

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

Summary Minutes – June 23, 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		
Jacqueline Carlton		X	
Lauren DiFrancesco	X		
Judge Kent Holmberg	X		
James Hunnicutt	X		
Larissa Lee		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. Slauch	X		
Trystan B. Smith	X		
Heather M. Sneddon		X	
Paul Stancil	X		
Nick Stiles		X	
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		
Christopher Williams	X		
Nancy Sylvester, Staff	X		
Kim Neville, Recording Secretary	X		
Nathaneal Player	X		

(1) APPROVAL OF MINUTES

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

(2) RULE 108

Mr. Hunnicutt discussed the proposed amendment to Rule 108, which would alter the standard of review of a commissioner’s findings. After analyzing the issue, the sub-committee believes that the amendment could raise potential Constitutional issues that would weigh against the adoption of the proposed amendment.

Judge Stone suggested the Committee may want to consider a future amendment or additional education to provide guidance to judges and practitioners regarding the subject. Judge Blanch commented that the case law suggests that the appellate courts appear to be reviewing the issue for correctness, and that there is at least some burden of persuasion upon the petitioner to show that the commissioner erred.

Leslie Slauch expressed support for incorporating a standard of review that requires the moving party to identify their grounds for review. Mr. Slauch also expressed concern that the commissioners often make a decision based upon proffers or affidavit without hearing any evidence. Susan Vogel expressed concern that it would be burdensome for a self-represented party to demonstrate a legal error. Dean Adler commented that Rule 108(b)(2) of the existing rule already provides that the “objection must identify succinctly and with particularity the findings of fact, the conclusions of law, or the part of the recommendation to which the objection is made...” as well as explain why that decision was incorrect. Dean Adler suggested that the issue could be addressed by allowing other avenues for objection, such as insufficiency of proof.

Ms. Vogel also commented that sub-section (d) appears to be drawing a distinction between evidence and proffers, but does not state why.

After a full discussion, Mr. Hafen inquired as to whether any Committee members would be interested in reviewing the issue further and recommending proposed changes. Mr. Hunnicutt volunteered to work with the family law subcommittee to obtain additional input.

(3) RULE 5

Nathaneal Player spoke regarding the proposed changes to Rule 5, which would require a party to file a motion to be excused from e-mail service. Mr. Player commented that the provision could create a barrier for self-represented parties, who often have difficulty filing or presenting motions.

Judge Stone commented that litigants could potentially elect traditional mail to slow down the process; that the courts need to have an efficient method to communicate with all parties; and email is typically the best and most reliable default method. Ms. DiFrancesco also noted that the rules now allow for an additional seven days for mailing days, which would cause further delays when traditional mail is required.

Ms. Vogel commented that the change may be difficult for self-represented parties, who often report difficulty receiving notices from the Court. Mr. Player also commented that a large number of people come to the law library specifically to create an account for mycase, which they often have difficulty accessing in the future.

Tim Pack spoke in support of email as a default service mechanism, as it is relatively easy to obtain a free account or to access the internet through public sources, such as a library.

Judge Stone also commented that there are frequently service issues in landlord-tenant and debtor cases, in which default judgments are being entered based upon service to an old mailing address; using email service could potentially mitigate against this. Ms. Vogel suggested that the Court make it easy for parties to opt out of e-mail service, such as by checking a box in a form. Mr. Slauch commented that any opt out should include a warning to confirm that the party understands that documents will be sent to the address that is listed. Mr. Player indicated that this may be a feasible option.

Additional revisions were made to subsection (3)(C) to clarify that the party should certify that they do not have access to email. Mr. Hafen suggested that the forms committee prepare / modify an opt-out form so that it can be submitted with the proposed amendment to the Supreme Court.

Ms. DiFrancesco pointed out that the current language does not provide direction for the party who is serving in compliance with the rules. Additional revisions were made to subsection (3)(C) to address this issue.

After a full discussion, Mr. Hafen called for the motion. Justin Toth moved to send the proposed amendment with an accompanying opt-out form to the Supreme Court; Ms. DiFrancesco seconded. The motion passed unanimously.

(4) RULE 6.1

Ms. Sylvester presented the proposed amendments to Rule 6.1, which address the use of expedited procedures. This proposal emerged as a result of legislative discussion. The purpose of the rule is to allow for a standing procedure that would alleviate the need for additional legislative regulation.

Mr. Player presented concerns raised by the self-help office concerning the proposed change to subsection (f)(1)(a), which would potentially allow for an occupancy hearing within seven days (as opposed to ten days under the existing statute). The concern is that self-represented parties have difficulty responding under truncated time frames. It is unclear whether the proposed rule is intended to apply to eviction proceedings.

Judge Stone expressed concerns regarding the remote proceedings provision, set forth in 6.1(d). The proposed provision conflicts with Rule 43, which allows the trial judge to determine whether remote proceedings are appropriate. Judge Stone also expressed concerns that self-represented parties and others frequently have difficulty reliably accessing the Court's webex system. Judge Stucki joined in these concerns, indicating that the overwhelming majority of people accessing webex at the Justice Courts have difficulty connecting to the system.

With regard to subsection (e), the Committee also discussed the types of cases in which the expedited procedures rule would apply. Committee members raised questions as to whether the rule would apply to wrongful lien matters, civil commitment matters, or Rule 37 proceedings. In addition, the Committee questioned how subsection (f) intersects with residential eviction cases and the bond requirements in § 78B-6-812.

After a full discussion, Ms. Sylvester recommended that the proposed rule be returned to the liaison committee with the Committee's feedback.

(5) ADJOURNMENT

The meeting adjourned at 5:40 p.m.