Agenda
Advisory Committee on Rules of Civil Procedure

November 28, 2007
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Judicial Council Room, Suite N31

Approval of minutes	Tab 1	Fran Wikstrom
E-filing rules	Tab 2	Ron Bowmaster Tim Shea
Rule 35. Physical and mental examination of persons.	Tab 3	Frank Carney Tom Lee
Rule 6, et al. Time	Tab 4	Tim Shea
Encouraging comments to rules	Tab 5	Frank Carney
Overall evaluation of URCP	Tab 6	Fran Wikstrom

Committee Web Page: http://www.utcourts.gov/committees/civproc/

Meeting Schedule

January 23, 2008
February 27, 2008
March 26, 2008
April 23, 2008
May 28, 2008
September 24, 2008
October 22, 2008
November 19, 2008 (3d Wednesday)

Tab 1

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, October 24, 2007
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slaugh, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Honorable Anthony B. Quinn, Honorable Derek Pullan, Anthony W. Schofield, Thomas R. Lee (via phone), Cullen Battle, Barbara Townsend, Steven Marsden

EXCUSED: Todd M. Shaughnessy, Debora Threedy, Lori Woffinden, Janet H. Smith, Jonathan Hafen, Honorable R. Scott Waterfall, David W. Scofield

STAFF: Tim Shea, Matty Branch, Trystan B. Smith

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the September 26, 2007 minutes. No comments were made and Mr. Wikstrom asked for a motion that the September 26, 2007 minutes be approved. The motion was duly made and seconded, and unanimously approved.

II. OVERALL EVALUATION OF URCP.

Mr. Wikstrom asked that the committee further discuss the general results of the discovery survey at the next meeting.

III. RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS.

Mr. Carney and Mr. Lee addressed comments they obtained from personal injury lawyers concerning the proposed changes to Rule 35. Judge Quinn, Judge Anderson, and Judge Pullan observed they were addressing an increasing number of motions concerning physical examinations.

The committee discussed generally the use and application of Rule 35, and the need to revise the rule to allow a trial court judge to appoint an independent medical examiner. The committee also considered whether the "good cause" standard in subsection 35(a) provided a sufficient standard to determine the need for an examination.

Mr. Wikstrom elicited the committee's comments about allowing the person being examined to elect to record the examination by videotape or other means. Judge Quinn

addressed the pros and cons of allowing videotaping. Mr. Carney noted he did not feel defense lawyers had strong objections to videotaping.

Mr. Carney addressed the need for subsection (b). He indicated he did not feel practitioners utilized subsection (b). The committee addressed the meaning of subsection (b) and whether subsections (b) and (c) were duplicative. The committee also discussed the difficulty understanding the current language in subsection (b), and the need to make the existing rule clearer. Mr. Lee questioned the need to have the specific provision in subsection (c) addressing disclosure of prior reports. Judge Pullan indicated issues concerning Rule 35 examinations are raised so often that it would be appropriate to specifically address prior reports in Rule 35.

Mr. Wikstrom asked Mr. Carney and Mr. Lee to re-examine the language and proposed revisions to Rule 35, and bring their suggestions back to the committee next month. He also asked Mr. Carney and Mr. Lee to explore a tiered approach for an examiner's disclosure of prior reports.

IV. E-FILING RULES.

Mr. Shea brought the e-filing rules back to the committee.

The committee unanimously agreed to strike Rule 1 (c) referencing e-filing as a pilot program.

Mr. Shea indicated he would ask the AOC's IT department how a lawyer would know opposing counsel was an e-filer.

The committee discussed Rule 5(b)(1)(B) and the effectiveness of service, but agreed the language did not need revision.

The committee also discussed Rule 5(e) and the language giving a trial court judge discretion to require parties to file electronically using an e-filing account.

The committee addressed the elimination of Rule 6 (e) allowing for three-extra-days-for-mailing. The committee discussed the feasibility of providing a uniform time period for responses and notices. Many committee members noted the need to make response and notice time periods for motions and hearings consistent with the federal rules. The committee agreed it would examine revisions to the time periods at the next meeting.

Mr. Shea addressed Rule 10(a)(3) and the need to contain a parties' contact information "on every pleading and other paper." The committee discussed the need to protect a pro se litigants privacy. The committee also questioned the need to protect a lawyer or a pro se litigants address and/or email address. After discussion, the committee agreed it did not want to strike Rule 10(a)(3) in its entirety, but the committee took out the language in Rule 10(a)(3) requiring a party to list the ". . . *the name of* the party for whom it is filed."

Finally, Mr. Shea addressed Rule 10(i) which defines electronic papers. Mr. Shea noted all references to a writing, recording, or image includes the electronic version thereof. The

committee discussed the need to revise subsection (i)(5) to address hyperlinks to citations, pleadings, and papers filed with the court. Mr. Shea indicated at some point it is anticipated the e-filing rules will require a filer to include hyperlinks in filings.

V. RULE 54. *AURORA CREDIT, INC. V. LIBERTY WEST DEVELOPMENT, INC.*

Mr. Wikstrom asked that Mr. Battle and Mr. Carney address Rule 54 and the *Aurora Credit* decision at the next meeting.

VI. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next meeting of the committee will be held at 4:00 p.m. on Wednesday, November 28, 2007, at the Administrative Office of the Courts.

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Tab 2

Rule 1. General provisions.

(a) Scope of rules. These rules shall govern the procedure in the courts of the state of Utah in all actions, suits, and proceedings of a civil nature, whether cognizable at law or in equity, and in all special statutory proceedings, except as governed by other rules promulgated by this court or enacted by the Legislature and except as stated in Rule 81. They shall be liberally construed to secure the just, speedy, and inexpensive determination of every action.

(b) Effective date. These rules shall take effect on January 1, 1950; and thereafter all laws in conflict therewith shall be of no further force or effect. They govern all proceedings in actions brought after they take effect and also all further proceedings in actions then pending, except to the extent that in the opinion of the court their application in a particular action pending when the rules take effect would not be feasible or would work injustice, in which event the former procedure applies.

~~(c) Electronic filing. Notwithstanding these rules, the court may permit electronic transactions among the parties and with the court in court-supervised pilot projects approved by the Judicial Council.~~

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

(a) Service: When required.

(a)(1) Except as otherwise provided in these rules or as otherwise directed by the court, every judgment, every order required by its terms to be served, every pleading subsequent to the original complaint, every paper relating to discovery, every written motion other than one heard ex parte, and every written notice, appearance, demand, offer of judgment, and similar paper shall be served upon each of the parties.

(a)(2) No service need be made on parties in default except that:

(a)(2)(A) a party in default shall be served as ordered by the court;

(a)(2)(B) a party in default for any reason other than for failure to appear shall be served with all pleadings and papers;

(a)(2)(C) a party in default for any reason shall be served with notice of any hearing necessary to determine the amount of damages to be entered against the defaulting party;

(a)(2)(D) a party in default for any reason shall be served with notice of entry of judgment under Rule 58A(d); and

(a)(2)(E) pleadings asserting new or additional claims for relief against a party in default for any reason shall be served in the manner provided for service of summons in Rule 4.

(a)(3) In an action begun by seizure of property, ~~whether through arrest, attachment, garnishment or similar process,~~ in which no person ~~need be or~~ is named as defendant, any service required to be made prior to the filing of an answer, claim or appearance shall be made upon the person having custody or possession of the property at the time of its seizure.

(b) Service: How made ~~and by whom~~.

(b)(1) ~~Whenever under these rules service is required or permitted to be made upon~~ If a party is represented by an attorney, ~~the~~ service shall be made upon the attorney unless service upon the party is ordered by the court. If 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, service shall be made upon the attorney and the party. ~~Service upon the attorney or upon a party shall be made by delivering a copy or by~~

~~mailing a copy to the last known address or, if no address is known, by leaving it with the clerk of the court.~~

(b)(1)(A) ~~Delivery of a copy within this rule means: Handing it to the attorney or to the party; or leaving it at the person's office with a clerk or person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; or, if consented to in writing by the person to be served, delivering a copy by electronic or other means.~~ If a hearing is scheduled 5 days or less from the date of service, the party shall use the method most likely to give actual notice of the hearing. Otherwise, a party shall serve a paper under this rule:

(b)(1)(A)(i) upon any person with an electronic filing account who is a party or attorney in the case by submitting the paper for electronic filing;

(b)(1)(A)(ii) by sending it by email to the person's last known email address if that person has agreed to accept service by email;

(b)(1)(A)(iii) by faxing it to the person's last known fax number if that person has agreed to accept service by fax;

(b)(1)(A)(iv) by mailing it to the person's last known address;

(b)(1)(A)(v) by handing it to the person;

(b)(1)(A)(vi) by leaving it at the person's office with a person in charge or leaving it in a receptacle intended for receiving deliveries or in a conspicuous place; or

(b)(1)(A)(vii) by leaving it at the person's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

(b)(1)(B) Service by mail, email or fax is complete upon ~~mailing~~ sending, but service is not effective if the party making service learns that the attempted service did not reach the person to be served. ~~If the paper served is notice of a hearing and if the hearing is scheduled 5 days or less from the date of service, service shall be by delivery or other method of actual notice. Service by electronic means is complete on transmission if transmission is completed during normal business hours at the place receiving the service; otherwise, service is complete on the next business day.~~

(b)(2) Unless otherwise directed by the court:

(b)(2)(A) an order signed by the court and required by its terms to be served or a judgment signed by the court shall be served by the party preparing it;

(b)(2)(B) every other pleading or paper required by this rule to be served shall be served by the party preparing it; and

(b)(2)(C) an order or judgment prepared by the court shall be served by the court.

(c) Service: Numerous defendants. In any action in which there is an unusually large number of defendants, the court, upon motion or of its own initiative, may order that service of the pleadings of the defendants and replies thereto need not be made as between the defendants and that any cross-claim, counterclaim, or matter constituting an avoidance or affirmative defense contained therein shall be deemed to be denied or avoided by all other parties and that the filing of any such pleading and service thereof upon the plaintiff constitutes ~~due~~ notice of it to the parties. A copy of every such order shall be served upon the parties in such manner and form as the court directs.

(d) Filing. All papers after the complaint required to be served upon a party shall be filed with the court either before or within a reasonable time after service. The papers shall be accompanied by a certificate of service showing the date and manner of service completed by the person effecting service. Rule 26(i) governs the filing of papers related to discovery.

(e) Filing with the court defined. ~~The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may accept the papers, note thereon the filing date and forthwith transmit them to the office of the clerk.~~ A party may file with the clerk of court using any means of delivery permitted by the court. The court may require parties to file electronically with an electronic filing account. Filing is complete upon acceptance by the clerk of court. The clerk shall note the date of acceptance on the paper. The judge may accept papers, shall note the date of acceptance on the papers, and shall transmit them to the clerk of court.

Rule 10. Form of pleadings and other papers.

(a)(1) Caption; names of parties; other necessary information. All pleadings and other papers filed with the court shall contain a caption setting forth the name of the court, the title of the action, the file number, the name of the pleading or other paper, and the name, if known, of the judge (and commissioner if applicable) to whom the case is assigned.

(a)(2) In the complaint, the title of the action shall include the names of all the parties, but other pleadings and papers need only state the name of the first party on each side with an indication that there are other parties. A party whose name is not known shall be designated by any name and the words "whose true name is unknown." In an action in rem, unknown parties shall be designated as "all unknown persons who claim any interest in the subject matter of the action."

(a)(3) Every pleading and other paper filed with the court shall ~~also~~ state in the top left hand corner of the first page the name, address, email address, telephone number and bar number of ~~any~~ the attorney ~~representing the~~ or party filing the paper, ~~which information shall appear in the top left-hand corner of the first page. Every pleading shall state~~ and, if filed by an attorney, the ~~name and address of the~~ party for whom it is filed~~; this information shall appear in the lower left-hand corner of the last page of the pleading~~. The plaintiff shall file ~~together~~ and serve with the complaint a completed cover sheet substantially similar in form and content to the cover sheet approved by the Judicial Council. The clerk shall destroy the coversheet after recording the information it contains.

(b) Paragraphs; separate statements. All ~~averments~~ statements of claim or defense shall be made in numbered paragraphs~~, the contents of each of which~~. Each paragraph shall be limited as far as practicable to ~~a statement of~~ a single set of circumstances; and a paragraph may be ~~referred to by number~~ adopted by reference in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

(c) Adoption by reference; exhibits. Statements in a ~~pleading~~ paper may be adopted by reference in a different part of the same ~~pleading~~ or ~~in~~ another ~~pleading, or in any motion~~ paper. An exhibit to a ~~pleading~~ paper is a part thereof for all purposes.

(d) ~~Paper quality, size, style and printing. All pleadings and other papers filed with the court, except printed documents or other exhibits, shall be typewritten, printed or photocopied in black type on good, white, unglazed paper of letter size (8 1/2" x 11"), with a top margin of not less than 2 inches above any typed material, a left-hand margin of not less than 1 inch, a right-hand margin of not less than one-half inch, and a bottom margin of not less than one-half inch. All typing or printing shall be clearly legible, shall be double-spaced, except for matters customarily single-spaced or indented, and shall not be smaller than 12-point size. Typing or printing shall appear on one side of the page only.~~ Paper format. All pleadings and other papers, other than exhibits and court-approved forms, shall be 8½ inches wide x 11 inches long, on white background, with a top margin of not less than 2 inches, a right and left margin of not less than 1 inch and a bottom margin of not less than one-half inch, with text or images only on one side. All text or images shall be clearly legible, shall be double spaced, except for matters customarily single spaced, and shall not be smaller than 12-point size.

(e) Signature line. ~~Names~~ The name of the person signing shall be typed or printed under ~~all signature lines, and all signatures shall be made in permanent black or blue ink~~ that person's signature. If a paper is electronically signed, the paper shall contain the typed or printed name of the signer with or without a graphic signature.

(f) ~~Enforcement by clerk; waiver for pro se parties.~~ Non-conforming papers. The clerk of the court shall examine all pleadings and other papers filed with the court. If they are not prepared in conformity with ~~this rule~~ subdivisions (a) – (e), the clerk shall accept the filing but may require counsel to substitute properly prepared papers for nonconforming papers. The clerk or the court may waive the requirements of this rule for parties appearing pro se. For good cause shown, the court may relieve any party of any requirement of this rule.

(g) Replacing lost pleadings or papers. If an original pleading or paper filed in any action or proceeding is lost, the court may, upon motion, with or without notice, authorize a copy thereof to be filed and used in lieu of the original.

(h) No improper content. The court may strike and disregard all or any part of a pleading or other paper that contains redundant, immaterial, impertinent or scandalous matter.

(i) Electronic papers.

(i)(1) Any reference in these rules to a writing, recording or image includes the electronic version thereof.

(i)(2) A paper electronically signed and filed is the original.

(i)(3) An electronic copy of a paper, recording or image may be filed as though it were the original. Proof of the original, if necessary, is governed by the Utah Rules of Evidence.

(i)(4) An electronic copy of a paper shall conform to the format of the original.

(i)(5) An electronically filed paper may contain links to other papers filed simultaneously or already on file with the court and to electronically published authority.

Rule 11. Signing of pleadings, motions, affidavits, and other papers; representations to court; sanctions.

(a) Signature.

(a)(1) Every pleading, written motion, and other paper shall be signed by at least one attorney of record ~~in the attorney's individual name~~, or, if the party is not represented ~~by an attorney, shall be signed~~ by the party. ~~Each paper shall state the signer's address and telephone number, if any.~~

(a)(2) A person may sign a paper using any form of signature recognized by law as binding.

~~Except when otherwise specifically provided~~ Unless required by ~~rule or~~ statute, ~~pleadings~~ a paper need not be ~~verified or~~ accompanied by affidavit or have a notarized, verified or acknowledged signature. If a rule requires an affidavit or a notarized, verified or acknowledged signature, the person may submit a declaration pursuant to Utah Code Section 46-5-101. If a statute requires an affidavit or a notarized, verified or acknowledged signature and the party electronically files the paper, the signature shall be notarized pursuant to Utah Code Section 46-1-16.

(a)(4) An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to court. By presenting a pleading, written motion, or other paper to the court (whether by signing, filing, submitting, or ~~later~~ advocating), an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(b)(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(b)(2) the claims, defenses, and other legal contentions ~~therein~~ are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(b)(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(b)(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(c)(1) How initiated.

(c)(1)(A) By motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion. In appropriate circumstances, a law firm may be held jointly responsible for violations committed by its partners, members, and employees.

(c)(1)(B) On court's initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(c)(2) Nature of sanction; limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

(c)(2)(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(c)(2)(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(c)(2)(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

(d) Inapplicability to discovery. Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Rule 64D. Writ of garnishment.

(a) Availability. A writ of garnishment is available to seize property of the defendant in the possession or under the control of a person other than the defendant. A writ of garnishment is available after final judgment or after the claim has been filed and prior to judgment. The maximum portion of disposable earnings of an individual subject to seizure is the lesser of:

(a)(1) 50% of the defendant's disposable earnings for a writ to enforce payment of a judgment for failure to support dependent children or 25% of the defendant's disposable earnings for any other judgment; or

(a)(2) the amount by which the defendant's disposable earnings for a pay period exceeds the number of weeks in that pay period multiplied by thirty times the federal minimum hourly wage prescribed by the Fair Labor Standards Act in effect at the time the earnings are payable.

(b) Grounds for writ before judgment. In addition to the grounds required in Rule 64A, the grounds for a writ of garnishment before judgment require all of the following:

(b)(1) that the defendant is indebted to the plaintiff;

(b)(2) that the action is upon a contract or is against a defendant who is not a resident of this state or is against a foreign corporation not qualified to do business in this state;

(b)(3) that payment of the claim has not been secured by a lien upon property in this state;

(b)(4) that the garnishee possesses or controls property of the defendant; and

(b)(5) that the plaintiff has attached the garnishee fee established by Utah Code Section 78-7-44.

(c) Statement. The application for a post-judgment writ of garnishment shall state:

(c)(1) if known, the nature, location, account number and estimated value of the property and the name, address and phone number of the person holding the property;

(c)(2) whether any of the property consists of earnings;

(c)(3) the amount of the judgment and the amount due on the judgment;

(c)(4) the name, address and phone number of any person known to the plaintiff to claim an interest in the property; and

(c)(5) that the plaintiff has attached or will serve the garnishee fee established by Utah Code Section 78-7-44.

(d) Defendant identification. The plaintiff shall submit with the affidavit or application a copy of the judgment information statement described in Utah Code Section 78-22-1.5 or the defendant's name and address and, if known, the defendant's social security number and driver license number and state of issuance.

(e) Interrogatories. The plaintiff shall submit with the affidavit or application interrogatories to the garnishee inquiring:

(e)(1) whether the garnishee is indebted to the defendant and the nature of the indebtedness;

(e)(2) whether the garnishee possesses or controls any property of the defendant and, if so, the nature, location and estimated value of the property;

(e)(3) whether the garnishee knows of any property of the defendant in the possession or under the control of another, and, if so, the nature, location and estimated value of the property and the name, address and phone number of the person with possession or control;

(e)(4) whether the garnishee is deducting a liquidated amount in satisfaction of a claim against the plaintiff or the defendant, a designation as to whom the claim relates, and the amount deducted;

(e)(5) the date and manner of the garnishee's service of papers upon the defendant and any third persons;

(e)(6) the dates on which previously served writs of continuing garnishment were served; and

(e)(7) any other relevant information plaintiff may desire, including the defendant's position, rate and method of compensation, pay period, and the computation of the amount of defendant's disposable earnings.

(f) Content of writ; priority. The writ shall instruct the garnishee to complete the steps in subsection (g) and instruct the garnishee how to deliver the property. Several writs may be issued at the same time so long as only one garnishee is named in a writ. Priority among writs of garnishment is in order of service. A writ of garnishment of

earnings applies to the earnings accruing during the pay period in which the writ is effective.

(g) Garnishee's responsibilities. The writ shall direct the garnishee to complete the following within seven business days of service of the writ upon the garnishee:

(g)(1) answer the interrogatories under oath or affirmation;

(g)(2) serve the answers on the plaintiff;

(g)(3) serve the writ, answers, notice of exemptions and two copies of the reply form upon the defendant and any other person shown by the records of the garnishee to have an interest in the property; and

(g)(4) file the answers with the clerk of the court.

The garnishee may amend answers to interrogatories to correct errors or to reflect a change in circumstances by serving and filing the amended answers in the same manner as the original answers.

(h) Reply to answers; request for hearing.

(h)(1) The plaintiff or defendant may file and serve upon the garnishee a reply to the answers and request a hearing. The reply shall be filed and served within 10 days after service of the answers or amended answers, but the court may deem the reply timely if filed before notice of sale of the property or before the property is delivered to the plaintiff. The reply may:

(h)(1)(A) challenge the issuance of the writ;

(h)(1)(B) challenge the accuracy of the answers;

(h)(1)(C) claim the property or a portion of the property is exempt; or

(h)(1)(D) claim a set off.

(h)(2) The reply is deemed denied, and the court shall conduct an evidentiary hearing.

(h)(3) If a person served by the garnishee fails to reply, as to that person:

(h)(3)(A) the garnishee's answers are deemed correct; and

(h)(3)(B) the property is not exempt, except as reflected in the answers.

(i) Delivery of property. A garnishee shall not deliver property until the property is due the defendant. Unless otherwise directed in the writ, the garnishee shall retain the property until 20 days after service by the garnishee under subsection (g). If the

garnishee is served with a reply within that time, the garnishee shall retain the property and comply with the order of the court entered after the hearing on the reply. Otherwise, the garnishee shall deliver the property as provided in the writ.

(j) Liability of garnishee.

(j)(1) A garnishee who acts in accordance with this rule, the writ or an order of the court is released from liability, unless answers to interrogatories are successfully controverted.

(j)(2) If the garnishee fails to comply with this rule, the writ or an order of the court, the court may order the garnishee to appear and show cause why the garnishee should not be ordered to pay such amounts as are just, including the value of the property or the balance of the judgment, whichever is less, and reasonable costs and attorney fees incurred by parties as a result of the garnishee's failure. If the garnishee shows that the steps taken to secure the property were reasonable, the court may excuse the garnishee's liability in whole or in part.

(j)(3) No person is liable as garnishee by reason of having drawn, accepted, made or endorsed any negotiable instrument that is not in the possession or control of the garnishee at the time of service of the writ.

(j)(4) Any person indebted to the defendant may pay to the officer the amount of the debt or so much as is necessary to satisfy the writ, and the officer's receipt discharges the debtor for the amount paid.

(j)(5) A garnishee may deduct from the property any liquidated claim against the plaintiff or defendant.

(k) Property as security.

(k)(1) If property secures payment of a debt to the garnishee, the property need not be applied at that time but the writ remains in effect, and the property remains subject to being applied upon payment of the debt. If property secures payment of a debt to the garnishee, the plaintiff may obtain an order authorizing the plaintiff to buy the debt and requiring the garnishee to deliver the property.

(k)(2) If property secures an obligation that does not require the personal performance of the defendant and that can be performed by a third person, the plaintiff may obtain an order authorizing the plaintiff or a third person to perform the obligation

and requiring the garnishee to deliver the property upon completion of performance or upon tender of performance that is refused.

(l) Writ of continuing garnishment.

(l)(1) After final judgment, the plaintiff may obtain a writ of continuing garnishment against any non exempt periodic payment. All provisions of this rule apply to this subsection, but this subsection governs over a contrary provision.

(l)(2) A writ of continuing garnishment applies to payments to the defendant from the effective date of the writ until the earlier of the following:

(l)(2)(A) 120 days;

(l)(2)(B) the last periodic payment;

(l)(2)(C) the judgment is stayed, vacated or satisfied in full; or

(l)(2)(D) the writ is discharged.

(l)(3) Within seven days after the end of each payment period, the garnishee shall with respect to that period:

(l)(3)(A) answer the interrogatories under oath or affirmation;

(l)(3)(B) serve the answers to the interrogatories on the plaintiff, the defendant and any other person shown by the records of the garnishee to have an interest in the property;

(l)(3)(C) file the answers to the interrogatories with the clerk of the court; and

(l)(3)(D) deliver the property as provided in the writ.

(l)(4) Any person served by the garnishee may reply as in subsection (g), but whether to grant a hearing is within the judge’s discretion.

(l)(5) A writ of continuing garnishment issued in favor of the Office of Recovery Services or the Department of Workforce Services of the state of Utah to recover overpayments:

(l)(5)(A) is not limited to 120 days;

(l)(5)(B) has priority over other writs of continuing garnishment; and

(l)(5)(C) if served during the term of another writ of continuing garnishment, tolls that term and preserves all priorities until the expiration of the state’s writ.

Tab 3

Rule 35. Physical and mental examination of persons.

(a) Order for examination. When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party is in controversy, the court ~~in which the action is pending~~ may order the party ~~or person~~ to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control~~, unless the party is unable to produce the person for examination~~. The order may be made only on motion for good cause shown~~.~~ ~~and upon notice to the person to be examined and to all parties and~~ The order shall specify the time, place, manner, conditions, and scope of the examination and the person ~~or persons~~ by whom it is to be made. The party being examined may record the examination by videotape or other means absent a showing that the recording would unduly interfere with the examination.

(b) Reports of examining physicians.

~~(b)(1) If requested by a party against whom an order is made under Rule 35(a) or the person examined, the party causing the examination to be made shall deliver to the person examined and/or the other party a copy of a detailed written report of the examiner setting out the examiner's findings, including results of all tests made, diagnosis and conclusions, together with like reports of all earlier examinations of the same condition. After delivery the party causing the examination shall be entitled upon request to receive from the party against whom the order is made a like report of any examination, previously or thereafter made, of the same condition, unless, in the case of a report of examination of a person not a party, the party shows that the report cannot be obtained. The court on motion may order delivery of a report on such terms as are just. If an examiner fails or refuses to make a report, the court on motion may take any action authorized by Rule 37(b)(2).~~

(b)(1) The party examined may request and obtain the examiner's report. The examiner's report must be in writing and must state in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests. If the party examined obtains the examiner's report, the parties shall exchange all reports of earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not

obtain them. The court on motion may order, on such terms as are just, that a party deliver an examiner's report.

(b)(2) By requesting and obtaining ~~a report of the examination so ordered~~ the examiner's report or by taking the deposition of the examiner, the party examined waives any privilege the party may have in that action or any other involving the same controversy, ~~regarding the testimony of every other person who has examined or may thereafter examine the party in respect~~ about testimony of the same ~~mental or physical~~ condition.

(b)(3) This subdivision applies to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. This subdivision does not preclude discovery of an examiner's report ~~of any other examiner or the taking of a deposition of~~ or deposing an examiner ~~in accordance with the provisions of any~~ under other rules.

(c) Right of party examined to other medical reports. ~~At the time of making an order to submit to an examination under Subdivision (a), the court shall, upon motion of the party to be examined, order the party seeking such examination to furnish to the party to be examined a report of any examination previously made or medical treatment previously given by any examiner employed directly or indirectly by the party seeking the order for a physical or mental examination, or at whose instance or request such medical examination or treatment has previously been conducted.~~

(c)(1) If the proposed examiner is employed directly or indirectly by the party seeking the examination and has performed ten or more examinations under this rule in the preceding year, the party requesting the examination shall, at its own expense, provide to the party examined a copy of the reports of all examinations of the same condition conducted by the examiner in the preceding four years.

(c)(2) If the proposed examiner is employed directly or indirectly by the party seeking the examination and performed fewer than ten examinations under this rule in the preceding year, the court may order the party requesting the examination to provide a copy of the reports of examinations of the same condition conducted by the examiner upon motion showing good cause.

(c)(3) The party producing the reports may redact any personal identifying information.

(d) Sanctions.

(d)(1) If a party or a person in the custody or under the legal control of a party fails to obey an order entered under Subdivision (a), the court on motion may take any action authorized by Rule 37(b)(2), except that the failure cannot be treated as contempt of court.

(d)(2) If a party fails to obey an order entered under Subdivision (b) or (c), the court on motion may take any action authorized by Rule 37(b)(2).

Tab 4

Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

Daniel J. Becker
State Court Administrator
Myron K. March
Deputy Court Administrator

MEMORANDUM

To: Civil Procedures Committee
From: Tim Shea
Date: November 20, 2007
Re: Federal computation of time.

The federal rules now out for comment take what the drafting committee calls a "days-are-days" approach to computing elapsed time. In other words, all days except the triggering day are counted. No extended time if notice is served by mail. No counting intervening weekends for some purposes and not others. The federal amendments then amend the time periods in several rules to a uniform 7, 14 or 21 days.

I've redrafted our URCP 6 to conform to the federal approach.

I have also attached a table of all of the time periods of less than 30 days that I could find with a notation of the current time period and the proposed time period. The list is long, but consider the rules carefully. There may be some deadlines that should not be changed. Consider, for example, Rule 69B(b)(2).

Some observations:

Currently, we have two deadlines expressed in hours, Rule 64A(g) and Rule 69(B)(c). If a current deadline is 1, 2 or 3 days, I have proposed expressing that in hours. Note that under the proposed Rule 6, if a deadline is expressed in hours, the time period expires as of the time of day (e.g., 9:27 am) that the triggering event occurred, rather than the close of the day. If you want to express these short deadlines in days, then the time periods would expire on midnight or 5:00 pm of the last day. We should nevertheless include the description for calculating hours, in case a court orders something to be done in X hours.

I have proposed increasing 5 days to 7, 7 and 10 days to 14, and 20 days to 21. I have not included any deadlines of 30 days or longer. There is one "three month" time period that should be expressed as 90 days. There are several existing 14-day deadlines that I have not proposed to change.

I am not sure what circumstances "inaccessibility" of the clerk's office is supposed to cover. If its meaning includes "a critical piece of internet communication is down and the lawyer cannot file electronically at the last minute," then that is different from the model

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we had planned for e-filing. Our e-filing model had planned to treat that the same is if the courier's bike is hit by a bus. The clerk's office is still accessible, just not by e-filing (or by that poor courier).

I am not aware of any deadlines that are determined by counting backwards. If we have none, then we may not need to include paragraph (e).

Paragraph (g) is intended to replace the current (b), and like the proposed federal amendments prohibits extending the time permitted in Rules 50(b), 52(b), 59(b), 59(d), 59(e) and 60(b). The current federal and state rules prohibit extensions except as permitted in those rules. Those rules do not include any provisions for extensions. The rest of (g) is my attempt to restate (b) in something akin to English grammar. If this is not what the current (b) means, then we need to do more work.

Consider whether the last sentence of (h) should apply only to (h), or whether the rule should set out a procedure for shortening all time periods.

Finally, when it comes time to amend the several rules to change the time periods to 7, 14 and 21 days, do we want to change only the time periods or take the opportunity to make style amendments as well?

There will be forms to amend.

"Time Has Come Today" - The Chambers Brothers

Time has come today
Young hearts can go their way
Can't put it off another day
I don't care what others say
They say we don't listen anyway
Time has come today
(Hey)

Oh. The rules have changed today (Hey)
I have no place to stay (Hey)
I'm thinking about the subway (Hey)
My love has flown away (Hey)
My tears have come and gone (Hey)
Oh my Lord, I have to roam (Hey)
I have no home (Hey)
I have no home (Hey)

Now the time has come (Time)
There's no place to run (Time)
I might get burned up by the sun (Time)
But I had my fun (Time)
I've been loved and put aside (Time)
I've been crushed by the tumbling tide (Time)
And my soul has been psychedelicized (Time)

(Time)
Now the time has come (Time)
There are things to realize (Time)
Time has come today (Time)
Time has come today (Time)

Time [x11]

Oh. Now the time has come (Time)
There's no place to run (Time)
I might get burned up by the sun (Time)
But I had my fun (Time)
I've been loved and put aside (Time)
I've been crushed by tumbling tide (Time)
And my soul has been psychedelicized (Time)

(Time)
Now the time has come (Time)
There are things to realize (Time)
Time has come today (Time)
Time has come today (Time)

Time [x4]
Yeah

Rule 6. Time.

~~(a) Computation. In computing any period of time prescribed or allowed by these rules, by the local rules of any district court, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed, without reference to any additional time provided under subsection (e), is less than 11 days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.~~

~~(b) Enlargement. When by these rules or by a notice given thereunder or by order of the court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 52(b), 59(b), (d) and (e), and 60(b), except to the extent and under the conditions stated in them.~~

~~(c) Unaffected by expiration of term. The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action that has been pending before it.~~

~~(d) Notice of hearings. Notice of a hearing shall be served not later than 5 days before the time specified for the hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application.~~

~~(e) Additional time after service by mail. Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him~~

~~by mail, 3 days shall be added to the end of the prescribed period as calculated under subsection (a). Saturdays, Sundays and legal holidays shall be included in the computation of any 3-day period under this subsection, except that if the last day of the 3-day period is a Saturday, a Sunday, or a legal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or a legal holiday.~~

(a) This rule applies when computing a time period stated in these rules, a local rule, a court order or a statute that does not specify a method of computing time.

(b) When a time period is stated in days or a longer unit of time, exclude the day of the event that triggers the time period, count every day within the time period, including the last day. If the clerk's office is inaccessible on the last day or if the last day is a Saturday, Sunday or legal holiday, the time period continues to the end of the first accessible day that is not a Saturday, Sunday or legal holiday.

(c) When a time period is stated in hours, begin counting immediately on the occurrence of the event that triggers the time period, count every hour within the time period, including the last hour. If the clerk's office is inaccessible on the last hour or if the last hour is on a Saturday, Sunday or legal holiday, the time period continues to the same time on the first accessible day that is not a Saturday, Sunday or legal holiday.

(d) For electronic filing, the last day ends at midnight. For filing by other means, the last day ends when the clerk's office is scheduled to close.

(e) The next day is determined by counting forward when the time period is measured after an event and by counting backward when the time period is measured before an event.

(f) "Legal holiday" means the day for observing:

(1) New Year's Day;

(2) Human Rights Day;

(3) Presidents' Day;

(4) Memorial Day;

(5) Independence Day;

(6) Pioneer Day;

(7) Labor Day;

(8) Columbus Day;

(9) Veterans' Day;

(10) Thanksgiving Day;

(11) Christmas Day; and

(12) any day designated by the Governor as a state holiday.

(g) The court may extend any time period other than those stated in Rules 50(b), 52(b), 59(b), 59(d), 59(e) and 60(b). If the request to extend a time period is made before expiration of the period, as originally prescribed or as extended by a previous order, the order may be entered upon an ex parte application and a showing of good cause. If the request to extend the time period is made after expiration of the period, the request shall be made by motion and may be granted upon a showing of excusable neglect.

(h) Notice of a hearing shall be served not less than 7 days before the day of the hearing, unless a different period is stated by these rules or by order of the court. An order to shorten the time period may be entered upon an ex parte application and a showing of good cause.

Rule	Change	To
3(a)	10	14
4(c)(2)	13	14
4(f)(1)	20	21
5(b)(1)(B)	5	7
7(c)(1)	5	7
7(c)(1)	10	14
12(a)	20	21
12(a)(1)	10	14
12(a)(2)	10	14
12(e)	10	14
12(f)	20	21
14(a)	10	14
15(a)	20	21
15(a)	10	14
17(c)(2)	20	21
17(c)(3)	20	21
27(a)(2)	20	21
31(a)(4)	7	14
38(b)	10	14
38(c)	10	14
50(b)	10	14
50(c)(2)	10	14
52(b)	10	14
53(d)(1)	20	21
53(e)(2)	10	14
54(d)(2)	5	7
54(d)(2)	7	14
54(e)	2	48 hrs
56(a)	20	21
59(b)	10	14

Rule	Change	To
59(c)	10	14
59(c)	20	21
59(d)	10	14
59(e)	10	14
60(b)	3 months	90
62(a)	10	14
63(b)(1)(B)	20	21
63(b)(1)(B)(iii)	20	21
64(d)(3)(C)	10	14
64(d)(3)(D)(ii)	10	14
64(e)(2)	10	14
64(f)(1)	5	7
64A(g)	24 hrs	24 hrs
64A(i)(5)	10	14
64D(g)	7	14
64D(h)	10	14
64D(i)	20	21
64(D)(l)(3)	7	14
64E(d)(1)	10	14
65A(b)(2)	10	14
65A(d)(2)	2	48 hrs
65C(g)(3)	20	21
65C(i)	Delete “plus time …”	
65C(m)(1)	5	7
66(f)	10	14
68(c)(3)	10	14
68(c)(4)	10	14
69B(b)(2)	7	14
69B(b)(2)	1	24 hrs
69B(c)	72 hrs	72 hrs

Rule	Change	To
69C(f)	20	21
69C(f)	7	14
69C(i)(2)	5	7
69C(i)(2)	15	21
74(c)	20	21
101(b)	Delete “calendar”	
101(c)	5	7
101(c)	3	72 hrs
101(d)(2)	2	48 hrs
101(g)	2	48 hrs

Tab 5

Dear Frank Carney and other colleagues. I have continual issues with complete records production from parties under Rule 34.

Query: why the same requirements are not in place for party production as response to subpoenas, i.e. ‘accurate’ and ‘complete’ declaration by custodian. Another helpful requirement for both production requests and subpoenas would be to put the onus of bates stamping on the producing party (even if the requesting party has to pay a nominal fee for that service) so that the responsive declaration from the producing custodian would say something like: The undersigned has made a good faith effort, and a reasonable search and inquiry to locate all documents requested in the request for production/subpoena. Attached pages 1-37, inclusive, are true and correct copies of all documents responsive to the request for production/subpoena.

Additionally, for producing parties, where applicable: “The following is a list of documents not produced pursuant to a _____ [insert claimed privilege] and then attach privilege log.

Certainly paying a $25.00 or so nominal fee for such a declaration from the producing custodian would be more expedient that taking that custodian’s deposition later on in the case in order to verify the completeness and authenticity of the file. Additionally such an initial complete and verified disclosure with numbering would allow all parties to have all relevant documents from the outset.

Frank, perhaps you could pass this on to your Rules Committee Member Colleagues. I apologize for not submitting the comment earlier when submissions were open.

Any thoughts on this issue are appreciated.

[redacted]
Attorney at Law

From: Francis J. Carney
To: UTLA Member Networking
Sent: Friday, November 02, 2007 12:30 PM
Subject: Rules Changes and Comments

[redacted]

I will pass it on to the committee chair but, as you noted, you can assume that there will not be any change to the brand-new rule in the near future, as the comment period has passed.

Ideas like this are the very reason for the comment period, and why people should read those "form" emails from the AOC re proposed rules coming out for comment. This is the third "idea" about a recently-adopted rule that I have received just in the past week from a UTLA member about some rule that was out for comment, no comment was made, and then the rule was adopted. I do really appreciate the input, no kidding, but at this stage it's unlikely to result in another rule amendment, no kidding again.

The rules that are presently out for comment are here: http://www.utcourts.gov/resources/rules/comments/ I suggest that UTLA members read them before the applicable comment period expires. The comment period deadline is right there upfront. You can't miss it. Bookmark that page.

For example, did you know that there is a petition (not from our committee, but from the Supreme Court's CLE Board) proposing an hour of professionalism-civility indoctrination (included in our three hours of required ethics) per reporting period? (Comment period ends Dec 17) Many members might want to comment on that one, and the comments already there make for good reading. Or that our Civil Rules Committee has made what I think is a long overdue proposal to eliminate the use of the archaic "order to show cause" as a substitute for a proper motion? (Comment period ends Nov 21)

Granted, there's probably only one "controversial" rule change in the bunch of proposed rules that is now there, but that's not always the case.

Back to the process in the Civil Rules Advisory Committee, which I assume is followed in every other advisory committee if I know Tim Shea.

Every comment received is distributed to the committee members in their meeting materials, and nearly always discussed. Some important changes in proposed rules have happened that way. Do not think for a minute that the proposed rules are set in stone, and that the comment period is for PR purposes, or that the comments are ignored: we get some great ideas that way, and serious comments are taken seriously.

Post-adoption "informal" comments are not given anywhere near that sort of consideration, for obvious reasons. Well, maybe not so obvious. Like changing the rules every six months, and driving all of us nuts. Like committee members donating tons of volunteer hours, asking for comments, getting none, and then only later hearing, "why didn't you do this or maybe that?" Like having dozens of rules and hundreds of subrules to consider and limited time in which to do so. Like having a process for rules changes that is well-defined by the Supreme Court and the AOC, something that we assume lawyers (if no one else) should be able to understand and follow.

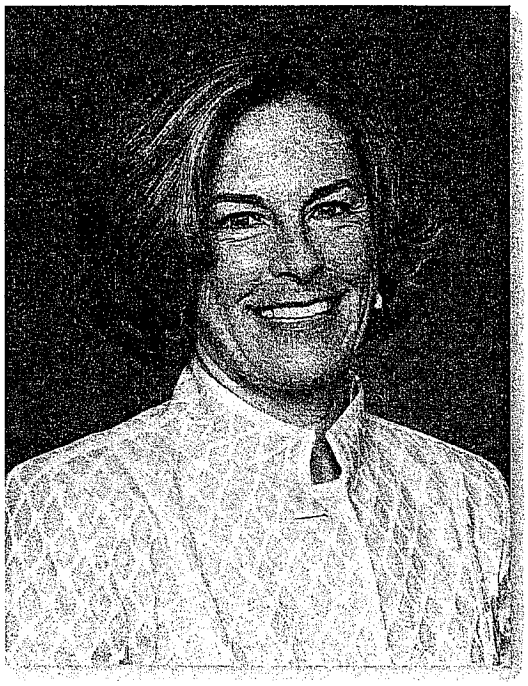
Not meaning to sound snippy at you, my dear, just at this phenomenom generally. It's been five years or so since the AOC stopped spending the (great deal of) money involved in physically mailing all proposed rule changes to every member of the bar. Once that was done, it seems there have been fewer comments, I assume because people don't bother to read the email notices. But this is 2007, and lawyers need to pay attention to the new process, and that means to those emails from Tim Shea or the AOC.

Crank Carney

Tab 6

INSTITUTE DIRECTOR CALLS *for* CIVIL JUSTICE SYSTEM REFORM

"We live in a society with a promise of justice for all. We count on our right to go to court to resolve our differences as well as prosecute crimes. It is a foundation of our way of life, even for those who do not end up in court, and the foundation is cracking."



Colorado Supreme Court Justice Rebecca Love Kourlis

"I believe," continued former Colorado Supreme Court Justice **Rebecca Love Kourlis**, "our civil justice system is being crippled under too much process and, unfortunately, paralysis is spreading throughout the system at a time when Americans are counting on their courts more than ever."

Executive Director of the Denver-based Institute for the Advancement of the American Legal System which she created, she was introduced by Fellow **James M. Lyons** of Denver thus: "From time to time, . . people come into our society and our lives with extraordinary talent. Some of those are born to public service, others are called to public service. [Becky Kourlis] is a rare combination in that she is both born and called into public service."

Daughter of a three-term governor of Colorado, a graduate of Stanford University and of its law school, the wife of rancher and former Colorado Commissioner of Agriculture Tom Kourlis and the mother of three children, she practiced law in Denver and in Craig, Colorado. Joining the state trial bench in 1987, she quickly built a statewide reputation for her skill, fairness and intellect. Appointed to the Colorado Supreme Court in 1995, she authored over 200 opinions and dissents and led significant reforms in several aspects of the Colorado court system.

In January 2006, Kourlis, whom Lyons described as "a crusader for judicial excellence and independence of our judicial system," left the bench to establish the Institute, believing that she could best serve the courts by working to rebuild the system from the outside. Its first product, *Shared Expectations:*

Judicial Accountability in Context, and a follow-up publication, *Transparent Courthouse: A Blueprint for Judicial Performance Evaluation,* have received national recognition.

COST AND DELAY

"There is a growing body of people," Kourlis observed, "who are dissatisfied with the service of the courts and the legal system, a growing body of people who think the system is too expensive, too costly, too inconsistent. Indeed, the most recent evidence to support the claim that Americans are losing faith in their courts can be seen . . . in the number of initiatives and amendments on ballots around the country in the last election that sought to address court dysfunction, or perceived dysfunction, by punishing judges."

"People settle cases under the hammer of time and money considerations because they don't trust the system. . . . You can probably think of dozens, if not hundreds, of other examples from your own experience," she told the audience, "cases where there were continuances, delays in resolution of motions, unnecessary discovery disputes, changing judges at the last moment, battles over minutia, and enormous expenditures of money. The picture isn't pretty."

INTENT OF RULES THWARTED

Calling for a "long, hard look in the mirror," she suggested that change could take many forms. She pointed, for instance, to how far we have come from the stated purpose of the 1938 Federal Rules of Civil Procedure, the "just, speedy and inexpensive determination" of disputes, noting that, "The Rules have never been reviewed as a whole to determine how far they have veered from the stated objective."

"Rather," she continued, "we have continued to append and amend–most recently with the rule on electronic discovery–to the point where the Rococo obscures the sound construction of the system. . . . Indeed, one attorney analogized it [the rule on E-discovery] . . .as 'tuning the violins on the Titanic'."

"Addressing details of implementation, assuming that more process is a good thing," she observed, "is much easier than stepping back and really thinking about what we want our system to achieve and at what cost. We engage, not in trial by jury, but trial by discovery. Only a small fraction of cases go to trial. . . . And litigants settle cases because they can't afford the time, the delay and the uncertainty."

Contrasting the criminal justice system where liberty, life and death are at issue, where pleading with particularity is required, at least for the prosecution, where there are no depositions except in truly extraordinary circumstances, no interrogatories, no requests for admission, but instead, disclosure requirements for the prosecution and to some limited extent for the defense, she asked the rhetorical question, "So why is the civil system so much more complex?"

She went on to cite as an example to consider, Oregon, where pleading with specificity is required in civil cases and discovery, particularly of experts, is limited. "Astonishingly," she reported, "our feedback on that system would indicate that plaintiff's attorneys, defense attorneys, judges, and clients are not just supportive, they're downright ebullient about that approach. It's much less expensive for all concerned. It allows parties to settle cases under the threat of a trial but with an eye to the facts and the law, not the relative marketability of experts to a jury. . . . It allows for more trials and the consequent benefits associated with jury resolution and appellate law. And maybe most interestingly, the lawyers with whom we met love the practice of law."

SYSTEMIC REFORM

Moving to the broader topic of systemic reform, she cited the "reinvention" in the 1990s of England's civil justice system under the direction of Honorary Fellow Lord Harry Woolf, asking, "Does that mean that they have a capacity to respond to changing times and we do not?"

"What would reform look like?" she asked. "First," she answered, "we must remake our system with a new commitment to openness and public service, . . a philosophy that our Institute describes as 'building a transparent courthouse.'. . . We must hold judges and the system

accountable for doing what they are supposed to do, applying the law, doing it fairly, economically and courteously."

She went on to define that part of the process as a mixture of five steps: "Selection and retention of judges based on merit, training of judges, evaluation of judges against clear performance criteria, pay sufficient to draw the best and the brightest into the judiciary and staffing appropriate to caseload."

Noting that there is a hunger out there for real solutions to these problems, she continued, "There's a seismic shift afoot . . . in the way that we look at our courts and at our judiciary. That shift can be harnessed for constructive, sustainable change or it can swing the pendulum clear out of the clock cabinet in one direction or another. At the Institute, we believe that our court system is essential to our way of life. It is not fulfilling its critical function. And the best way to defend it is to advocate for real change, change designed to serve all litigants, change designed to make the courts accountable for providing a fair, effective and efficient process for the resolution of disputes."

A CHALLENGE

Challenging the College, she concluded, "All of you are uniquely situated to make a difference. You are lawyers and judges who have your collective fingers on the pulse of the justice system at every level in the United States and Canada. You have access to the rules committees in your home states or to the legislative committees in state where the legislature has a role in rule-making. You have access to the Judicial Conference. You have the expertise and the credibility and the experience to know whereof you speak.

"I challenge you to have the courage to eschew labels that divide us, such as plaintiff's counsel, defense counsel, liberals, conservatives, and commit yourself to the passion that unites us, the passion for our system of justice. I challenge you to join us in the vital work of rebuilding trust in America's courts by supporting bold and innovative measures to transform our system."

"Of course," she cautioned, "you have to be willing to transcend the inertia associated with opposition to change. And you have to contend with the financial realities of a profession that is built on the status quo. We as lawyers do not intend to be motivated by these realities. We're sometimes even unaware of their presence, but they're there. But if you can overcome them, you can initiate the kind of change I'm suggesting."

"In return, we at the Institute commit ourselves to working tirelessly to prod, mediate, innovate or aggravate in ways designed to remake the system into one that serves all users."

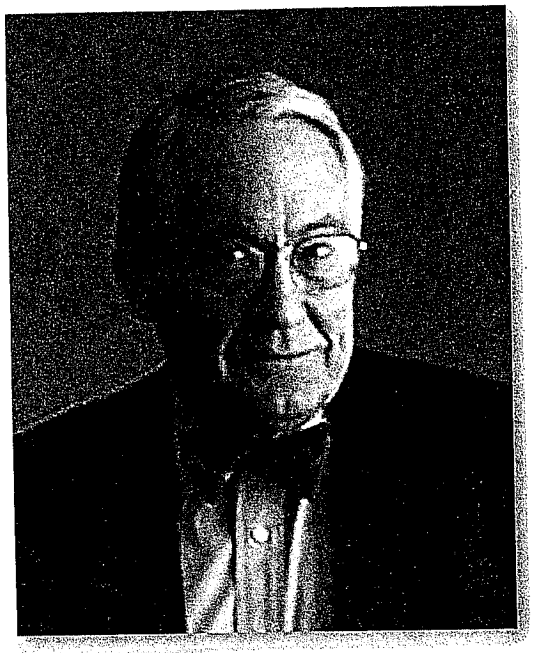
[Editors' note: The College has subsequently created an ad hoc committee to cooperate with the Institute for the Advancement of the American Legal System in examining the state of the civil justice system.]

"[T]he volunteer lawyers representing the Guantanamo detainees are a tribute to our profession. They deserve our respect and gratitude."

ABA PRESIDENT KAREN J. MATHIS

OPINION:

BEFORE WE JUMP ON OUR HORSE *and* RIDE OFF IN ALL DIRECTIONS



E. Osborne Ayscue, Jr.

Mention the "vanishing civil trial syndrome" to a group of lawyers and each will have his or her own theory about its nature and its cause. And each will have his or her own solution.

Scratch beneath the surface, however, and each will define the problem differently. Each will attribute it to a different cause. Each will have a different solution.

The addresses of Wisconsin Law Professor Marc Galanter, National Center for State Courts President Mary McQueen and Institute for the Advancement of the American Legal System Director Justice Rebecca Love Kourlis at the College's Spring meeting raised many questions. The Civil Justice Reform Summit that Kourlis' Institute subsequently hosted raised even more.

Those questions did not necessarily conform to commonly accepted wisdom on the subject. Indeed, some of them produced an uncomfortable suspicion that many of our preconceived notions may not hold water.

THE CONVENIENT CULPRIT: THE RULES OF CIVIL PROCEDURE

Many blame the vanishing trial syndrome on the cost and delay inherent in the present Civil Rules. Drafted in 1938, before the Information Age, principally to address problems that by and large no longer exist, they were intended to facilitate the "just, speedy, and inexpensive determination of every action." They were intended to prevent litigants from hiding the ball. They were also intended to become a model

for procedural uniformity.

Today they accomplish none of these things. They lead to delay, expense and unjust resolutions, resolutions that are driven by the cost of litigation as often as by objective merit. They do not always produce the truth. They have been Balkanized–every judge wants to have his or her own rules.

And electronic discovery now threatens to swamp the system.

In response, we have subjected the Rules to band-aid therapy. No one has undertaken to review them systematically, to examine whether the balance between the low threshold set by Rule 8 and the reliance on broad discovery to develop, or to determine whether one even has, a case remains appropriate seventy years after the Rules were adopted.

We seem to have lost sight of the admonition of Justice Oliver Wendell Holmes that, "The rule of relevance is a concession to the shortness of life."

WHAT ELSE IS OUT THERE?

Clearly the Rules need to be reexamined, but can we really assume that they are the whole problem? Or even that they are really the problem? Can we safely address them in a vacuum without examining what else is out there?

We talk about the vanishing jury trial, and then Professor Galanter tells us that in the federal courts, non-jury trials have disappeared twice as fast as jury trials.

We go to the Civil Justice Reform Summit and hear about jurisdictions where cases get tried regardless of what procedural rules they use. We find that not every state has a problem. We find that not even every Federal district has a problem.

WHAT THEN SHOULD WE BE ASKING OURSELVES?

Of course, we should look at jurisdictions whose rules require more specificity in pleading. Do they really foreclose just claims? And if they do, is the cost too great? And if they do not, why not?

And of course we should be asking whether higher pleading standards tend to shift identification of meritless cases to the Rule 12(b)(6) stage–before the expense of discovery–and away from post-discovery summary judgment, a procedural device which has progressively become an expensive trial by judge in advance of, or in avoidance of, trial by jury.

Of course, we should look at the results in jurisdictions whose rules limit discovery. And we should look at the results in those types of cases, including criminal cases, in which only limited discovery is available. And we should ask ourselves whether the results they produce are any less just.

Of course, we should look at jurisdictions that place limits of expert testimony or on discovery of expert witnesses. Do those legions of professional "have theory, will travel" expert witnesses really produce more just results?

Professor Galanter, however, had some tantalizing statistics, all from Federal courts beginning in 1962, when they began to keep uniform records, through 2005. In 1962, over half of filed civil cases were terminated without "court action," that is without motion practice or formal discovery that showed up on the court's records. Another 20 per cent were terminated after court action, but before pretrial conference. That left 30 per cent to be disposed of at pretrial conference, settlement conferences or trial. And there were as many non-jury trials as jury trials.

Today, only 20 per cent of cases filed are terminated before court action. A whopping 70 per cent are terminated after court action, but before pretrial, that is during discovery and motion practice. Cases terminated during or after pretrial but before trial have decreased only slightly.

The result: the percentage and the actual number of civil cases ending in trial has declined precipitously, as have the number of trials per judge. The number of case terminations has increased by a multiple of more than five, but the number of trials has

decreased by about a third. We have had an explosion of litigation and an implosion of trials. The percentage of civil cases tried has dropped from almost 12 per cent of cases filed to 1½ per cent, the number of civil trials per judge per year from 21 to 6! And the greatest decline has been in non-jury trials: only one percent of filed civil jury cases are now actually tried; only one-half percent of non-jury cases are tried.

Shouldn't we be asking ourselves why this is so? And should we not be looking at comparable figures from state courts?

Shouldn't we be looking at how the role of judges has changed? And at why? Is it because the public is unwilling to provide and pay for enough judges? Or to give them adequate facilities and staff support? If so, the public needs to know that, because ultimately it is the loser if our courts do not dispense justice.

Is it because judges are being taught that their job is to manage dockets, instead of trying cases? And if that is so, is there a relationship between the magnitude of their jobs and the inadequacy of resources we have given them?

Is it because fewer and fewer judges come to the bench with significant civil trial experience? One need only to look at the responses of nominees to the Federal bench in the questionnaire each files with the Senate Judiciary Committee, a public document, to see that over time more and more of them have to stretch to list ten significant litigated matters for which they have been responsible and to see how many have little or no civil trial experience.

In the states that select judges through the election process, should we be looking at the impact of judicial elections on how many experienced trial lawyers are willing to subject themselves to that process to go on the bench? And should we be looking at the adequacy of the compensation that goes with the job in both Federal and state courts and its impact on the level of trial experience it attracts?

Shouldn't we be asking if these factors have led to judges who manage dockets instead of trying cases?

And should we be looking at how judges are trained to do their jobs? Are they trained to be jurists–decision-makers–or managers? And how are their performances evaluated? Are they marked down if they have too many cases go to trial? And what effect does that have on the availability of trial for those cases whose just resolution requires a trial?

And should we also be looking at what happens in those jurisdictions that do provide timely civil trials? Should we be asking whether the procedural rules are really an impediment to trial if a case is given a reasonably prompt, firm trial date before a judge the parties know can–and will–try the case if it is not settled? There is anecdotal data that tends to support the conclusion that they are not. In those courts, Parkinson's Law in the form of unnecessary discovery to fill up the time from filing to trial has no opportunity to take hold.

And should we not be looking to see if compulsory mediation, which in many cases requires completion of discovery and preparation that approaches that of actual trial, is less often resorted to in such courts?

And should we not examine the role of lawyers in the picture? Untrammeled discovery and the billable hour, where the lawyer controls how much he or she does and how long it takes to do it, are a toxic mix. Are we doing enough to sensitize lawyers to the ethical dilemma this creates? Have we created a generation of highly educated, expensive searchers of documents and briefers of motions who live off the present system and will never see a jury?

And are "case-manager" judges who have no personal trial experience and hence no sense

of the economic impact of delay on litigants being educated to its implications?

Should we be looking at the magnitude of the shrinking pool of lawyers and judges who have substantial trial experience, who know how to try cases? And should we be looking at the impact of that shrinkage on the quality of justice our courts dispense?

Should we attempt to quantify in a rough sort of cost-benefit analysis the out-of pocket expenses incurred by litigants who do choose to go to court? Should we also attempt to quantify in some fashion the cost–economic and social–of meritorious claims not pursued and payments made in non-meritorious cases because of the delay and expense attendant to litigation?

We need to ask all these questions and more. We need to look at the variations among Federal districts, among states, among judges. We need to identify those courts that work–that stand ready to try expeditiously those cases that need to be tried–and to find out why they work when others do not, how and why they get more cases to trial.

Professor Galanter's preliminary research ought to be enough to tell us that we do not have all the answers and that some of our preconceived notions of the problem have already been proved wrong.

If, without examining all the facts, we assume that we already understand the problem and already know the solution, we risk emulating the six men of Indostan in John Godfrey Saxe's poem, *The Blind Men and the Elephant,* who from their separate limited observations were variously convinced that the elephant was like: a wall, a spear, a snake, a tree, a fan and a rope. The poem aptly observes that "[E]ach was partly in the right and all were in the wrong!"

Pursuing these inquiries will be a formidable task. Professor Galanter has collected the macro numbers from the Federal system. Justice Kourlis' Institute is extracting data from selected Federal districts, ones that seem to be able to provide trials and ones that do not. Her Institute has already done significant work in developing methodology for objective evaluation of individual judicial performance of state court judges, and a number of states are already making use of these tools. The National Center for State Courts has projects underway. The College itself has more than one project underway.

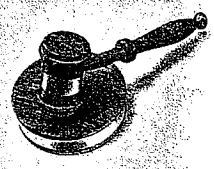
But no one seems to have undertaken to ask or to answer all the questions to which I have alluded, much less to make certain that all of them and all those that may occur to others are being addressed. No one seems to have established a clearinghouse of information that could lead to a rational, comprehensive, non-redundant approach to all facets of the problem.

Every organization addressing this issue needs to ask itself whether we are about to jump on our respective horses and ride off in all directions. And the College needs to ask itself what its role ought to be in all this. As the one national organization composed of experienced lawyers from every segment of the trial bar, it is uniquely equipped both to help coordinate and to contribute to this effort.

If we reach the point where trial lawyers become an anachronism or worse, an extinct species, the College will suffer along with the public it aspires to serve. We do have an interest in both the process and the outcome.

E. Osborne Ayscue, Jr.

[The opinions expressed in this editorial are those of the author, and not necessarily those of the College.]



STOUT, con't from cover

"We often discuss our concern about the vanishing trial from the lawyers' perspective," he said in an interview with *The Bulletin.* "But this should be a concern of all our citizens, not just lawyers. The duty of our citizens to participate in this aspect of the judicial system and to have an opportunity to know how disputes are being resolved is a critical part of the administration of justice. We all have an interest in assuring that participation of our citizens and transparency continue in our justice system in the United States and Canada."

Stout, who will take the gavel as the College's top officer in Denver, points out that arbitration and private alternative dispute resolution often leave the public in the dark. "You go to court to have a trial and everyone knows how the trial comes out," he says. "The public can sit there and watch if they like. In other methods of disposition of legal disputes the public doesn't know how these matters are resolved or what the rules are in those situations."

Stout does not foresee any drastic changes in direction for the College under his leadership. Pledging to continue the path set by President **David Beck** to reverse the vanishing trial trend, he says, "Frankly, it wouldn't affect lawyers much, but it would be a big loss to our citizens not to have the system we've had for the last couple hundred years."

Stout has represented many major businesses in the Wichita area, including Boeing and Coleman. And he has specialized in environmental and employment litigation. He won the first case applying comparative negligence law after it was adopted in Kansas.

Stout was inducted as a Fellow in 1984 at Chicago. "I didn't know much about the College until I was invited to submit a statement of qualifications," he said. "When I saw the names of the Fellows from Kansas I realized for the first time what an honor it was to be included."

The College's mission is just as important now as it was when it was founded in 1950, Stout believes. Under his leadership, he says the College will continue its mission to maintain and improve the standards of trial practice, the administration of justice and the ethics of the profession. "The goals we have will continue to be our responsibility—education and training of trial lawyers, maintaining the judicial system with citizen participation and transparency and high ethical standards. We will continue to pursue these goals and we will do so in the company of Fellows we enjoy and respect."

Stout grew up as a farm boy from near tiny Bazaar, Kansas, (current population 81), about sixty miles northeast of Wichita. The most significant event in the town every year is a commemoration of the 1931 plane crash that killed Notre Dame football coach Knute Rockne and seven others.

Stout had no lawyers in his family and no idea what he would do in life until he took a standardized aptitude test as a young college student. The result pegged him as a future aviator, forest ranger or lawyer. "With mediocre eyesight and, being from Kansas, never having seen a forest, I chose law," he says. For his only orientation, Stout traveled from Bazaar to the county seat in nearby Cottonwood Falls (population 966) and talked to a courthouse lawyer.

After graduating from Kansas State University in 1958, he went on to receive his J.D. in 1961 from Kansas University where he graduated with distinction, Order of the Coif and an editor of the law review. He then spent two years in the Army Judge Advocate General Corps, mostly trying courts martial.

After his discharge, he joined the Foulston Siefkin law firm in Wichita in the fall of 1963 and immediately began trying cases. "No one case stood out," he recalls. "I tried a lot of cases. I remember the ones I lost. I learned that our clients don't expect us to win every time, but they do expect us to care."

His early mentor was **Robert C. Foulston**, a Fellow of the College. Stout remembers, "He was a true professional, a living example of the Code of Trial Conduct, he also believed in making trial work fun."

Stout, who has a son and a daughter who are lawyers, believes the legal profession itself is in good shape. "Lawyers are demonstrating professionalism and providing high quality legal services," he says. "They are continuing their education, maintaining self-imposed disciplinary procedures and ethical requirements in a constantly and rapidly changing environment. We have problems like anybody else, but we solve most of the problems ourselves, which is not typical."

Stout and his wife, **LeAnn**, have

five adult children, two sons and three daughters, two of them twins. He and his family relax by riding horses and taking care of "a couple thousand acres" they own with his brother's family near Bazaar, including the original home place. "I wouldn't call myself a rancher," he says. "We buy cattle, keep them for the summer and then sell them."

He likes to spend his time clearing brush and keeping up with other chores, but swears he doesn't do it to try to keep in shape:

"I have a chainsaw and a woodsplitter so I have done everything I can to mechanize it."

Stout's resume on his firm's website reveals another facet of his personality. In 2001 he was Admiral Windwagon Smith XXVIII in the Wichita River Festival. His explanation: "You dress up in a phony admiral's outfit and preside over the annual Wichita River Festival for 10 days. Pretty silly, but the kids like it. I am not sure it is a career highlight, but it might be."

MIKEL L. STOUT

Born 1937.
B.S. in Animal Husbandry, Kansas State University, 1958;
J.D. with distinction, University of Kansas, 1961.
Order of the Coif; Editor, Kansas Law Review, 1960-61.
Captain, U.S. Army Judge Advocate General Corps, 1961-63;
Foulston Siefkin, LLP, Wichita, Kansas, 1963-present.
Member, American Bar Association. President, Kansas Association of Defense Counsel, 1983-84;
President, Wichita Bar Association, 1987-88;
President, Kansas Bar Foundation, 1991-93.
Civil Justice Reform Act Advisory Group, United States District Court, District of Kansas, 1991-95;
Kansas Commission on Judicial Qualifications, 1984-present, Chair 1994-95.
Trustee, U. S. Supreme Court Historical Society;
Kansas Bar Association Professionalism Award, 1997;
William Kahrs Lifetime Achievement Award, Kansas Association of Defense Counsel, 2005;
Robert K. Weary Award, Kansas Bar Foundation, 2006.
Community involvement: President, Wichita Festivals, Inc., 1978-79;
Captain, Wichita Wagonmasters, 1982-83;
Admiral Windwagon Smith XXVII, Wichita River Festival, 2001;
Board of Directors, Livestock & Meat Industry Council, 1999-present;
Kansas Park Trust, 2005-present.
Inducted into American College of Trial Lawyers, 1984;
Kansas State Chair, 1994-96; Board of Regents, 2000-present; Secretary, 2004-05; Treasurer, 2005-06; President-elect, 2006-07.
Business litigation lawyer.
Listed in: Best Lawyers in America (Personal Injury Litigation, Commercial Litigation and Bet-the-Company Litigation);
Chambers USA (General Commercial Litigation);
MO/KS Super Lawyer (Business Litigation);
Lawdragon 500 Leading Lawyers in America.

Email to the President:

Dave [Beck]. [O]n the recently received Bulletin from the College, with all the good stuff about the Spring meeting, is it true that this publication is now being written by Comedy Central? I made the mistake of taking it home for Leah to read, and I couldn't pull it from her grasp, while she doubled up with laughter. . . . I read with pleasure several articles and inserts that were hilarious! (Some of the stories might even be true.) . . . [C]ommunications such as the Bulletin . . .—laced with humor—are quite welcome. Leah was so impressed that she insisted that we register for the Denver meeting . . . and show that we are still kicking. **Hubert [Green, former Regent]**

Editors' note: We don't make this stuff up. . . . Come and see for yourselves.

Rule 26. General provisions governing discovery.

....

(a)(2) Exemptions.

(a)(2)(A) The requirements of subdivision (a)(1) and subdivision (f) do not apply to actions:

....

(a)(2)(A)(v) which qualify for fast-track discovery as set forth in this rule.

....

(j)(1) Fast-track Discovery. In cases where the total amount in controversy of all claims, counter-claims, and crossclaims does not exceed $120,000.00, the following discovery rules shall apply:

(j)(1)(A) Fast-Track Discovery and Scheduling Conference. Within 30 days after the first answer is filed, the parties shall:

(i) meet in person or by telephone and confirm that the combined amount in controversy of all claims, counterclaims, or cross claims does not exceed $120,000.00;

(ii) disclose a computation of any category of damages claimed, and identify the documents or other evidentiary material on which such computation is based;

(iii) disclose to each other the names, and if known, the addresses and telephone number of each person that party expects to call as a witness at trial;

(iv) plan how to preserve, disclose, and discover electronically stored information; and

(v) file with the Court a Fast-Track Discovery scheduling order.

(j)(1)(B) Fast-Track Discovery Schedule and Limits. Unless otherwise ordered by the court, in Fast-Track Discovery cases, the following discovery schedule and limitations shall apply:

(i) Fact discovery shall be completed within 90 days after the first answer is filed.

(ii) Expert discovery shall be completed within 60 days after the close of fact discovery.

(iii) Amending pleadings and joining additional parties shall occur no later than 60 days after the first answer is filed. If joinder of an additional party or amendment to the pleadings will cause the total amount of all claims, counterclaims, and cross-claims to exceed $120,000.00, the case shall be removed from fast-track discovery. As soon as practicable, the parties shall notify the Court and conduct a discovery and scheduling conference pursuant to section (f) of this rule.

(iv) Each side shall be limited to 3 depositions of no more than 4 hours each, 10 interrogatories (including discreet subparts), 10 requests for admission, and 10 requests for production of documents.

(v) No dispositive motions shall be filed later than 180 days after the first answer is filed.

(vi) The parties shall schedule a final pre-trial conference with the court no later than 180 days after the first answer is filed. Final pre-trial disclosures shall be provided by each party on the date of the pre-trial conference.

(vii) Unless a party shows good cause for a longer trial, trials in Fast-Track Discovery

cases shall not exceed 2 days.

Survey of Discovery Rules of Utah

1. Number of years in practice			
		Response Percent	**Response Count**
0-4		15.4%	35
5-8		16.3%	37
9-12		12.8%	29
13-16		11.5%	26
17-20		9.3%	21
21 or more.		**34.8%**	79
	answered question		**227**
	skipped question		**1**

2. Type of practice			
		Response Percent	**Response Count**
generally represent plaintiffs in civil litigation		19.9%	45
generally represent defendants in civil litigation		29.7%	67
civil practice with approximately equal representation of plaintiffs and defendants		**42.5%**	96
primarily criminal law practice		0.4%	1
transactional law practice		1.3%	3
judge		1.3%	3
education		0.4%	1
corporate		1.3%	3
other		3.1%	7
	answered question		**226**
	skipped question		**2**

3. Number of lawyers in organization.

	Response Percent	Response Count
1-3	21.9%	49
4-10	25.5%	57
11-15	11.6%	26
16-30	6.7%	15
31 or more	**34.4%**	77
	answered question	**224**
	skipped question	**4**

4. Please review the statements below and select the option for each statement that best represents your viewpoint.

	Strongly Agree	Agree	Disagree	Strongly Disagree	Has no effect	No Opinion	**Rating Average**	**Response Count**
1. The discovery rules simplify discovery.	2.9% (6)	**57.0% (118)**	22.7% (47)	11.1% (23)	2.4% (5)	3.9% (8)	2.65	207
2. The discovery rules promote full disclosure of discoverable information.	3.4% (7)	**60.4% (125)**	19.3% (40)	8.7% (18)	6.8% (14)	1.4% (3)	2.59	207
3. The discovery rules make litigation more expensive.	24.3% (50)	**31.6% (65)**	29.1% (60)	2.9% (6)	6.8% (14)	5.3% (11)	2.52	206
4. The discovery rules promote the just, speedy, and inexpensive determination of lawsuits.	1.4% (3)	29.5% (61)	**39.6% (82)**	17.4% (36)	5.8% (12)	6.3% (13)	3.15	207
5. The requirement of an attorney planning meeting improves the prompt resolution of lawsuits.	2.9% (6)	26.9% (56)	**33.2% (69)**	17.8% (37)	16.8% (35)	2.4% (5)	3.26	208
6. The requirement of an attorney planning meeting reduces disagreements over discovery.	1.0% (2)	30.3% (63)	**35.1% (73)**	16.8% (35)	12.0% (25)	4.8% (10)	3.23	208
7. Attorneys generally treat the attorney planning conference as a procedural hurdle rather than as an opportunity to discuss the issues and create a discovery plan suited to the particular case.	37.7% (78)	**46.4% (96)**	12.1% (25)	0.5% (1)	1.0% (2)	2.4% (5)	1.88	207
8. Initial disclosures often provide much of the information I would otherwise seek in discovery thus reducing or eliminating the need for	2.9% (6)	25.7% (53)	**42.2% (87)**	26.7% (55)	1.5% (3)	1.0% (2)	3.01	206

further discovery.								
9. The requirement that the disclosure of expert witnesses be accompanied by a written report outlining the expert's anticipated testimony generally reduces or eliminates the need for further discovery regarding the expert's opinions.	3.8% (8)	26.4% (55)	**42.8% (89)**	17.8% (37)	2.4% (5)	6.7% (14)	3.09	208
10. The limitation on the number of interrogatories has reduced discovery abuse.	8.7% (18)	**40.8% (84)**	22.8% (47)	13.6% (28)	7.3% (15)	6.8% (14)	2.90	206
11. I am often required to seek judicial intervention in establishing an initial discovery plan.	2.4% (5)	9.7% (20)	**64.1% (132)**	15.5% (32)	3.4% (7)	4.9% (10)	3.22	206
12. Attorneys are generally willing to agree to appropriate variations from the default discovery limits and deadlines specified in the rules.	6.7% (14)	**72.2% (151)**	10.5% (22)	3.3% (7)	1.9% (4)	5.3% (11)	2.37	209
13. Judges are generally willing to order appropriate variations from the default discovery limits and deadlines.	4.3% (9)	**59.3% (124)**	8.6% (18)	5.3% (11)	1.9% (4)	20.6% (43)	3.03	209
							answered question	**210**
							skipped question	**18**