **Timing.** The party shall serve the notice on the Attorney General or other governmental entity on or before the date the party files the paper challenging constitutionality as set forth above.

(5) RULE 83

Ms. Sylvester introduced amendments to Rule 83 recommended by appellate court staff to clarify whether a district or appellate court may rely on another court’s vexatious litigant order. The committee discussed making explicit that the findings in a vexatious litigant order entered under Rule 83 may be used statewide by any court to impose its own conditions on the litigant. The committee discussed a concern raised by Judge Laura Scott regarding a presiding judge in one district not being responsible for reviewing filings entered in another. The committee also discussed a suggestion by Judge Stone that the presiding judge be able consult with the judge who entered the

vexatious litigant order when considering what to do with future filings. After incorporating revisions to the proposed language recommended by the committee, Mr. Andreason moved to send the proposed amendments to the Supreme Court for comment. Lauren DiFrancesco seconded the motion. The motion passed unanimously.

The committee approved the following proposed amendments to send to the Court:

Rule 83. Vexatious litigants.

[...]

(b) **Vexatious litigant orders.** The court may, on its own motion or on the motion of any party, enter an order requiring a vexatious litigant to:

[...]

(b)(5) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any future claim for relief in any court; or

[...]

(e) **Prefiling orders as to future claims.**

(e)(1) A vexatious litigant subject to a prefiling order restricting the filing of future claims shall, before filing, obtain an order authorizing the vexatious litigant to file the claim. The presiding judge of the judicial district in which the claim is to be filed, in consultation with the judge who entered the vexatious litigant order, shall decide the application. In granting an application, the presiding judge may impose in the pending action any of the vexatious litigant orders permitted under paragraph (b).

[...]

(i) **Applicability of vexatious litigant order to other courts.** After a court has issued a vexatious litigant order, any other court may rely upon that court's findings and order its own restrictions against the litigant as provided in paragraph (b).

(6) RULE 43

The committee formed a subcommittee to move the provisions regarding remote hearings from Code of Judicial Administration Rule 4-106 to Rule 43 of the Rules of Civil Procedure. The subcommittee comprises Susan Vogel, Lauren DiFrancesco (chair), Judge Clay Stucki, and Judge Laura Scott. The subcommittee will also consider federal rules and what other states have done.

(7) ADJOURNMENT

The remaining items were deferred until July 29, 2020. Mr. Hafen informed the committee that the Court approved the committee's recommendation to reappoint Justin Toth, Heather Sneddon, and Judge Andrew Stone as members of the committee. Mr. Hafen noted that Larissa Lee had left the committee due to her appointment as the Appellate Court Administrator and thanked her for her service. The Court approved the committee's recommendation to appoint recording secretary Ash McMurray as a member of the committee to fill the vacancy left by Ms. Lee. The meeting adjourned at 5:58 p.m.