

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

**Summary Minutes – September 22, 2021**

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

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

(1) MEMBER INTRODUCTIONS

New and continuing members as well as committee staff and guests introduced themselves.

(2) APPROVAL OF MINUTES

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

(3) DISCUSSION OF RULE 5

Ms. Keisa Williams opened the discussion on Rule 5, summarizing public comments and questions raised by Justice Lee, as noted in the rule draft included in the materials. Following discussion, the Committee made the following amendments in response to Justice Lee’s questions:

- *(line 46)* **What does “or by other notice” mean?**
  - “or by other notice” was meant to address all of the ways in which a pro se litigant might provide an email address to the court or to other parties.
  - To clarify and accomplish that purpose, the committee struck “or by other notice,” removed the reference to Rules 10 and 76, and added “and other parties.”
  
- *(lines 49-50)* **What if the person hasn’t provided a mailing address? Couldn’t service be made by other methods listed in (C)?**
  - Yes. The committee added a reference to the methods in (b)(3)(C).
  
- *(lines 50-51)* **Does this mean there is an unlimited amount of time to serve someone by mail following an undeliverable notice?**
  - The committee added a time limit: “provided service by another method is made within 3 days following receipt of an undeliverable email notice, excluding Saturday, Sunday, or legal holidays.
  
- *(lines 58-59)* **Doesn’t this essentially allow parties to “opt-out” of email service by simply not providing an email address? Does that defeat the purpose?**
  - This is really a policy decision for the Court. An exception is necessary to account for those who cannot communicate by email, but most pro se litigants prefer email and provide it freely. The committee does not believe the “opt-out” provision would be abused.

Other amendments included eliminating the use of gendered pronouns (*lines 56 and 58*) and eliminating the requirement that parties “certify” their inability to serve and receive documents by

email (*line 55*). The amendment would allow litigants to simply “notify” the court and other parties of their inability to use email. The committee felt certification was unnecessary and confusing for pro se litigants.

Ms. Vogel noted that a more a focused discussion of persons with disabilities or lack of access to technology is necessary to ensure those individuals are able to easily “opt-out” or certify that they are unable to serve or be served by email. Ms. Vogel noted the difficulty that self-represented parties and those who lack access to technology already have in receiving notices from the court. Ms. Vogel explored whether this should be done by adding a ‘check box’ on the form and should be referred to the forms committee.

After a full discussion, Mr. Hunnicutt moved to adopt the revisions and Ms. Vogel seconded. The motion passed unanimously.

#### **(4) Rule 100A**

Judge Holmberg summarized the concerns raised by court staff on Rule 100A pertaining to the additional workload that will be created for court staff. He noted that the November 1<sup>st</sup> effective date posed an unfeasible burden on court staff and would have a detrimental effect given the lack of human and financial resources. Based on extensive feedback, he recommended that that the effective date be suspended. Ms. Keri Sargant also recommended a delay in implementation of the rule to allow court staff and administration to prepare. Mr. Hunnicutt noted that while delay in the short term is required, the rule has been in the pipeline for over four years and expressed concern that postponing implementation may lead to other legislative actions. Judge Amber Mettler recommended that that the issue be addressed with the Judicial Council to push for increased resources so that the rule may be implemented properly.

Mr. Robert Alder questioned whether it makes sense to remove case management conferences from track one cases. Mr. Hunnicutt noted that the proposal for a case management conference does expedite the divorce process by identifying what track a case falls in; thereby estimating how long a case will take and how many resources will be needed.

Ms. Vogel noted that the case management conference can be highly effective for pro se litigants who do not understand the system. Litigants receive a quick education of the process and learn what will be required of them. Mr. Hunnicutt also pointed out that part of the appeal of case management conferences is judges can use it to push settlement on the spot, and often push for at least partial settlements narrowing the issues.

Mr. Nick Stiles suggested that the committee’s decision be placed on the Supreme Court’s conference agenda in October. Judge Holmberg and Ms. DiFrancesco volunteered to attend the conference to lead the discussion.

Judge Holmberg moved to delay the effective date until May 1, 2022. Judge Stucki seconded. The motion passed unanimously.

**(5) Rule 108**

Judge Holmberg and Mr. Hunnicutt updated the committee on the status of Rule 108. Judge Holmberg stated that all of the discussion and feedback he received, as well as recent case law on the authority of judges and commissioners, leads to the conclusion that the proposed changes are unconstitutional. Judge Holmberg recommended that the committee retire the issue. The committee expressed thanks for the work that had been done.

**(6) RULES OF SMALL CLAIMS PROCEDURE: ODR (ONLINE DISPUTE RESOLUTION)**

Judge McCullagh opened the discussion concerning ODR and the Small Claims Procedure Rules by giving a summary of the history of ODR from its pilot program to its current operation under a standing order of the Supreme Court. They are now working on a permanent set of rules to govern the roll out of the program. Judge McCullagh noted that it is expedient to standardize the rules and make them more understandable.

Judge McCullagh asked for a focus on substantive changes in order to present the concept of the proposals to the Court for feedback.

Judge Stucki expressed that the language in Rule 9(c) could be unclear as “immediately” needs to be defined. The rule was revised to provide that the party granted default judgment must serve the judgment within 7 days. Judge McCullagh noted that service of judgments will most likely be by traditional mail as the second party would have defaulted by their absence and most likely have not provided an email address.

Judge Stucki noted that Rule 3(d) only provides one method of dismissing the case and questioned whether to provide courts with the ability to dismiss the case after 14 days for failure to file the proof of service. Judge McCullagh clarified that the failure to serve the proof of service triggers the ability of the defendant to exercise the right to move for dismissal and the court must be notified of that by the defendant.

The committee discussed changing the language in 2(d) to read, “the court will notify the plaintiff at the email address provided.”

Judge Stucki asked for clarification of whether Rule 2(b) mandates that small claims litigants must have emails and suggested including a statement about requesting an exemption pursuant to Rule 5.

With regard to Rule 13, Judge Mettler suggested including that the party may also be represented by a paralegal within the authorized scope of practice and licensure and noted as an aside that a representative from the paralegal sector should be invited to sit on the committee.

Other changes to the rules were suggested in: (1) Rule 7 to allow for permissive subpoena rather than mandatory; (2) the numbering error in Rule 6B.

Judge Stucki motioned for adoption of the rules as amended. Mr. Hunnicutt seconded. The changes were adopted unanimously. Judge McCullagh expressed his excitement about the positive impact the new rules may have on access to justice.

**(7) ADJOURNMENT**

The chair thanked everyone for their time and efforts and requested that any new items be emailed to her or Ms. Keisa Williams. The meeting adjourned at 6:00 p.m.