

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

**Summary Minutes – March 24, 2021**

**DUE TO THE COVID-19 PANDEMIC AND PUBLIC HEALTH EMERGENCY,  
THIS MEETING WAS CONDUCTED ELECTRONICALLY VIA WEBEX**

<b>Committee members, staff, and guests</b>	<b>Present</b>	<b>Excused</b>	<b>Appeared by Phone</b>
Jonathan Hafen, Chair	<b>X</b>		
Robert Adler		<b>X</b>	
Rod N. Andreason	<b>X</b>		
Paul Barron	<b>X</b>		
Judge James T. Blanch	<b>X</b>		
Jacqueline Carlton	<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>		
Brooke McKnight	<b>X</b>		
Ash McMurray		<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. Slaugh	<b>X</b>		
Trystan B. Smith	<b>X</b>		
Heather M. Sneddon		<b>X</b>	
Paul Stancil		<b>X</b>	
Nick Stiles		<b>X</b>	
Judge Andrew H. Stone		<b>X</b>	
Justin T. Toth	<b>X</b>		
Susan Vogel	<b>X</b>		
Nancy Sylvester, Staff	<b>X</b>		
Kim Neville, Recording Secretary		<b>X</b>	

Judge Brendan McCullagh, Guest	<b>X</b>		
-----------------------------------	----------	--	--

**(1) ODR/SMALL CLAIMS RULES**

Judge Brendan McCullagh presented a summary of the proposed Rules of Small Claims Procedure and Online Dispute Resolution Program. Under the proposed rules, the parties may opt for online resolution program using a facilitator provided by the Administrative Office of the Courts. Judge McCullagh noted that approximately 50-60% of cases that utilize the ODR process are resolved prior to court involvement. Judge McCullagh noted that all courts are expected to join the ODR program by the end of the year. Judge McCullagh also noted that the proposed rules are intentionally simplified as they are frequently utilized by unrepresented parties.

Leslie Slaugh inquired as to the use of certain capitalized terms within the proposed rules. Nancy Sylvester and Judge Clay Stucki commented that the use of capitalized terms is intentional, to reflect that a form is likely available from the court. Ms. Vogel commented that capitalized terms coincide with the forms available on the court’s website. Judge McCullagh also noted that the draft rules provide that motions should be in “substantially the same form” as those approved by the Forms Committee, and that the court would anticipate providing links to the forms.

Judge Stucki suggested that the proposed language be revised to clarify that parties are expected to arrange for service, as opposed to being served by the court. Additional discussion was raised regarding the consistent use of “must” versus “shall” within the proposed rules. Judge McCullagh further noted that the use of the term “affidavit” has been eliminated throughout, as parties now utilize unsworn declarations to state a claim.

Judge McCullagh also noted that very few parties are requesting an exemption to the ODR process. The overwhelming majority of small claims parties have been able to utilize the ODR processes.

Additional provisions have been included within Rule 4 that provide for removal to the district court if the amount at issue exceeds the jurisdictional limits of the small claims court. Judge McCullagh noted that the use of the term “removal” is intentional and coincides with the federal court practice with regard to jurisdictional issues.

Mr. Slaugh proposed additional language with respect to proposed Rule 6A to address suspension or deferral of judgments if a settlement agreement is reached and the money owed is timely paid. After further discussion, Rule 6A(b) was revised to remove the words “confessed judgment” and replace them with “entered judgment.” Rule 11 also contains corresponding language with respect to collection of judgments.

**(2) APPROVAL OF MINUTES**

Jonathan Hafen asked for approval of the minutes as amended with comments from the minutes subcommittee. Susan Vogel moved to adopt the minutes as amended; Jim Hunnicutt seconded. The minutes were approved unanimously.

**(3) LEGISLATIVE UPDATE**

Ms. Sylvester reported that a bill regarding the costs of experts did not make it through legislative committee.

**(4) PANDEMIC AMENDMENTS**

Ms. Sylvester reported on the recent use of Covid-19 signatures by mail delivery services, which allows delivery personnel to sign for recipients upon delivery. Brooke McKnight reported that the clerk's office is often reluctant to enter a default certificate based upon a Covid-19 signature, as the signature has not been uniformly accepted by district judges. Ms. Sylvester suggested that the issue may be best addressed informally through the pandemic response working group, as the issue is likely to resolve as pandemic-related issues subside.

**(5) STATE V. BILLINGS**

Mr. Hafen and Ms. Sylvester suggested that the committee form a working group to evaluate the impact of a recent appellate decision, *State v. Billings*, which addresses criminal restitution. Judge Stucki, Ms. McKnight, and Michael Petrogeorge volunteered to serve on the working group.

**(6) RULE 12 CONFORMING AMENDMENT**

Mr. Slaugh presented a proposed technical amendment to Rule 12, which allows a plaintiff to file a reply to a counterclaim, which is inconsistent with Rule 7, which refers to an answer to a counterclaim. Justin Toth moved to amend the language of Rule 12 for consistency; Judge Clay Stucki seconded. The motion passed unanimously.

**(7) ADJOURNMENT**

The meeting adjourned at 4:57 p.m.