

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

Summary Minutes – May 26, 2021

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

Committee members, staff, and guests	Present	Excused	Appeared by Phone
Jonathan Hafen, Chair	X		
Robert Adler		X	
Rod N. Andreason	X		
Paul Barron	X		
Judge James T. Blanch	X		
Lauren DiFrancesco	X		
Judge Kent Holmberg	X		
James Hunnicutt	X		
Trevor Lee	X		
Judge Amber M. Mettler	X		
Brooke McKnight	X		
Ash McMurray	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	
Paul Stancil		X	
Nick Stiles		X	
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Nancy Sylvester, Staff	X		
Kim Neville, Recording Secretary	X		
Troy Booher, Guest	X		
Jacqueline Carlton, Guest	X		

(1) APPROVAL OF MINUTES

Jonathan Hafen asked for approval of the minutes as amended with comments from Susan Vogel and the minutes sub-committee. Jim Hunnicutt moved to adopt the minutes as amended; Ron Andreason seconded. The minutes were approved unanimously.

(2) RULE 62

Troy Booher presented a proposed amendment to Rule 62. The proposal would extend the automatic stay from 14 days to 28 days to allow additional time for briefing. Mr. Booher noted that the comparable federal rule provides for a 30-day automatic stay. The proposed change would also allow for additional discretion by the trial judge to allow for alternative security under certain circumstances. In addition, the proposed change makes clear that the court can stay an injunction while an appeal is sought under Rule 5, as opposed to when the appeal is allowed, which can take months for consideration. The proposed change would further allow either party to request a hearing within five days – not just the creditor.

Leslie Slaugh commented that the proposed change would only apply when a writ is needed to enforce the judgment. Judge Holmberg also noted that the proposed change would not stay the accrual of post-judgment interest. Ms. Vogel commented that the additional time would be of benefit to self-represented parties as they often find out about judgments late, and need additional time to move to set aside the order.

Mr. Slaugh suggested a change to subsection (b)(2)(A) to clarify that the court may stay an order that is “not final.” Mr. Booher suggested that the wording be changed from “not final” to “certified” in order to avoid confusion as to whether the order is appealable.

With regard to paragraphs (c) and (d), Mr. Slaugh questioned whether the rule is intended to allow for an automatic stay when sought by the government. Mr. Slaugh proposed that subsection (d) be limited to money judgments. The Committee also discussed whether the subsection should be revised to clarify that the rule covers “governmental entities,” which could potentially include special service districts, municipalities, and counties. After further discussion, the Committee opted to return to the original language of subsection (d), except for adding “United States” to the title for internal consistency.

With respect to paragraphs (h)(3), Mr. Andreason questioned whether the change would limit the forms of security available to litigants. Mr. Slaugh suggested that the language of the preceding section would give the court broad latitude in establishing the type of security.

The Committee reviewed the remainder of the proposed changes, with no material comments.

At the conclusion of the discussion, Mr. Hafen called for the motion. Bryan Pattison moved to send the proposed amendments to the Supreme Court; Jim Hunnicutt seconded. The motion passed unanimously. The proposed amendments, which are attached as **Exhibit A**, will be sent to the Supreme Court for consideration.

(3) CRIMINAL RESTITUTION; STATE V. BILLINGS

Brooke McKnight reported on the working group's review of *State v. Billings* and its effect, if any, on rules governing restitution. Ms. McKnight reported that the working group has reviewed and discussed the decision, but is recommending no change to the existing rules, only to clerk of court practice.

(4) RULE 37

Judge Holmberg presented the feedback received by the working group on submission of proposed orders for discovery motions. Judge Holmberg reported that some judges have expressed concern that the proposed orders unnecessarily crowd the docket; the majority of judges, however, appear to favor the submission of proposed orders. After further consideration, the working group is recommending no change to the existing rules.

Ms. Vogel commented that the use of proposed orders is burdensome to self-represented parties, who frequently do not know what to ask for in terms of relief. Lauren DiFrancesco suggested that this concern could be addressed by including a form on the courts' website. After further discussion, no changes were recommended.

(5) RULE 5

Proposed Changes to Certificate of Service Requirements:

Trevor Lee reported on the proposed change to Rule 5, which would eliminate the need for a certificate of service when all parties are registered e-filers. Mr. Lee proposed that the Committee utilize the language of the analogous federal rule.

Ms. Vogel expressed concern that self-represented parties may not be properly served since they are rarely registered as e-filers. Mr. Lee clarified that the proposed change would not affect parties who are not registered e-filers; service of parties who are not registered e-filers would be governed by the other portions of the rules.

Ms. DiFrancesco expressed support for the change, but noted that attorneys admitted pro hac vice may not be registered e-filers and would also require documentation of service.

At the conclusion of discussion, Mr. Hafen called for the motion. Ms. DiFrancesco moved to send the proposed amendments to the Supreme Court; Jim Hunnicutt seconded. The motion passed unanimously. The proposed amendments, which are attached as Exhibit B, will be sent to the Supreme Court for consideration.

Supreme Court’s Feedback Regarding Methods of Service:

Ms. Sylvester also shared the Supreme Court’s feedback on the proposed changes to the methods of service identified in Rule 5. Ms. Sylvester reported that Justice Lee expressed concern regarding the proposed changes providing for alternative service when a party claims to lack access to email, and the potential for collateral litigation or misuse by litigants. Mr. Slauch commented that some litigants intentionally choose not to use email, which would support the Justice’s policy concern. Ms. Vogel expressed the counter-view, indicating that inmates, elderly parties, low-income parties, and disabled parties often report difficulty accessing email.

Judge Holmberg suggested that the Committee consider allowing the parties to file a motion to be excused from e-mail service. Judge Stone commented that one of the reasons for the proposed rule change is that mischievous litigants can easily claim they did not receive documents when traditional mail service is allowed. Judge Stone expressed support for Judge Holmberg’s proposal, indicating that electronic service should be the default method of service and that it is often the most reliable method of communication for parties who lack a physical address.

After further discussion, Judge Stone proposed that paragraph (C) be revised to provide for email service unless the person has been excused by the court from serving or receiving documents by email.

At the conclusion of discussion, Mr. Hafen called for the motion. Judge Holmberg moved to send the proposed amendments to the Supreme Court; Ms. DiFrancesco seconded. The motion passed with one dissent from Ms. Vogel. The proposed amendments, which are attached as Exhibit B, will be sent to the Supreme Court for consideration.

(6) RULE 108

Judge Holmberg presented a proposal from the family law subgroup, which includes both commissioners and family law practitioners. The group proposed a change to sub-part (c), which would change the standard of review of a commissioner’s findings. The proposed change would provide for review for clear error.

Judge Stone inquired as to whether there are Constitutional concerns with the proposed amendment in light of the limited role assigned to commissioners. Leslie Slauch expressed concern that commissioners frequently resolve disputes by proffer, which also raises potential Constitutional implications. Judge Stone and Mr. Hunnicutt also commented on the potential for conflict with

legislative developments. Judge Holmberg and Judge Stone suggested that the Committee start with a review from the General Counsel's office as to any Constitutional implications associated with changing the standard of review and return to the issue after that analysis has been conducted.

(7) ADJOURNMENT

The meeting adjourned at 5:59 p.m.