

Agenda

Supreme Court Advisory Committee Utah Rules of Civil Procedure

April 27, 2022
4:00 to 6:00 p.m.

[Via Webex](#)

Welcome and approval of minutes	Tab 1	Lauren DiFrancesco
Rule 81 and HB0367 – changes to probate code to align with URCP	Tab 2	Rep. Kelly Miles, Chris Williams, Cameron Sabin, and Steve Dixon
Rule 5 – service of documents by the court	Tab 3	Keri Sargent and Stacy Haacke
Rule 26 – Follow up on disclosure of third party financing, and discuss “any damages claimed”		Judge Stone and Judge Holmberg
Rule 30(b)(6) – following change to federal rule in December, need Subcommittee.		Judge Holmberg
<i>Consent agenda</i> - None		
Verify Pipeline items: <ul style="list-style-type: none">• Rule 26(a)(1)(A)(ii) (Tim Pack)• Rules 7B(i), 109 and 7A(h) (Judge Stone and Judge Mettler)• Court Notices (Susan Vogel and Loni Page)• Rule 5 (Susan, Loni, Tonya)• Revisit Rule 45 (Jim Hunnicutt and Susan Vogel)• Revisit Rules 7 and 37 (Trevor Lee)		Lauren DiFrancesco

Next Meeting: May 25

Future Meetings: June 22, July 27, August 24, September 28, October 26, November 23, December 28

Meeting Schedule: 4th Wednesday at 4pm unless otherwise scheduled

Committee Webpage: <http://www.utcourts.gov/committees/civproc/>

Tab 1

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

Summary Minutes – March 23, 2022

**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		Stacy Haacke, Staff
Rod N. Andreason	X		Crystal Powell, Recording Secretary
Lauren DiFrancesco, Chair	X		Keri Sargent
Judge Kent Holmberg		X	Chris Williams
James Hunnicutt	X		
Judge Linda Jones		X	
Trevor Lee	X		
Ash McMurray	X		
Judge Amber M. Mettler		X	
Kim Neville		X	
Timothy Pack	X		
Loni Page	X		
Bryan Pattison	X		
James Peterson		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		
Tonya Wright	X		

(1) MEMBER INTRODUCTIONS

The meeting started after forming a quorum. Ms. Lauren DiFrancesco welcomed the Committee and guests to the meeting. It was discussed that Mr. Leslie Slaugh will be resigning from the Committee after the April meeting, and Judge Blanch will be resigning as well.

(2) APPROVAL OF MINUTES

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

(3) RULE 26 AND HB0344

Ms. Lauren DiFrancesco informed the committee that the legislature issued and passed a rule on medical candor with amendments to Rule 26. This is really just for the Committee's information. The effective date of the amended rule will be May 4, 2022.

(4) RULE 45

Comment to Rule 45 regarding LPPs.

Ms. Tonya Wright has prepared a comment for Rule 45 regarding LPPs. Mr. Hunnicutt likes the explanation, but notes the preference for no comments to the rules and that the Supreme Court has asked the Committee to review notes to either delete them or amend the rule to be more clear. Mr. Leslie Slaugh mentions the exception to preference for no committee notes is if the comment is meant to educate practitioners on a temporary basis. Otherwise the rules should be clear on their own. Judge Stucki concurs with Mr. Slaugh's explanation, and that this particular comment would fall within such an exception. The second sentence is useful in educating attorneys. Ms. Vogel mentions the language "sign and issue." Ms. DiFrancesco indicates there was a discussion surrounding "sign and issue" at the last meeting. Mr. Rod Andreason mentions trying to internally calendar a "sunset" of comments to a rule.

Judge Stucki moves to approve the comment. Mr. Justin Toth seconds the motion. The comment is unanimously approved.

Foreign Subpoenas.

Mr. Tim Pack has proposed an amendment to paragraph (k) regarding foreign subpoenas. There is discussion surrounding Rule 30(h) and uniformity. Mr. Hunnicutt mentions the federal rules stop at paragraph (g). Ms. DiFrancesco mentions that foreign subpoenas are typically signed by an attorney or clerk. Mr. Pack raises the matter of jurisdiction when outside attorney tries to conduct a deposition of someone in Utah. Mr. Slaugh believes the statute is broader. In terms of which court

hears an objection the statute is unclear which is why Rule 45(k) was drafted. Ms. Di Francesco references statutory provision with similar language in Utah Code section 78B-17-204. If another state does not follow the Act, would 30(h) be useful and then would you need a subpoena. Ms. Vogel mentions the court website and what is listed as required. Mr. Pack states that is a lot of procedure that is not listed in the rule, and may want to just allow the statute to dictate the procedure. Ms. Vogel would like to see instruction in the rule. This may be a forms issue. Ultimately, the proposed amendment for Rule 45(k) is withdrawn, and Rule 30(h) remains untouched.

Prior submissions for requests on Rule 45.

These are request sent to the Committee that have not been thoroughly addressed. Mr. Hunnicutt, Ms. Vogel, and Ms. Wright volunteer to take on these requests for review. Mr. Slauch mentions the timing issue raised by Mr. Hafen is 4 days pursuant to the federal rule. May also want to request guidance from Ms. Jenifer Tomchak.

(5) RULES 7 AND 101

The Committee left off on this issue with discussing Rule 101 as presented by Mr. Trevor Lee. Ms. Vogel mentions the “or in the alternative” language and request an addition of “whichever is shorter” be included because someone could use one word over 5,000 pages. In response to this Mr. Bryan Pattison mentions the formatting requirements found in Rule 10(b). Ms. Vogel suggests a table to explain the limits in each rule. Mr. Hunnicutt states the latest he’s heard from court commissioners is that they would not be excited about the idea of word limits. The practice is hard enough with page limits where a lot of parties are pro se. Presenting word limits in this area would be idealistic. Mr. Lee mentions the certification needed to use word limits on a filing versus page limits. Mr. Andreason asks how the limit of 400 words was calculated because there are usually 300 words per page. Mr. Lee indicates he reviewed the federal and appellate rules, averaged their limits and then just rounded the number. There tends to be a little more argument available with the word count than the page count. Mr. Andreason states he would prefer comparable accuracy over rounded numbers. Mr. Lee will take another look at the rules that mention length of brief and return to the Committee.

(6) RULE 26

Judge Stone brings the issue of an increase in third party financing in plaintiff’s cases to the Committee and questions whether this should be disclosed similar to defendant’s insurance. Judge Stone has done some research on the issue. Hedge funds are buying an interest in cases and buying a piece of the recovery. Mr. Slauch asks what the line would be in terms of disclosing “lines of credit,” contingent fees, or financing of costs. Judge Stone mentions defendant’s insurance as a party of interest, where on the other hand there are a number of medical experts claiming large medical fees which are increased based upon an agreement with the plaintiff. Judge Stone will circulate a few articles for the Committee to review and the Committee can return to the issue for further discussion.

(7) LEGAL TERMINOLOGY

The issue of legal terminology used in the rules is presented by Ms. Vogel and the subcommittee. President Nixon ordered the use of layman's terms as the trend in people representing themselves began. When Susan was practicing in the 90's and wrote a paper on how people were happy with simple words and others thought they were being coddled. Trend in self represented litigants is tied to economic disparities. Subcommittee has re-named themselves the "Plain Language Subcommittee" and includes Mr. Ash McMurray, Mr. Trevor Lee, and Mr. Leslie Slaugh.

Mr. McMurray states he is half Korean and family members are immigrants. For the first part of their lives here things were difficult. Had an uncle who was an attorney at Kirt and McConkie, otherwise it would have been difficult on their own. Many interactions with the Korean community, and his background includes philosophy of language. Mr. Lee states he has an interest in making sure legal writing is easy to use and understand. Law is really hard and the writing should not make it harder. Balancing understandability and readability with words that have been embedded in the rules and law. Mr. Slaugh finds himself as the nay-sayer. All about simplified language. Request to not scrap words that have established meaning just to make it more easily understood. Lengthy guide included in materials. On page 23. Simplify processes along with simplifying words. Rules have become longer, but if shorten or simplify may see more diversity in decisions from judges.

Different ideas are being considered by the Subcommittee, including hyperlinking words, explanations linked to words, or a glossary. May collect data on which terms are causing the most confusion based upon click rates. Judge Stone mentions there are algorithms that will tell you average grade levels. Ms. Vogel states the goal is a 6th grade reading level. The Committee can expect to see a lot of challenge from the Subcommittee when it comes to words being used. Going to take the changes as they come. Can share a spreadsheet with the Committee.

(8) ADJOURNMENT.

The next meeting will be on April 27, 2022. The Chair thanked everyone for their time and effort and wished everyone a great month. The meeting adjourned at 6:00 p.m.

Tab 2

PROBATE AND TRUST AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kelly B. Miles

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to notice in probate and trust matters.

Highlighted Provisions:

This bill:

- ▶ clarifies notice requirements related to probate and trust matters;
- ▶ allows an individual to file a motion with the court to participate in a pending probate or trust matter when the individual did not have notice of the matter;
- ▶ allows an individual to file a motion with the court to reopen a resolved probate or trust matter when the individual did not have notice of the matter;
- ▶ clarifies when the rules of civil procedure apply to probate and trust matters; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

75-1-401, as last amended by Laws of Utah 2021, Chapters 84 and 345

75-7-109, as enacted by Laws of Utah 2004, Chapter 89



28 *Be it enacted by the Legislature of the state of Utah:*

29 Section 1. Section **75-1-401** is amended to read:

30 **75-1-401. Notice -- Method and time of giving -- Lack of notice procedure --**

31 **Objections.**

32 (1) If notice of a hearing on any petition is required, and except for specific notice
33 [~~requirements as otherwise provided, the petitioner shall cause notice of the time and place of~~
34 ~~hearing of any petition to be given to any interested person or the person's attorney if the person~~
35 ~~has appeared by attorney or requested that notice be sent to the person's attorney]~~ requirements
36 as otherwise provided in this title or court order, the court clerk shall provide notice of the time
37 and place of any petition hearing to any interested person or the person's attorney if the attorney
38 has appeared in the matter for the person or the person has requested that notice be sent to the
39 person's attorney. Notice shall be given by the clerk posting a copy of the notice for the 10
40 consecutive days immediately preceding the time set for the hearing in at least three public
41 places in the county, one of which must be at the courthouse of the county and:

42 (a) (i) by the clerk mailing a copy thereof at least 10 days before the time set for the
43 hearing by certified, registered, or ordinary first class mail addressed to the person being
44 notified at the post-office address given in the demand for notice, if any, or at the person's
45 office or place of residence, if known; or

46 (ii) by delivering a copy thereof to the person being notified personally at least 10 days
47 before the time set for the hearing; and

48 (b) if the address, or identity of any person is not known and cannot be ascertained with
49 reasonable diligence, by the petitioner publishing:

50 (i) at least once a week for three consecutive weeks a copy thereof in a newspaper
51 having general circulation in the county where the hearing is to be held, the last publication of
52 which is to be at least 10 days before the time set for the hearing; and

53 (ii) on the Utah Public Notice Website created in Section [63A-16-601](#), for three weeks.

54 (2) The court for good cause shown may provide for a different method or time of
55 giving notice for any hearing.

56 (3) Proof of the giving of notice shall be made on or before the hearing and filed in the
57 proceeding.

58 (4) A person may file a motion described in Subsection (5) or (6) if:

59 (a) the person can establish by competent evidence that the person did not receive
60 notice under Subsection (1)(a);

61 (b) the person would be entitled to participate in the matter had the person received
62 notice; and

63 (c) the petitioner did not publish notice in accordance with Subsection (1)(b).

64 (5) (a) For a pending petition described in Subsection (1), a person described in
65 Subsection (4) may file a motion to participate in the matter with any rights that would be
66 available to the person had the person received notice under Subsection (1).

67 (b) A court may grant a motion described in Subsection (5)(a):

68 (i) after a hearing where any party to the petition may participate; and

69 (ii) if the court determines that:

70 (A) the person did not receive notice in accordance with Subsection (1)(a); and

71 (B) the person's substantial rights are implicated if the person is not allowed to
72 participate in the matter.

73 (6) (a) For a resolved petition described in Subsection (1), a person described in
74 Subsection (4) may file a motion with the court to reopen the matter.

75 (b) The court may grant the motion described in Subsection (6)(a):

76 (i) after a hearing where any party to the granted petition may participate; and

77 (ii) if the court determines that the person:

78 (A) did not receive notice as described in Subsection (1)(a); and

79 (B) will be substantially prejudiced if the matter is not reopened.

80 (7) The Utah Rules of Civil Procedure shall govern court filings and hearings under
81 this title once a party files an objection.

82 Section 2. Section **75-7-109** is amended to read:

83 **75-7-109. Methods and waiver of notice.**

84 (1) Notice to a person under this chapter or the sending of a document to a person
85 under this chapter must be accomplished in a manner reasonably suitable under the
86 circumstances and likely to result in receipt of the notice or document. Permissible methods of
87 notice or for sending a document include first-class mail, personal delivery, delivery to the
88 person's last known place of residence or place of business, or a properly directed electronic
89 message.

90 (2) Notice under this chapter or the sending of a document under this chapter may be
91 waived by the person to be notified or sent the document.

92 [~~(3) Notice of a judicial proceeding must be given as provided in the applicable rules of~~
93 ~~civil procedure.]~~

94 (3) Unless otherwise ordered by the court, for a judicial proceeding under this chapter,
95 notice of a judicial proceeding shall be provided as described in Section [75-1-401](#), including
96 notice of any petition filed under this chapter.

1 **Rule 81. Applicability of rules in general.**

2 (a) Special statutory proceedings. These rules shall apply to all special statutory
3 proceedings, except insofar as such rules are by their nature clearly inapplicable. Where
4 a statute provides for procedure by reference to any part of the former Code of Civil
5 Procedure, such procedure shall be in accordance with these rules.

6 (b) Probate and guardianship. These rules shall not apply to proceedings in uncontested
7 probate and guardianship matters, but shall apply to all proceedings subsequent to the
8 joinder of issue therein, including the enforcement of any judgment or order entered.

9 (c) Application to small claims. These rules shall not apply to small claims proceedings
10 except as expressly incorporated in the Small Claims Rules.

11 (d) On appeal from or review of a ruling or order of an administrative board or agency.
12 These rules shall apply to the practice and procedure in appealing from or obtaining a
13 review of any order, ruling or other action of an administrative board or agency, except
14 insofar as the specific statutory procedure in connection with any such appeal or review
15 is in conflict or inconsistent with these rules.

16 (e) Application in criminal proceedings. These rules of procedure shall also govern in
17 any aspect of criminal proceedings where there is no other applicable statute or rule,
18 provided, that any rule so applied does not conflict with any statutory or constitutional
19 requirement.

20

Tab 3

MEMORANDUM

Included below is the currently effective Rule 5 language. However, this Rule is also in the amendment process. An issue has again arisen concerning documents to be served by the Court on parties. Recently a request was made by the self-help center to send divorce decrees to self-represented parties. Ms. Keri Sargent is up to date on the questions and concerns from Clerks of Court regarding this issue as well as the associated workloads.

This topic was previously raised at Committee meetings in January, March and April 2018. There were no amendments made to the rule regarding this issue at that time. Of relevance are paragraphs (a)(1) and (b)(5). There are no requests for amendments to this rule, rather an inquiry as to whether there was an intent when this language was drafted or an expectation voiced by the Supreme Court.

Previous discussions have surrounded what documents are considered “prepared” by the Court, and whether every document signed by the Court must then be served upon the parties by the Court. There has also been an understanding that as more court documents are made available electronically, this has and will become less of an issue.

Any recollection or input Committee members may have regarding intent or expectations for this language in the Rule would be greatly appreciated.

Rule 5. Service and filing of pleadings and other papers.

Effective: 1/1/2021

(a) When service is required.

(1) Papers that must be served. Except as otherwise provided in these rules or as otherwise directed by the court, the following papers must be served on every party:

- (A) a judgment;
- (B) an order that states it must be served;
- (C) a pleading after the original complaint;
- (D) a paper relating to disclosure or discovery;
- (E) a paper filed with the court other than a motion that may be heard ex parte; and
- (F) a written notice, appearance, demand, offer of judgment, or similar paper.

(2) Serving parties in default. No service is required on a party who is in default except that:

(A) a party in default must be served as ordered by the court;

(B) a party in default for any reason other than for failure to appear must be served as provided in paragraph (a)(1);

(C) a party in default for any reason must be served with notice of any hearing to determine the amount of damages to be entered against the defaulting party;

(D) a party in default for any reason must be served with notice of entry of judgment under Rule [58A\(g\)](#); and

(E) a party in default for any reason must be served under Rule [4](#) with pleadings asserting new or additional claims for relief against the party.

(3) Service in actions begun by seizing property. If an action is begun by seizing property and no person is or need be named as defendant, any service required before the filing of an answer, claim or appearance must be made upon the person who had custody or possession of the property when it was seized.

(b) How service is made.

(1) Whom to serve. If a party is represented by an attorney, a paper served under this rule must be served upon the attorney unless the court orders service upon the party. Service must be made upon the attorney and the party if:

(A) an attorney has filed a Notice of Limited Appearance under Rule [75](#) and the papers being served relate to a matter within the scope of the Notice; or

(B) a final judgment has been entered in the action and more than 90 days has elapsed from the date a paper was last served on the attorney.

(2) When to serve. If a hearing is scheduled 7 days or less from the date of service, a party must serve a paper related to the hearing by the method most likely to be

promptly received. Otherwise, a paper that is filed with the court must be served before or on the same day that it is filed.

(3) Methods of service. A paper is served under this rule by:

(A) except in the juvenile court, submitting it for electronic filing, or the court submitting it to the electronic filing service provider, if the person being served has an electronic filing account;

(B) emailing it to

(i) the most recent email address provided by the person to the court under [Rule 10\(a\)\(3\)](#) or [Rule 76](#), or

(ii) to the email address on file with the Utah State Bar;

(C) mailing it to the person's last known address;

(D) handing it to the person;

(E) leaving it at the person's office with a person in charge or, if no one is in charge, leaving it in a receptacle intended for receiving deliveries or in a conspicuous place;

(F) leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion who resides there; or

(G) any other method agreed to in writing by the parties.

(4) When service is effective. Service by mail or electronic means is complete upon sending.

(5) Who serves. Unless otherwise directed by the court or these rules:

(A) every paper required to be served must be served by the party preparing it; and

(B) every paper prepared by the court will be served by the court.

(c) Serving numerous defendants. If an action involves an unusually large number of defendants, the court, upon motion or its own initiative, may order that:

(1) a defendant's pleadings and replies to them do not need to be served on the other defendants;

(2) any cross-claim, counterclaim avoidance or affirmative defense in a defendant's pleadings and replies to them are deemed denied or avoided by all other parties;

(3) filing a defendant's pleadings and serving them on the plaintiff constitutes notice of them to all other parties; and

(4) a copy of the order must be served upon the parties.

(d) Certificate of service. A paper required by this rule to be served, including electronically filed papers, must include a signed certificate of service showing the name of the document served, the date and manner of service and on whom it was served. Except in the juvenile court, this paragraph does not apply to papers required to be served under paragraph (b)(5)(B) when service to all parties is made under paragraph (b)(3)(A).

(e) Filing. Except as provided in Rule [7\(j\)](#) and Rule [26\(f\)](#), all papers after the complaint that are required to be served must be filed with the court. Parties with an electronic filing account must file a paper electronically. A party without an electronic filing account may file a paper by delivering it to the clerk of the court or to a judge of the court. Filing is complete upon the earliest of acceptance by the electronic filing system, the clerk of court or the judge.

(f) Filing an affidavit or declaration. If a person files an affidavit or declaration, the filer may:

(1) electronically file the original affidavit with a notary acknowledgment as provided by Utah Code Section [46-1-16\(7\)](#);

(2) electronically file a scanned image of the affidavit or declaration;

(3) electronically file the affidavit or declaration with a conformed signature; or

(4) if the filer does not have an electronic filing account, present the original affidavit or declaration to the clerk of the court, and the clerk will electronically file a scanned image and return the original to the filer.

The filer must keep an original affidavit or declaration of anyone other than the filer safe and available for inspection upon request until the action is concluded, including any appeal or until the time in which to appeal has expired.

Advisory Committee Notes

Note adopted 2015

Under paragraph (b)(3)(A), electronically filing a document has the effect of serving the document on lawyers who have an e-filing account. (Lawyers representing parties in the district court are required to have an account and electronically file documents. Code of Judicial Administration Rule 4-503.) The 2015 amendment excepts from this provision documents electronically filed in juvenile court.

Although electronic filing in the juvenile court presents to the parties the documents that have been filed, the juvenile court e-filing application (CARE), unlike that in the district court, does not deliver an email alerting the party to that fact. The Board of Juvenile Court Judges and the Advisory Committee on the Rules of Juvenile Procedure believe this difference renders electronic filing alone insufficient notice of a document having been filed. So in the juvenile court, a party electronically filing a document must serve that document by one of the other permitted methods.