Agenda

Advisory Committee on Rules of Civil Procedure

April 23, 2003
4:00 to 6:00 p.m.

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

Approval of minutes	Fran Wikstrom
New trial judge after remand	Doug Mortensen
Small claims rules	Tim Shea
Rule 68. Offer of judgment	Fran Wikstrom
Rule 26. Delete disclosure and discovery plan exemption for self represented litigants	Tim Shea
August 27 meeting (To consider comments to rules)	Fran Wikstrom

Meeting Schedule

May 28
September 24
October 22
November 19 (3rd Wednesday)

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, March 26, 2003
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Janet H. Smith, Francis J. Carney, R. Scott Waterfall, Terrie T. McIntosh, Glenn C. Hanni, W. Cullen Battle, Leslie W. Slaugh, Thomas R. Lee, Todd M. Shaughnessy, Virginia S. Smith, James T. Blanch

STAFF: Tim Shea, Judith Wolferts

EXCUSED: David W. Scofield, Thomas R. Karrenberg, Honorable Anthony B. Quinn, Honorable Anthony W. Schofield, Honorable Lyle R. Anderson, Paula Carr, Debora Threedy

GUESTS: Matty Branch, Mark Olsen, Richard Deloney

I. WELCOME AND APPROVAL OF MINUTES.

Francis M. Wikstrom called the meeting to order at 4:00 p.m. Tim Shea stated that due to the press of matters at today's meeting, Doug Mortensen has agreed to delay his appearance before the Committee until the next meeting. Mr. Mortensen had been invited to attend today's meeting to discuss his proposal for a rule on reassignment of a case after remand.

The minutes of the February 26, 2003 meeting were reviewed. Tim Shea asked whether anyone recalled the details of the discussion referenced in Section III. It was agreed that the official set of minutes will exclude Section III, and that the issue presented in that Section will be discussed at this meeting. Glenn C. Hanni moved that the minutes be approved with this change. The motion was seconded and the February 26, 2003 minutes were approved as amended.

II. NOTICE TO DEFENDANT OF SIGNATURE REQUIREMENT.

Mr. Shea referred the Committee to pages 45-46 of the Agenda, and stated that a court clerk in the Third District informed him that default judgments are being entered against defendants who have filed an unsigned answer. The clerk suggested amending URCP 4(c) to require that the summons include a notice to the defendant that the answer must be signed. If this amendment is made, it would also require making conforming amendments to Civil Forms 2 and 3. Mr. Shea stated that he believes the more important issue is that clerks should not be accepting unsigned answers, and he asked for comments.

Francis Carney pointed out URCP 11 requires that pleadings be signed or they will be stricken if the party does not make the change after being notified. James Blanch noted that, in conjunction with this, URCP 10(d) requires the court clerk to review all papers filed. Both Mr. Shea and Mr. Carney stated that it appears that the URCP already requires that notice be given of the signing requirement before a default can be taken, and Mr. Wikstrom noted that it appears that what is needed is education, not amendment. Leslie Slaugh pointed out that many judges consider anything that is filed by a defendant as an answer, and that he believes Rule 4 should remain as it presently is. Todd Shaughnessy stated that despite all of this, he favors amending Rule 4 because some attorneys move to quash an unsigned answer.

After additional discussion, the consensus was that pursuant to Rules 10 and 11, clerks should not be entering a default unless they have first notified the defendant of the signing requirement, and that there is no need to amend Rule 4.

III. PROPOSED RULE 74--ATTORNEYS FEES

Mr. Wikstrom introduced Mark Olsen. As the representative for the Collections Section of the Utah State Bar, Mr. Olsen has asked to address the Committee about proposed Rule 74, with emphasis on the attorneys' fees schedule and various language in the Rule. Prior this meeting, Mr. Olsen provided the Committee with letters from several collection attorneys who have expressed displeasure with the proposed Rule. Referring to these letters and noting that the Collections Section has numerous concerns about Rule 74, Mr. Olsen presented several suggestions/requests.

Mr. Olsen first suggested that the dollar amount of the fees in the schedule be increased. The present schedule has been in effect more than ten years. Mr. Olsen noted that other attorneys can raise fees with the market, but collections attorneys cannot unless they depart from the schedule and, for many smaller attorneys, the amount permitted in the schedule is insufficient to cover their costs. Moreover, some judges refuse to allow any departure from the schedule, and even use the schedule as the guideline to determine a reasonable fee if a petition is filed. Mr. Olsen commented that he personally would be put out of business if he were to only follow the present schedule, and that collections attorneys are pleading for this change because only attorneys with a high business volume can survive using the schedule. Another concern is that some collections attorneys believe that they are being singled out for doing "routine" work. An example of this is garnishment, which actually includes a great deal of work, including tracking down debtors, verifying employment, and taking the employer to court if it refuses to start the garnishment. Mr. Olsen named some larger employers that must always be taken to court before they will comply with a garnishment.

This said, Mr. Olsen stated that collections attorneys are willing to live with the schedule if the dollar amounts in the lower categories are increased **and** if the Rule makes absolutely clear that collections attorneys may either use the schedule **or** petition for their fees. He expressed his concern that: (1) the "routine collection" language appears to limit judges to using the schedule, (2) the language permits judges to define a "reasonable" fee by reference to the schedule, and/or (3) the language makes it appear that the fees amount in the schedule also includes post-judgment work.

Mr. Slaugh commented that the reason an increase in fee amount has been rejected in the past is because of inflation. He stated that he is not opposed to increasing the bottom and top rungs of the fees, but he is opposed to indexing the schedule to inflation.

Cullen Battle questioned whether it is proper to have a schedule that would allow an attorney to collect $250 in fees on a $150 debt. Mr. Slaugh pointed out that courts allow this now, and Mr. Olsen stated that if courts do not allow it, small creditors have no recourse but to write off the debt.

Mr. Wikstrom commented that it might be appropriate to notify small debtors prior to a collection action that they may have to pay more in attorneys' fees than the debt is worth. Mr. Olsen responded to this comment by describing how the collection process actually works. Preliminarily, he noted that one of his clients has told him it never sends anything for collection if the debtor has done anything at all to pay even a token amount, and that a debtor has already been notified several times before the matter is even sent for collection. After the failure of the debtor to make any attempt at payment, Mr. Olsen sends a routine collection letter giving the debtor 30 days to pay. The letter includes notice that there is a $50 fee at this point. Janet Smith asked Mr. Olsen whether he includes in the letter the amount that the debtor could potentially owe in collection fees. Mr. Olsen said that he does not because this would not be in compliance with the Fair Debt Collection Act.

Janet Smith then asked Mr. Olsen whether the language in the present Advisory Committee Note for Rule 74 is strong enough to assure that judges do not use the schedule as the standard for reasonableness. Mr. Olsen stated that he would not be opposed to even stronger language. Mr. Shaughnessy asked whether there has ever been a study of how much time is typically required to collect a debt. Mr. Olsen stated he did not know of such a study, but agreed with Mr. Wikstrom's comment that it can take as much time to collect $100 as $1000.

Mr. Shaughnessy also asked whether Mr. Olsen would proceed under the schedule more frequently if the fee amounts were increased, and Mr. Olsen stated that he would. Mr. Olsen stated that this increase would be particularly useful in one particular Utah judicial district that refuses to allow collections attorneys to depart from the schedule. Mr. Battle asked whether Mr. Olsen had any sense of how many attorneys use the schedule as opposed to filing a separate petition. In response, Mr. Olsen stated that many attorneys have left the practice because they did not realize that they were allowed to depart from the schedule. He also stated that when he began to depart from the schedule, he had to educate many judges to the fact that the schedule is optional. Mr. Olsen also stated that the only real rationale for the schedule is that it covers **routine** collections.

Mr. Slaugh then stated that there is a reason that the Committee selected the word "extraordinary"[1] as used in Rule 74, and asked whether substituting the word "considerable"

[1] "The schedule of attorneys fees includes fees for routine collection procedures. Attorneys fees awarded under the schedule may be augmented only for *extraordinary* efforts

would have its own set of problems. Mr. Olsen stated that the Collections Section prefers the word "considerable" since it comports with an attorneys' fees case involving collections that was recently decided by the Utah Supreme Court. *See N.A.R., Inc. v. Walker*, 37 P.3d 1068, 434 Utah Ad. Rep. 20 (Utah 2001). Mr. Wikstrom then suggested changing language to make the schedule a baseline, and allowing augmentation. Mr. Olsen stated that the Collections Section has discussed the option of having a schedule for post-judgment fees, but decided to drop it because it was unclear how this could be dealt with, *e.g.*, by motion, or another way. He also observed that collections attorneys are required to go to court more frequently lately since defendants are more often requesting hearings on garnishments.

Mr. Slaugh asked whether there is a problem with less ethical attorneys who file a suit so they can obtain attorneys fees under the schedule, even though the debtor is willing to pay. Mr. Olsen stated that there may be some attorneys who do this, but that most collections attorneys are too busy and harried to bother with it. Mr. Slaugh also commented that he can see a problem if the schedule is just barely enough to cover the work, since it means that more and more collections attorneys will avoid using the schedule, which means more work for the court. Mr. Carney agreed, noting that the schedule will soon become irrelevant if it is not changed.

Mr. Wikstrom again expressed concern about debtors paying more in attorneys fees than the amount of the original debt. Mr. Slaugh pointed out that debtors have already had notice and could have paid the debt when the fee was minimal. Mr. Olsen also noted that attorneys risk a FDCA lawsuit when they ask up-front for more than is authorized. He stated that the FDCA is already an effective curb on the practice of asking for more than authorized, since compliance with the FDCA is a serious matter because the attorneys' fees in such lawsuits can be huge.

Thomas R. Lee expressed his opinion that changing the attorneys' fees amounts is a legislative matter, and that he does not believe the Committee has authority to do this.

Janet Lee moved to approve the dollar amount changes in the Rule 74 schedule that have been proposed by Mr. Olsen. The motion was seconded, and approved with only Mr. Lee voting in opposition.

The Committee next discussed various language changes in Rule 74 to comport with Mr. Olsen's concerns, including the terms "considerable" and "non-routine." Mr. Olsen pointed out that the before the present Rule, the language "considerable additional work" was used, which is consistent with the Utah Supreme Court's ruling in *N.A.R., Inc. v. Walker* (discussing CJA Rule 4-505).

A motion was made to change "collection" to "pre-judgment," to change "extraordinary" to "considerable additional efforts," and to strike both "incurred" and expended." The motion was seconded, and passed by a majority vote.

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incurred in collecting or defending a judgment and only after further order of the court." Proposed Utah R.Civ.P. 74(c) (emphasis added).

The next issue addressed was whether the language of Rule 74 makes it sufficiently clear that judges are not to use the schedule as the standard for determining reasonableness of fees. It was noted that the Committee's intent in making a change is to make sure that judges do not use the schedule as an opportunity to limit attorneys fees to those in the schedule. Mr. Battle and Mr. Carney made suggestions as to how the language could be changed to be more clear. After discussion, Mr. Wikstrom suggested that the language read that the "schedule does not limit the amount of a reasonable fee if an affidavit is submitted." The Committee agreed to this change.

The footnote to Rule 74 was also discussed, with several members commenting on the "augmentation" language. Mr. Shaughnessy asked how a judgment can be augmented, and Mr. Olsen stated that there is no real procedure for doing so in the Rule. Mr. Lee and Mr. Wikstrom pointed out that the original intent of the footnote was to make sure that judges knew augmentation would require extraordinary effort if an attorney chose to use the schedule. A discussion ensued on how attorneys could request augmentation. Mr. Olsen noted that the old CJA rule affirmatively stated that augmentation could be requested, and that he was concerned that judges would note the deletion in the present rule and decide that this means that augmentation is no longer allowed. It was agreed that language concerning augmentation should be added as subpart (b)(5) of proposed Rule 74.

Janet Smith moved to substitute "the amount of attorneys' fees" for "attorneys fees" in subpart (b)(4). The motion was seconded by Mr. Blanch and approved unanimously.

IV. RECODIFICATION OF CODE OF JUDICIAL ADMINISTRATION INTO RULES OF CIVIL PROCEDURE.

Mr. Wikstrom invited discussion and comments on all new and revised rules.

Rule 107: Mr. Shea and Mr. Lee had agreed at the last meeting to work on Rule 107. Mr. Shea stated that the revised Rule now dovetails more with the statute, and that his and Mr. Lee's intent with the revision is to point out that the overall model in this rule is a showing of good cause. The Committee discussed the revisions. Janet Smith asked the meaning of the term "social information," and Mr. Shea stated that it is a phrase taken from the statute. Mr. Slaugh asked whether lines 8-10 on page 32 of the Agenda can be read as mandating notice to the birth parent any time that the petitioner seeks information. Mr. Shea and Mr. Lee agreed that a change should be made in the language referenced by Mr. Slaugh, and Mr. Shea suggested that the first "if" clause be deleted and replaced with "if the court determines notice is necessary."

Rule 5: Mr. Lee pointed out what he believes to be a punctuation error on line 26. It was agreed that Mr. Shea would have the last word on this.

Rule 7: With regard to Rule 7(e) (Agenda, p. 18), Mr. Battle questioned whether the rule is sufficiently clear regarding hearings on injunctions. Mr. Wikstrom noted that there is an entire Rule dealing with preliminary injunctions, so this is sufficient. At Mr. Slaugh's suggestion, it was agreed to change the language of subpart (e) (line 14, page 18) from "in which it is requested" to "containing the request."

Rule 74: Mr. Battle suggested striking the first sentence of subpart (a). Mr. Wikstrom opposed this change. The Committee agreed to retain language stating that attorneys fees must be authorized by contract or law.

Rule 100: Mr. Shea stated that the Committee has recommended that this rule remain in the CJA, but that other committees are moving in a different direction. He stated that other committees are doing this because they believe the URCP are more high profile and more readily available. In light of this, Mr. Shea recommended that this Committee also include this rule in the URCP. In discussing whether to place Rule 100 in the URCP, the Committee discussed the distinction between juvenile and district courts, and made suggestions for language changes. Mr. Battle moved that the rule be placed in the URCP if satisfactory language can be worked out. Virginia Smith seconded the motion, which passed by a majority vote. Mr. Slaugh was asked to assist Mr. Shea in working out the language of Rule 100.

Rule 101: Mr. Wikstrom asked the meaning of the term "presiding district judge" in Rule 101 (Agenda, page 28, line 11). This use of this term was questioned, with Mr. Wikstrom pointing out that family law lawyers have never responded to requests for their input on this rule. Mr. Shea was asked to check whether the term "presiding district judge" is appropriate in this context.

Rule 102: It was agreed that the word "under" will be substituted for "designated" in subpart (a) of Rule 102 (Agenda, page 28, line 21).

Rule 104: Mr. Wikstrom stated that he is troubled by the repetitious language of Rule 104 (Agenda, page 29). Mr. Shea responded that the repetition is due to the fact that this rule is in the nature of a roadmap as it relates to other rules and statutes. Mr. Battle asked whether this means that Rule 104 must be changed any time there is a change in the statutes and rules on which it relies, and Mr. Shea said yes. Mr. Wikstrom and Mr. Shea then commented that the Committee does not have to adopt this rule because it is not independent law, and that the same thing could be accomplished with instructions on the website. Virginia Smith suggested that the rule be retained, but that work be done on it. Mr. Wikstrom responded to this suggestion by asking who will be responsible for monitoring Rule 104 to ensure that it is consistent with the statutes and rules on which it relies.

After discussion, Mr. Battle moved that Rule 104 **not** be included in the URCP. The motion was seconded by Mr. Waterfall and Mr. Carney, and was approved. After this vote, however, Terrie McIntosh moved to include Rule 104 in the URCP, but only up through the term "final judgment" in subpart (a) (Agenda, page 29, line 28). Virginia Smith seconded the motion, and it was approved.

Publication: Mr. Battle moved to approve all rules for publication as adopted and amended. The motion was seconded, and approved unanimously.

V. SMALL CLAIMS RULES.

Mr. Shea stated that an issue has arisen of whether a counterclaim that exceeds the jurisdictional dollar amount of a small claims action means that the entire lawsuit is moved to district court, or whether the counterclaim can be moved to district court with the original lawsuit remaining in small claims court. He stated that district judges prefer bifurcating, but justice court judges prefer moving the entire action to district court.

The Committee discussed numerous problems that can arise when the two actions are proceeding in different courts, including problems with inconsistencies in rulings, res judicata issues, and the fact of mandatory counterclaims. Mr. Battle raised the issue of whether Rule 13 could be amended to avoid the mandatory counterclaim issue, and Mr. Shaughnessy pointed out that this would still leave problems such as res judicata and collateral estoppel.

After listening to the discussion, Mr. Shea stated that the concerns expressed have convinced him that in cases where a counterclaim exceeds the statutory amount, the entire action should be moved to district court.

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, April 23, 2003, at the Administrative Office of the Courts.

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April 14, 2003

VIA FACSIMILE - (801) 578-3843
AND U.S. MAIL

Timothy Shea
Administrative Office of the Courts
450 S. State Street
P.O. Box 140241
Salt Lake City, UT 84114-0241

Re: Utah Supreme Court Advisory Committee on Rules of Civil Procedure
New Judge after Successful Appeal

Dear Tim:

Thank you for your April 1 e-mail and invitation to submit material to you for dissemination to Committee Members prior to the April 23 meeting.

Based on strong support from attorneys and litigants who have won appeals in cases which were then remanded to the judge whose decision was reversed, we propose that Rule 63A be amended to include the following provision:

> **If, upon an appeal from a judgment or order, an appellate court orders a new trial or reverses or modifies the ruling in a manner requiring further proceedings in the trial court, the party who wins the reversal or new trial may, at his or her option, have the case reassigned to a new trial judge. The request for reassignment shall be filed with the clerk of the district court within 10 days after the filing and mailing of the appellate court's remittitur, whereupon the clerk shall randomly reassign the case to a new judge.**

Alternatively, we ask that the Committee support or at least not oppose legislation which would accomplish the same thing as the proposed amendment to Rule 63A by adopting the language quoted above as new §78-21a-1 of Utah's Judicial Code.

Please disseminate to Committee Members with this letter, the enclosed "Rules, Statutes and Authorities Supporting Adoption of a Utah Rule or Statute Allowing a Litigant to Obtain a New Judge after Successful Appeal " as well as my January 22 and Rich Humpherys' January 29 letters to Fran Wikstrom. For your convenience, I have attached copies.

Very truly yours,

Douglas G. Mortensen

DGM/ab

Enclosures

Letter2Tim Shea.0414

RULES, STATUTES AND AUTHORITIES SUPPORTING ADOPTION OF A UTAH RULE OR STATUTE ALLOWING A LITIGANT TO OBTAIN A NEW JUDGE AFTER SUCCESSFUL APPEAL

Alaska has a statute allowing the peremptory disqualification of a judge. See Ak St. § 22.20.22 . So too does **North Dakota**. ND St. §29-15-21. **New Mexico** also has a similar statute allowing the peremptory challenge of a district judge by any party to a civil or criminal action. NM STAT. Ann. §38-3-9.

Idaho accomplishes the same thing through a rule, rather than a statute. See Rule 40(d)(1) (F), Idaho Rules of Civil Procedure.

In **Arizona**, a litigant has a peremptory right to a new judge, which may be exercised only once in a given case. The right is granted both by statute and by rule. It applies to both criminal and civil cases. See ARS §12-409; 16 ARS Rules of Civil Procedure, Rule 42(f); Rule 196, Arizona Rules of Criminal Procedure; and ARS §12-411(a). See also Stephens v. Stephens, 17 Ariz. 306, 152 P. 164; State v. Neil, 425 P.2d 842 (Ariz. 1967); Brush Wellman, Inc. v. Lee, 996 P.2d 1248 (Ariz. 2000).

A statute in **California** allows a litigant to disqualify peremptorily a judge when the retrial of a case has been ordered. This statute was enacted in 1985 to permit a peremptory challenge to be made when the same trial judge is assigned for a new trial after reversal on appeal. See Code Civ. Proc. §170.6; See also Steggs Investments v. Superior Court of LA County, 233 Cal. App.3d 572, 284 Cal. Rptr. 495 (1991);

In **Connecticut** a statute has been in place since 1899 which provides that "where a new trial is granted, the same judge shall not again preside". Chapter 128 of the Public Acts of 1899. That statute has been renumbered. The current statute is Conn. Gen. St. 51-183C; See State v. Hartley, 75 Conn. 104, 52 A.615 (Conn. 1902).

In **Indiana**, when a new trial is granted, a party is entitled to one change of judge if a timely request is made. Ind. Trial Rule 76(B) and (C) (3); See also Cullison v. Medley, 619 N.E. 2d 937, 947 (Ind. 1993).

Wisconsin has a statute which allows for substitution of a new judge upon remand for a new trial. It is Wisconsin's Revised Statutes §801.58(7).

In August of 2002, a U.S. District Court Judge in Utah (Judge Dale Kimball) voluntarily recused himself from further considering a case after the Tenth Circuit Court of Appeals reversed his decision to dismiss it. A local newspaper reported:

> Kimball's unusual decision was not required by law. He stepped aside under a personal philosophy first adopted by his role model, senior U.S. District Judge David Winder, who recuses himself from cases when he is overturned by a higher court. "Somebody's a

> winner and somebody's a loser," Winder noted. "Certainly the party who has reversed me [on appeal] might think I have some antagonism."

The Salt Lake Tribune, August 4, 2002, Page B-1.

The **Second Circuit Court of Appeals** has reached the same conclusion as Judges Winder and Kimball:

> We believe that at least in a multi-judge district such as the Southern District of New York where the necessity of retrial before the same judge is not present, the practice of retrial before a different judge is salutary and in the public interest, especially as it minimizes even a suspicion of partiality. Because we believe this outweighs any considerations of judicial economy and convenience, we hold that it is the wiser practice, wherever possible, that a lengthy criminal case be retried before a different judge unless all parties request that the same judge retry the case. See, United States v. Mitchell, 354 F.2d 767, 769 (2 Cir. 1966).

U.S. v. Bryan, 393 F.2d 90, 91 (2 Cir. 1968).

This matter is the subject of an ALR article: **"Disqualification of Original Trial Judge to Sit on Retrial after Reversal or Mistrial"**, 60 ALR 3d 176 (1974).

A 1983 Law Review article concludes that a statute allowing substitution of judge upon peremptory challenge does not violate the separation of powers doctrine. 66 Marq. L.Rev. 414 (1983).

DGM:Rules, Statutes and Authorities.0418

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January 22, 2003

Frances M. Wikstrom
Parsons, Behle & Latimer
201 S. Main St., Suite 1800
Salt Lake City, UT 84111

Re: New judge after successful appeal

Dear Fran:

In October, a survey was e-mailed to members of the Utah Trial Lawyers Association. It asked:

> Would you favor or oppose the adoption of a rule which would give a successful appellant the right, exercisable at his or her discretion, to have the remanded case assigned to a new judge rather than the judge whose judgment or order was reversed, for the handling of the new trial or evidentiary hearing?

27 attorneys responded in favor, only one responded in opposition. The accompanying comments were illuminating and insightful. With that kind of response, we thought it made sense to see how other litigating lawyers felt about the matter. We asked the executive committee of the Bar's Litigation Section for permission to send out an e-mail survey to its members. On November 13, that request was denied. I was told the executive committee members "had no real position on the need for the rule but felt that the request should come from the advisory committee itself, rather than a proponent of a rule change".

Thereafter, we decided to seek input from a class of people with the most first-hand experience. We turned to the Pacific Reporter and extracted the names of **all attorneys who won reversals in Utah cases within a recent three year period** beginning May 19, 2000 and ending March 7, 2002. Those dates were not arbitrary - they represent the first and last opinions handed down by Utah appellate courts in

Volumes 2 P.3d through 44 P.3d. Attached is a copy of the exact survey sent to each of these attorneys on January 6 of this year. **The results** to date have been: **35 in favor and 4 opposed**. The survey allowed five responses: strongly favor; favor; strongly oppose; oppose; take no position one way or the other. **Of the 35 who favored the rule change, 22 did so "strongly". Of the 4 who opposed the rule change, only 2 did so "strongly"**. No one "neutral" responded.

Last August, U. S. District Judge Dale Kimball voluntarily recused himself from continuing to preside over a case after the 10th Circuit Court of Appeals reversed his decision to dismiss it. The *Trib* reported :

> Kimball's unusual decision was not required by law. He stepped aside under a personal philosophy first adopted by his role model, senior U.S. District Judge David Winder, who recuses himself from cases when he is overturned by a higher court. "Somebody's a winner and somebody's a loser," Winder noted. "Certainly the party who has reversed me [on appeal] might think I have some antagonism."

The Salt Lake Tribune, August 4, 2002, Page B-1.

The obvious question is this: **If the judge universally regarded as the best trial judge in at least a generation of Utah judges** (Judge Winder) **regularly recuses himself whenever he is reversed on appeal, just on principle, how can one seriously contend allowing successful appellants the option of getting a new judge is a bad idea and besmirches the integrity of the judiciary**?

It seems to me your committee ought to be listening most closely to the lawyers and litigants who have won appeals and feel both justice and the appearance of justice would be better served by a rule change. Respectfully, I request that your committee reconsider the matter and allow interested parties with first-hand experience to be heard.

Very truly yours,

Douglas G. Mortensen

DGM/ab

c: Senator Gregory S. Bell
Richard D. Burbidge
Rich A. Humphreys
Robert R. Wallace
Michael N. Zundel

January 6, 2003

Dear Successful Appellant:

According to the Pacific Reporter, you appealed and won a reversal in a Utah case within the last 3 years. For that reason, your view is being solicited by a group of Utah attorneys who are interested in exploring support for a possible rule change. Thank you for taking a moment to answer the following question:

Would you favor, oppose or feel neutral about the adoption of a rule change which would give a successful appellant the right, exercisable at his or her discretion, to have the remanded case assigned to a new judge rather than the judge whose judgment or order was reversed, for the handling of the new trial or evidentiary hearing?

22 Strongly favor

13 Favor

2 Strongly oppose

2 Oppose

0 Take no position one way or the other

Comments, if any (including reasons for view):

Thank you.

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January 29, 2003

Frances M. Wikstrom
PARSONS BEHLE & LATIMER
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Re: New Trial Judge Assigned after Reversal on Appeal

Dear Fran:

I received a copy of a letter to you dated January 22, 2003 from Douglas Mortensen regarding a proposal to have a new trial judge assigned to a case that has been reversed on appeal. I wish to add my support to this general proposition, though I would qualify it to apply only to reversals on non-procedural grounds. For example, I would not support a reassignment if the reversal was based on the failure to provide necessary findings or conclusions and the case is reversed for the trial court to prepare such findings or conclusions.

The psychology of being reversed on appeal is a curious phenomenon. I have never met a judge who did not have an adverse reaction to being reversed on appeal. The theory is, however, that the reversed judge will be able to put his/her personal feelings aside and fairly address the case as set forth in the reversing opinion. In response to this, I have seen the following kinds of situations:

1) Some judges who have been reversed harbor feelings that the appellate court didn't properly understand the situation or for some other reason reversed improperly and so the trial court simply continues the quest for the same result in spite of the reversal, but goes about it in a different way so as to avoid a violation of the appellate court's opinion. As you know, there are numerous ways a trial court can address issues in a case to achieve an outcome. This would include reshaping discovery, exercising discretionary rulings on evidence, etc. Though it hasn't been my experience that all trial judges do this, I have certainly seen some who are convinced for personal reasons that a claim or defense should not proceed, despite a reversal of summary judgment/dismissal or other ruling. In

these circumstances, the trial judge then begins to craft future rulings (particularly discretionary rulings) to favor the judge's prior position. As you know, a trial court has immense discretionary power to shape how evidence is admitted and/or used. Furthermore, jurors can intuitively sense a judge's feeling toward an issue or position, and this never shows up in the record. I readily concede that there are good trial judges who rise above personal feelings, however, the opposite occurs often enough that I am quite concerned. Even if it occurs only on occasion, it is too many times.

2) On the other side of the spectrum, there are trial judges who want to appear so unbiased after being reversed that he/she begins to favor the party who reversed him/her on appeal. In other words, some judges appear to have such a strong desire to appear uninfluenced by the reversal on appeal, that there is a tendency to give more deference to the appealing party so as to demonstrate the lack of bias. For the same reasons as No. 1 above, this should not happen either.

3) A newly assigned judge would have little, if any, personal investment or history which may influence any ruling thereafter, particularly discretionary rulings. The new judge would carry no excess baggage such as the often thought, "If I had just done this or made this part of the ruling, I wouldn't have been reversed," or something similar to this. It is truly a great judge that can fairly set aside such kinds of personal feelings and start fresh after being reversed. I believe we have many such good judges, however, given past experience, I am also convinced that there are many who have a very difficult time not allowing the prior history to influence what they do after being reversed.

4) The appearance of being biased can do much to undermine the faith and trust in our judicial system. For obvious reasons, one side or the other will likely believe that a judge who has been reversed will likely be unreasonably influenced (directly or indirectly) by such experience. These situations are fertile ground for criticism of the judiciary. The appearance factor certainly is not controlling, however, it is a legitimate consideration. As a wise jurist once said, "Justice must not only be done, it should also appear to be done."

Though there are many other reasons, I wanted to express my strong support for such a proposal. There is nothing about the reassignment of a case that can reasonably raise an issue of bias. Such is not true, however, if the reversed judge continues to preside over the case.

Please understand that these comments are not applicable to all judges, for my experience has been that many try hard and succeed in not allowing an appeal to affect their subsequent rulings.

Thank you for your consideration.

Very truly,

CHRISTENSEN & JENSEN, P.C.

L. Rich Humpherys

LRH/mg

Small Claims Rules

Rule 1. ~~Scope, purpose, and forms~~ General provisions.

(a) These rules constitute the ~~"~~simplified rules of procedure and evidence~~"~~ in small claims cases required by Utah Code Section 78-6-1 and shall be referred to as the Rules of Small Claims Procedure. They are to be interpreted to carry out the statutory purpose of small claims cases, dispensing speedy justice between the parties.

(b) These rules apply to ~~the initial trial and any appeal under Rule 12 of all actions pursued as a~~ small claims actions under Utah Code Section 78-6-1 et~~.~~ seq., including the trial de novo.

(c) ~~If the Supreme Court has approved a form for use in small claims actions, parties must file documents substantially similar in form to the approved form.~~ Parties must file documents substantially similar to forms approved by the Supreme Court.

(d) If the time designated in these rules is 10 or fewer days, the reference is to business days, excluding intervening Saturdays, Sundays and holidays. If the time designated is 11 or more days, the reference is to calendar days. The day from which the time begins to run is not included. The last day of the period is included. If the last day is a Saturday, Sunday or holiday, the time expires on the next business day.

(e) By presenting any pleading or other paper a party is certifying that: it is not being presented for an improper purpose; the legal contentions are supported by existing law or by an argument for a change in the law; and the factual contentions are supported by evidence. If the court determines that this certification has been violated, the court may impose an appropriate sanction upon the attorney or party.

Rule 2. Beginning the case.

(a) A case is begun by plaintiff filing ~~a Small Claims Affidavit (Form A)~~ with the clerk of the court either:

(1) an affidavit stating facts showing the right to recover money from defendant; or

(2) an interpleader affidavit showing that plaintiff is holding money claimed by two or more defendants.

(b)The affidavit qualifies as a complaint under Utah Code Section 78-27-25.

~~(b)~~(c) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the small claims affidavit.

~~(c) A separate form of Affidavit (Form C) is available for an "interpleader action" - - action in which plaintiff is holding money that is claimed by two or more other parties.~~ (d) In an interpleader action, plaintiff must pay the money into the court at the time of filing the affidavit or acknowledge that it will pay the money to whomever the court directs.

(e) Upon filing the affidavit, the clerk of the court shall schedule the trial and issue the summons for the defendant to appear.

Rule 3. Service of the affidavit and summons.

(a) After filing the affidavit and receiving a trial date, plaintiff must serve the affidavit and summons on defendant. To serve the affidavit and summons, plaintiff must either:

(1) have the affidavit and summons served on defendant by a sheriff's department, constable, or person regularly engaged in the business of serving process and pay for that service; or

(2) have the affidavit and summons delivered to defendant by a method of mail or commercial courier service that requires defendant to sign a ~~document indicating~~ receipt and provides for return of that ~~document~~ receipt to plaintiff.

(b) The affidavit and summons must be served at least thirty ~~calendar~~ days before the trial date. Service by mail or commercial courier service is complete on the date the receipt is signed by defendant.

(c) Proof of service of the affidavit and summons must be filed with the court no later than ten ~~calendar~~ days after service. If service is by mail or commercial courier service, plaintiff must file a proof of service ~~(Form D)~~. If service is by a sheriff, constable, or person regularly engaged in the business of serving process, proof of service must be filed by the person completing the service.

(d) Each party shall serve on all other parties a copy of all documents filed with the court other than the counter affidavit. Each party shall serve on all other parties all documents as ordered by the court. Service of all papers other than the affidavit and counter affidavit may be by first class mail to the other party's last known address. The party mailing the papers shall file proof of mailing with the court no later than 10 days after service. If the papers are returned to the party serving them as undeliverable, the party shall file the returned envelope with the court.

Rule 4. Counter affidavit.

(a) ~~If defendant claims plaintiff owes defendant money, defendant~~ Defendant may file with the clerk of the court a counter affidavit stating facts showing the right to recover money from plaintiff.

(b) Unless waived upon filing an affidavit of impecuniosity, the appropriate filing fee must accompany the counter affidavit ~~(Form B)~~.

(c) Any counter affidavit must be filed at least fifteen ~~calendar~~ days before the trial. The ~~court~~ clerk of the court will mail a copy of the counter affidavit and summons to plaintiff at the address provided by plaintiff on the affidavit.

~~(d) In a case filed in district court, if the counter affidavit alleges that plaintiff owes defendant more than the monetary limit for small claims procedures, the entire case will proceed as a regular civil case.~~

~~(e) In a case filed in justice court, if the counter affidavit alleges that plaintiff owes defendant more than the monetary limit for small claims procedures, the entire case must be transferred to district court and will proceed as a regular civil case.~~

~~(f) Defendant must pay both parties' additional filing fees imposed as a result of the case proceeding as a regular civil case. If necessary, defendant must arrange for transfer of the case.~~

(d) A counter affidavit for more than the monetary limit for small claims actions may not be filed under these rules.

Rule 6. Pretrial.

(a) No ~~formal~~ discovery may be conducted ~~but the parties are urged to exchange information prior to the trial~~.

(b) Written motions and responses may be filed prior to trial. Motions may be made orally or in writing at the beginning of the trial. ~~No motions will be heard prior to trial.~~

(c) One ~~postponement~~ continuance of the trial date ~~("continuance")~~ per side may be granted by the ~~court~~ clerk of the court. To request a continuance, a party must file a ~~request~~ motion for continuance ~~(Form E)~~ with the court at least five days before trial. The clerk will give notice to the other party. ~~A Request for Continuance must be received by the court at least five calendar days before trial.~~ A continuance for more than forty-five ~~calendar~~ days may be granted only by the judge. The court may require the party requesting the continuance to pay the costs incurred by the other party.

Rule 7. Trial.

(a) All parties must bring to the trial all documents related to the controversy regardless of whose position they support. ~~Possible documents include medical bills, damage estimates, receipts, rental agreements, leases, correspondence, and any contracts on which the case is based.~~

(b) Parties may have witnesses testify at trial and bring documents. To require attendance by a witness who will not attend voluntarily, a party must ~~"~~subpoena~~"~~ the witness. The clerk of the court or a party's attorney may issue a subpoena pursuant to Utah Rule of Civil Procedure 45. The party requesting the subpoena is responsible for service of the subpoena and payment of any fees. A subpoena must be served at least five ~~calendar~~ days prior to trial.

(c) The judge will conduct the trial and question the witnesses. The trial will be conducted in such a way as to give all parties a reasonable opportunity to present their positions. The judge may allow parties or their counsel to question witnesses.

(d) The judge may receive the type of evidence commonly relied upon by reasonably prudent persons in the conduct of their business affairs. The rules of evidence shall not be applied strictly. The judge may allow hearsay that is probative, trustworthy and credible. Irrelevant or unduly repetitious evidence shall be excluded.

(e) After trial, the judge shall decide the case and direct the entry of judgment. No written findings are required. ~~The small claims judgment (Form F or G) with the notice of Entry of judgment completed shall be provided to each party by the court if all parties are present at trial or by the prevailing party if fewer than all parties are present.~~ The clerk of the court will serve all parties present with a copy of the judgment.

(f) ~~Filing fees and costs~~ Costs will be awarded to the prevailing party and to plaintiff in an interpleader action unless the judge otherwise orders.

Rule 8. Dismissal.

(a) Except in interpleader cases, if plaintiff fails to appear at the time set for trial, plaintiff's claim will be dismissed ~~with prejudice unless the judge otherwise orders~~.

(b) If defendant has filed a counter affidavit and fails to appear at the time set for trial, defendant's claim will be dismissed ~~with prejudice unless the judge otherwise orders~~.

~~(c) The prevailing party shall send all other parties a copy of the small claims judgment (Form F or G) with the notice of entry of judgment completed and file the completed copy with the court.~~

(c) A party may move to dismiss its claim at any time before trial.

(d) Dismissal is without prejudice unless the judge otherwise orders. The appearing party shall serve the order of dismissal on the non-appearing party.

Rule 9. Default judgment.

(a) If defendant fails to appear at the time set for trial, the court may grant plaintiff judgment in an amount not to exceed the amount requested in plaintiff's affidavit.

(b) If defendant has filed a counter affidavit and plaintiff fails to appear at the time set for trial, the court may grant defendant judgment in an amount not to exceed the amount requested in defendant's counter affidavit.

(c) ~~Any party granted a default judgment shall promptly send a copy of a completed Notice of Default judgment (Form H) to the other party and file the original with the court.~~ The appearing party shall serve the default judgment on the non-appearing party.

(d) In an interpleader action, if a defendant fails to appear, a default judgment may be entered against the non-appearing defendant.

Rule 10. Set aside of default judgments and dismissals.

(a) ~~Within thirty calendar days from the mailing of the notice of default judgment or the date of dismissal, a~~ A party may request that the default judgment or dismissal be set aside by filing a ~~request~~ motion to set aside ~~judgment (Form I)~~ within 15 days after entry of the judgment or dismissal. If the court receives a timely ~~request~~ motion to set aside the default judgment or dismissal and good cause is shown, the court may grant the ~~request~~ motion and reschedule a trial. The court may require the ~~requesting~~ moving party~~'s payment of~~ to pay the costs incurred by the other party ~~in obtaining the default judgment or dismissal~~.

(b) The ~~thirty day~~ period for ~~requesting the~~ moving to set aside ~~of~~ a default judgment or dismissal may be extended by the court for good cause if the ~~request~~ motion is made in a reasonable time.

Rule 11. Collection of judgments.

(a) Judgments may be collected under the Utah Rules of Civil Procedure.

~~(b) Upon full payment of the judgment including post-judgment costs and interest, the prevailing party shall promptly file a satisfaction of judgment (Form J) with the court.~~

~~(c) The court may enter a Satisfaction of Judgment at the request of a party after ten calendar days notice to all parties.~~ (b) Upon payment in full of the judgment, including post-judgment costs and interest, the judgment creditor shall file a satisfaction of judgment with the court. Upon

receipt of a satisfaction of judgment from the judgment creditor, the clerk of the court shall enter the satisfaction upon the docket. The judgment debtor may file a satisfaction of judgment and proof of payment. The court may conduct a hearing. If the judgment creditor fails to object within 10 days after notice, the court may order the judgment satisfied.

(c) If the judgment creditor is unavailable to accept payment of the judgment, the judgment debtor may pay the amount of the judgment into court and serve the creditor with notice of payment in the manner directed by the court as most likely to give the creditor actual notice, which may include publication. After 30 days after final notice, the debtor may file a satisfaction of judgment and the court may conduct a hearing. The court will hold the money in trust for the creditor for the period required by state law. If not claimed by the judgment creditor, the clerk of the court shall transfer the money to the Unclaimed Property Division of the Office of the State Treasurer.

Rule 12. Appeals.

(a) Either party may appeal a ~~small claims judgment within ten business days (not counting weekends and holidays) of receipt of notice of entry of judgment~~ final order or judgment within the time permitted by statute after entry of the judgment or order or after denial of a motion to set aside the judgment or order, whichever is later.

(b) To appeal, the appealing party must file a notice of appeal ~~(Form K)~~ in the court issuing the judgment ~~and mail a copy to each party~~. ~~The~~ Unless waived upon filing an affidavit of impecuniosity, the appropriate fee must accompany the notice of appeal.

(c) On appeal, a new trial will be held ~~("trial de novo")~~ in accordance with these rules.

(d) The district court shall issue all orders governing the trial de novo. The trial de novo of a justice court adjudication shall be heard in the district court nearest to and in the same county as the justice court from which the appeal is taken. The trial de novo of the small claims department of the district court shall be held at the same district court.

(e) A judgment debtor may stay the judgment during appeal by posting a supersedeas bond with the district court. The stay shall continue until entry of the final judgment or order of the district court.

(f) Within ten days after filing the notice of appeal, the justice court shall transmit to the district court the notice of appeal, the district court fees, a certified copy of the register of actions, and the original of all papers filed in the case.

(g) Upon the entry of the judgment or final order of the district court, the clerk of the district court shall transmit to the justice court which rendered the original judgment notice of the manner of disposition of the case.

(h) The district court may dismiss the appeal and remand the case to the justice court if the appellant:

(1) fails to appear;

(2) fails to take any step necessary to prosecute the appeal; or

(3) requests the appeal be dismissed.

Rule 4-801. Transfer of small claims cases.

Intent:

To establish a procedure for the transfer of small claims cases to the appropriate justice court.

Applicability:

This rule shall apply to the courts of record and not of record.

Statement of the Rule:

(1) Small claims actions filed in a court of record may be assigned to a judge pro tempore, if one has been appointed under Rule 11-202 to adjudicate small claims actions. If no judge pro tempore has been appointed to adjudicate small claims actions, the case may be transferred to a justice court with jurisdiction under Utah Code Section 78-5-104.

(2) At the time of the transfer, the court shall also transfer the filing fee, less the portion dedicated to the judges' retirement trust fund.

(3) If there is no justice court with territorial jurisdiction of the small claims action and no judge pro tempore, a district judge of the court shall hear and determine the action. ~~The appeal shall be as provided in Rule 4-803.~~

Rule 68. Offer of Judgment.

(a) Tender of money before suit. When in an action for the recovery of money only, the defendant alleges in his answer that before the commencement of the action he tendered to the plaintiff the full amount to which the plaintiff was entitled, and thereupon deposits in court for the plaintiff the amount so tendered, and the allegation is found to be true, the plaintiff cannot recover costs, but must pay costs to the defendant.

(b) Offer before trial. At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him for the money or property or to the effect specified in his offer, [~~with costs then accrued~~] which offer of judgment shall be considered to include all claims recoverable, including any costs or ¡ **[~~reasonable~~]** ¡ attorneys' fees awardable up to the date of the offer, unless otherwise specified. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service [~~thereof~~] and [~~thereupon~~] judgment shall be entered accordingly. An offer not accepted shall be [~~deemed~~] considered withdrawn and evidence [~~thereof~~] of the offer and withdrawal is not admissible except in a proceeding to determine costs . If the [~~judgment~~] adjusted award finally obtained by the offeree is not more favorable than the offer, the offeree [~~must~~] shall pay the costs incurred after the making of the offer, and in cases where reasonable attorneys' fees may be awarded by statute or contract to the offeree, the offeror may not be liable for ¡ **[~~reasonable~~]** ¡ attorneys' fees incurred by the offeree after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

(c) Adjusted award. The adjusted award is defined as the verdict with the addition of the offeree's costs incurred before service of the offer of judgment and, in cases where ¡ **[~~reasonable~~]** ¡ attorneys' fees may be awarded by statute or contract, reasonable attorneys' fees incurred before service of the offer of judgment. In contingent fee cases where ¡ **[~~reasonable~~]** ¡ attorneys' fees are awardable, the court shall pro rate the offeree's reasonable attorneys' fees on a daily basis to determine the amount incurred before the offer of judgment in reaching the adjusted award.

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: April 15, 2003
Re: Application of URCP to self-represented litigants

I've attached a letter and "complaint" from Chuck Eddy requesting, among other things, that the Rules of Civil Procedure be amended to make the disclosure and discovery rules fully applicable to self-represented litigants. I've already responded to Mr. Eddy that this committee is not in a position to respond to requests other than for rule changes. It appears that Mr. Eddy has submitted this request on previous occasions, but, at my suggestion, this is the first time he has submitted it to the Committee.

When the disclosure and discovery amendments were under consideration several years ago, Mr. Eddy was the only person to respond requesting that the provisions exempting self-represented litigants from certain parts of those changes be removed. Specifically, self represented litigants are exempt from the initial disclosure requirements of Rule 26(a)(1) and the "meet and confer" and discovery plan requirements of Rule 26(f). URCP 26(a)(2)(A)(iv). Mr. Eddy argued then and maintains the position that these are important procedural rights being denied to self-represented litigants. To implement his request, Rule 26(a)(2)(A)(iv) would be deleted.

Mr. Eddy represents that self-represented litigants are also exempt from pretrial conferences under Rule 16. I believe this is incorrect. Because Rule 26(f) does not apply, the provision in Rule 26(f)(4), permitting a party to request a scheduling and management conference also does not apply, but Rule 16 has independent authority by which any party, represented or not, can request a pretrial conference. URCP 16(a) and (b).

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Citizens' Advocate
2502 S. 3500 W.
Ogden, Utah 84401
Ph. 801-731-1922
Fax. 801-731-4558

Tim Shea
Legal Counsel
450 South State
P.O. Box 140241
Salt Lake City, Utah 84114-0241

April 3, 2003

Dear Mr. Shea:

Please refer to out discussion this date;

Enclosed are two letters related to the subject of pro se discrimination.

As you know, we have been trying for some time to get Rule 16 and Rule 26 changed. We are convinced that pro se litigants are being discriminated against by the courts.

We also believe that local governmental entities, or at least their legal counsel, are well aware of the discrimination being practiced. As a result, such public entities are destroying the democracy principles most citizens believe in.

We ask that you present the enclosed Complaint to the Rules Committee and explain how serious we are about the current violation of constitutional rights that are involved.

Thank You

Chuck Eddy

COMPLAINT

We, Charles J. Eddy, and Renee B. Eddy hereby file complaint with the Rules Committee for the Utah Supreme Court.

Issue: Should non-lawyer litigants be denied due process by Utah Rules Of Civil Procedure that are afforded attorneys in Utah ?

Fact #1: Residents in Utah communities often find themselves in dispute with elected or appointed public officials.

Fact #2: Because public entities often do not properly provide Notices, Hearings, and Protest procedures, citizens must turn to the courts's for relief. (Toone v. Weber County, Supreme Court No. 20010142, and Civil No. 990907314)

Fact #3: Many residents cannot afford the long dragged out litigation that tax-paid counsel for public offices can wage.

Fact #4: There is no public defender program for citizens finding themselves in a civil dispute with a public office.

Fact 5: Citizens who cannot afford counsel, must represent themselves as non-lawyer pro se litigants.

Fact #6: Citizens filing pro se must pay the same filing fees, jury demands, and copies of court documents as lawyers are required to pay.

Fact #7: Non-lawyer, pro se litigants are denied pre-trial conference under URCP Rule 16. As a result, issue clarification, and understanding by all parties never takes place.

Fact #8: Without a discovery schedule, normally established during pre-trial conference, discovery requests by pro se litigants are simply ignored, and evidence through, interrogatories, requests for documents, and admissions are simply ignored.

Fact #9: Motions to compel discovery entered by pro se litigants are ignored

by the court.

Conclusion: The Utah Supreme Court has established rules of procedure that have denied civil rights of pro se litigants, while at the same time extracting funds for court activities and services that are not being provided.

Relief

We are requesting that the Utah Rules Of Procedure be amended to provide for equal treatment of pro se litigants; or, in the alternative, wave the notification requirements of UCA 63-30-11 so that civil rights litigation can be started.

At this juncture, we are disappointed that Utah Supreme Court Justices and Utah Court Administration has not taken our protestations seriously and have simply ignored them. It is our understanding that Utah Supreme Court Justices have the responsibility and authority to correct this violation of civil rights. Should they be named as defendants if litigation takes place? Please advise.

Signed this 4th day of April 2003

Renee B. Eddy
2502 S. 3500 W.
Ogden, Utah 84401

Charles J. Eddy
2502 S. 3500 W.
Ogden, Utah 84401