

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

Summary Minutes – October 27, 2021

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

Committee members	Present	Excused	Guests/Staff Present
Robert Adler		X	Keisa Williams, Staff
Rod N. Andreason	X		Crystal Powell, Recording Secretary
Judge James T. Blanch		X	Paul Barron, Guest
Lauren DiFrancesco, Chair	X		Keri Sargent, Guest
Judge Kent Holmberg	X		Christopher Williams, Guest
James Hunnicutt	X		Nick Stiles, Guest
Judge Linda Jones	X		Jim Peters, Guest
Trevor Lee	X		Stacy Haacke, Staff
Ash McMurray	X		
Judge Amber M. Mettler	X		
Kim Neville	X		
Timothy Pack		X	
Loni Page	X		
Bryan Pattison	X		
James Peterson		X	
Michael Petrogeorge		X	
Judge Laura Scott	X		
Leslie W. Slaugh		X	
Paul Stancil		X	
Judge Clay Stucki		X	
Judge Andrew H. Stone	X		
Justin T. Toth	X		
Susan Vogel	X		

(1) MEMBER INTRODUCTIONS

Ms. Kesia Williams introduced new committee staff Ms. Stacy Haacke. Ms. Haacke was welcomed by the Committee. Ms. Williams will no longer attend the meeting; but noted she would be available if needed.

(2) APPROVAL OF MINUTES

Ms. Lauren DiFrancesco asked for approval of the minutes subject to minor amendments noted by the minutes subcommittee. Mr. Jim Hunnicutt moved to adopt the minutes as amended; Bryan Pattison seconded. The minutes were approved unanimously.

(3) SUPREME COURT CONFERENCE UPDATE

Ms. DiFrancesco reported that she, Ms. Williams, and Mr. Rod Andreason met with the supreme court and received final approval on rules 24 and 62, which will be published November 1, 2021. Changes to Rules 5 and 76 were made and will be sent back out for public comment and further addressed by the Committee.

(4) PREFERRED TERMINOLOGY FOR CERTAIN COURT/LEGAL TERMS

Ms. Susan Vogel presented on suggestions for preferred terminology for certain court/legal terms. Ms. Vogel noted that she was presenting her suggestions to get the conversation started. She noted that the nationwide trend is to make legal vocabulary easier to understand for all. Ms. Vogel expressed that there are many confusing terms especially pertaining to small claims and for self-represented persons where debt cases in which 97% of defendants are self-represented. She gave a few examples from the table presented to the Committee such as “estate” being used to refer to small items or a “traverse judgment.”

Ms. DiFrancesco questioned if the proposal to change the terms would be for words in the rules and Susan clarified that it would be on a step-by-step basis though she would be happy to take a look at the usage of confusing terms in the rules. Ms. DiFrancesco questioned what the nationwide trends were and suggested creating a subcommittee to take a deeper look into the project.

Ms. DiFrancesco reported that Mr. Leslie Slauch and Judge Blanch had emailed their comments before the Committee meeting noting they were not in favor of a broad change to court and legal terminology as it will likely lead to even more confusion. Mr. Hunnicutt cautioned that many of the terms are already in the Code and that the scope of work of this Committee was limited to only rule changes. He therefore wondered whether this Committee is the right place to start some of these efforts; but noted that as it relates to the Rules, it would be good to consolidate the various words that are used for filing papers with the court.

Judge Stone suggested that the preferred terminology list might be best placed as a glossary on a help page for understanding the court. He noted that the law is technical and certain words are defined in statute and case law and the effort might be misguided as it could lead to further confusion. Mr. Andreason noted that he is open to the prospect of updating a lot of terms that are outdated; as might have been done in other jurisdictions. Mr. Barron suggested that Ms. Vogel reach out to the IT department of the court that is working on the MyCase application to make definitions easy and interactive for persons using that system. Ms. Vogel volunteered to chair a subcommittee to lead the project. Mr. Trevor Lee asked to join the subcommittee. The Committee volunteered Mr. Slauch. Mr. Ash McMurray also volunteered. The sub-committee will report their findings and suggestions in a month or two.

(5) NOTICES OF REMOTE HEARINGS

Ms. Vogel explained how difficult it is for the court to send out notices for remote hearings. She noted that it would be very difficult to have a rule to address the problem and so would rather have a wish list of solutions to mitigate the difficulties people are having. Such issues include, for example: (1) remote hearing that happen after 5:00 p.m. have little to no technical support; (2) the notice not providing the information on the web-link; (3) there is no way to let the court know that an individual is trying to connect if there is a technical difficulty; (4) notices tend to have the court address and location but doesn't make it clear that the hearing will be remote. Ms. Vogel also expressed that the feedback to her is that "contacting the court" is a big blackhole. She also expressed that having a warrant out for non-appearance when the individual couldn't connect to the weblink is very harsh. Ms. Vogel suggested that the notice should have specific information about the hearing, how to connect or be present, as well as the number from which the court will contact the party if that is how the hearing will proceed.

Ms. DiFrancesco agreed that it is a problem and asked how best to mitigate the issue in terms of if it required a rule. Ms. Williams noted that one good place to start would be consulting the Clerks of Court meeting for feedback on the rationale behind procedure across the state. Ms. Loni Page expressed that she would raise the issue at that meeting. Ms. Page noted that sometimes the notices are lengthy and therefore can be overwhelming leading to individuals missing instructions. Ms. Page explained that some of the notices will refer the individual to the court's website which mostly has the links for hearings; and that while this is not an ideal solution as many instances require private links, it is a solution that is working.

Mr. Hunnicutt noted that some commissioners put the webex link on the notices, he believes that is the best procedure as it relieves all parties from scrambling to find it and the clerks from doing the extra work to send it out.

(6) RULE 7

Ms. DiFrancesco reported that based on a request received through Mr. Spencer Young, Green-filing is asking for a proposed order on motions to classify and the rules do not expressly presuppose that a proposed order would go along with that type of motion. Mr. Lee noted that he filed a motion to classify recently and when he went to file the request to submit, that is when he was prompted to file a proposed motion but that is not listed in the rules.

Judge Stone noted that his understanding is that in practice, the filing of the motion results in classifying the document at least until the motion can be heard. Ms. Page answered that that is the best practice for clerks, but clerks must physically do it as it is not automatic. Ms. Di Francesco suggested it should be automatic as some cases or issues in cases are highly sensitive. Mr. Paul Barron noted that everything is classified as private upon the motion being filed and then the specific classification request is finalized after the judge signs the proposed order or rules on the request. Judge Stone also noted that he is hesitant to have the motion or case be classified automatically because of the possibility for abuse. He noted that in other states heavily redacted documents are filed as a best practice until the judge issues the order.

Ms. DiFrancesco wondered if there needed to be separate rule for document filing classifications. It was noted that the Rules of Judicial Administration speaks to document classifications and perhaps that rule needed to be brought over into the Rules of Civil Procedure. Ms. DiFrancesco proposed that another subcommittee be created to address this issue. Judge Stone as lead, along with Mr. Justin Toth, Ms. Vogel, Mr. Hunnicutt, and Ms. Powell will work on the subcommittee. Judge Stone asked that the committee get feedback from the supreme court to see if replacing the rule of judicial administration with a civil rule is something that they support. Ms. Williams noted that replacing the judicial administration rule would also need to go through the Judicial Council policy and planning committee. Ms. Williams noted that she and Ms. Haacke would draft something very quickly to meet the council agenda deadline.

(7) RULE 37

Ms. DiFrancesco noted that the second issue raised by Mr. Young was the potential of attorneys' fees eclipsing the value of forcing the other side to pay expert fees and proposed that mandatory attorneys be added into Rule 37 to address this issue. Ms. DiFrancesco noted that while not expressly referenced in rule 37, it would fall under 37 (a) (1) as a discovery issue.

Committee members questioned how frequent the issue arises as they could not recall having seen a dispute over payment for experts. Ms. DiFrancesco noted that it is very rare but could only think of it in the context of experts asking for a deposit before a deposition; and ultimately suggested to not adopt any changes or act on this issue at this time. The Committee agreed.

(8) RULE 41

Judge Linda Jones and Judge Amber Mettler lead the discussion on whether rule 41 requires the dismissal of an action in order to dismiss one defendant from the action. She noted that the discrepancy arises where Rule 41 could be read as hindering the dismissal of a single defendant without dismissing the entire action or filing an amended complaint. Ms. Di Francesco questioned why the need to go to rule 41 or rule 54 and not dismiss the defendant by stipulated motion under rule 7. She suggested that perhaps it might be prudent to wait until the issue is presented in a case before the supreme court. Judge Jones wondered if such a case would ever go before the supreme court leaving the lower courts without a proper procedural mechanism.

Ms. Vogel commented that a defendant in an eviction case may have a negative effect on their credit or may have a garnishment on their salary even though they did not have a judgment against them because of a default against one of the other defendants and do not have a court order to show that they are out of the case. Ms. DiFrancesco noted that that might be a separate issue. Judge Jones noted that she is not able to sign a judgment if one party is not able to be served and would usually dismiss that person but is now wondering if rule 41 is a barrier to that.

Ms. DiFrancesco expressed that amending a complaint just to dismiss a party seems to be very uneconomical. Ms. Vogel noted that the committee should consult with Utah legal Service or People’s Legal Aid for input. Judge Stone added that a plaintiff should be able to carve out their complaint how they want and wondered why a motion process as opposed to a notice. Judge Jones noted that the remaining defendant might raise a right for the entire action to be dismissed. Judge Stone noted that it’s not burdensome to do it by motion; but parties tend to use rule 7. It was noted too, that rule 41 is routinely ignored.

After a full discussion, the Committee agreed to amend Rule 41 and simply modify the language. Mr. Andreason suggested changing rule 41 (a) (1) (A) to insert “... an action or any party or portion thereof.” The Committee also agreed to amend Rule 41(a)(1)(A)(i) to “any” party instead of “the party.” Judge Jones suggested a change in 41 (a) (2) from “action” to “an action or any party or part thereof.”

Judge Stone motioned to approve the proposed changes. Mr. Andreason seconded. The amendment unanimously passed.

(9) ADJOURNMENT

The chair thanked everyone for their time and efforts and requested that any new items be emailed to her or Ms. Haacke. The meeting adjourned at 5:36 p.m.