Agenda
Advisory Committee on Rules of Civil Procedure

February 27, 2008
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
Rule 35. Physical and mental examination of persons.	Tab 2	Frank Carney Tom Lee
Rule 6, et al. Time	Tab 3	Tony Schofield Frank Carney Jon Hafen Cullen Battle Tom Lee David Scofield James Blanch Steve Marsden Leslie Slaugh
Rule 103. Child support worksheets	Tab 4	Tim Shea
SB 205. Uniform Interstate Depositions and Discovery Act.	Tab 5	Tim Shea
Overall evaluation of URCP	Tab 6	Fran Wikstrom

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

Meeting Schedule

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, January 23, 2008
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slaugh, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Janet H. Smith, Thomas R. Lee, Honorable R. Scott Waterfall, Todd M. Shaughnessy, Honorable Anthony B. Quinn, Honorable Derek Pullan, Anthony W. Schofield, Todd M. Shaughnessy, Lori Woffinden, and Lincoln Davies

EXCUSED: David W. Scofield, Cullen Battle, Barbara Townsend, Steve Marsden, James T. Blanch, Jonathan Hafen, and Matty Branch

STAFF: Tim Shea and Trystan B. Smith

GUEST: Kim Colton

Mr. Wikstrom welcomed Lincoln Davies to the committee. Mr. Davies is a new faculty member at the S.J. Quinney College of Law. He will replace Ms. Threedy on the committee.

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the November 28, 2007 minutes. No comments were made and Mr. Wikstrom asked for a motion that the November 28, 2007 minutes be approved. The motion was duly made and seconded, and unanimously approved.

II. UNIFORM FAX POLICY.

Mr. Colton is the Chair of the Utah State Bar's Courts and Judges Committee. Mr. Colton discussed the Courts and Judges Committee's concerns about a uniform policy for fax filing in district and juvenile courts.

Mr. Wikstrom recounted the committee's previous discussions in February 2005 regarding fax filings. Judge Quinn discussed the Board of District Court Judges past experiences addressing fax filing and the local rules for individual districts. He indicated rural districts utilize fax filing with much more frequency than urban districts. He further noted rural districts feel fax filing is necessary. While urban districts (specifically the Third District), do not allow fax filings. Judge Anderson suggested that fax filing may not be necessary in rural districts except in limited circumstances — such as the issuance of search warrants. Mr. Schofield

reiterated Judge Anderson's concern that an exception for fax transmissions related to search warrants was necessary.

Mr. Wikstrom indicated to the committee his belief that the adoption of the e-filing rules mooted the issue of a uniform fax filing policy. Mr. Colton indicated the concern was not with whether to allow fax filing, but uniformity. Mr. Shea indicated that the committee could likely expect approval of the e-filing rules by April 1, 2008. He expected by April/May 2008 it is likely e-filing would be available. Mr. Colton noted that to the extent the e-filing rules were on the verge of being adopted his concerns about uniformity were indeed moot.

III. COMMENTS TO RULES 7, 40, 41, 101 AND SMALL CLAIMS RULE 3 AND RULES 1, 5, 10, 11, 64D.

Mr. Shea brought the comments to the published rule changes to the committee.

Small Claims Rule 3

Mr. Shea initially discussed Small Claims Rule 3. He suggested a revision to Rule 3(b) to state, "If the affidavit is not served within 120 days after *filing, the action may be* dismissed without prejudice, *upon the Court's own initiative with notice to the plaintiff*."

Rule 40(a)

The committee also discussed Judge McVey's comments concerning Rule 40(a). Judge McVey suggested the proposed rule change should be revised to state, "The Court shall schedule the trial [and] notify parties of the trial date and of any pretrial conference." The committee discussed the concern that some judges may not consult with counsel or the parties before scheduling a trial. The committee further discussed the need for the second two sentences of subsection (a).

Mr. Lee suggested removing the second two sentences of subsection (a). Judge Quinn suggested revising subsection (a) to state, "The court may but is not required to schedule a trial, until the case is certified pursuant to Rule 16(b)(8)." Mr. Shea proposed revising the language to state, "Until the case is certified in accordance with Rule 16, the court may, but is not required, to schedule a trial." Judge Quinn moved to adopt Mr. Shea's proposed revision. The motion was seconded, and approved.

Rule 101

The committee also discussed the comments to Rule 101. The comments expressed concern that parties may seek protective orders falsely alleging domestic violence in light of the proposed amendment to Rule 101 (I). After brief discussion, the committee continued to express support for the proposed amendment limiting a party's ability to seek orders to show cause. The committee further discussed amending Rule 101 to eliminate the mandatory hearing requirement. After discussion, the committee did not feel it was necessary to revise the proposed amendment.

Rule 5(e)

Mr. Shea discussed Rule 5(e). He indicated the need to revise subsection (e) to clarify when service would be complete for electronically filed documents. The committee discussed

and approved revising Rule 5(e) to state, " Filing is complete upon *the earliest of* acceptance by the clerk of the court, *the judge or the electronic filing system*. *The filing date shall be noted.*" The committee also discussed and approved deleting the last sentence of subsection (e).

Rule 10

The committee discussed the comments to Rule 10. Mr. Shea recommended that the committee amend the Rules to eliminate the requirement that a party put non-public information in a public record. Mr. Shea suggested that the Rules should amended to allow parties to include non-public information in the civil cover sheet, instead of on the face of every pleading and paper. The proposal is that only the name and the party designation would be included on the face of every pleading and paper. E-filers would be required to file a separate Certificate of Mailing for every pleading and paper that would be protected or sealed from public view.

The committee considered the potential that counsel would be required to track whether an opposing party did not want his or her non-public information on every pleading and paper, and redact the non-public information. After extensive discussion, the committee agreed to strike the phrase "and serve" from Rule 10(a)(3), and further revise subsection (a)(3) to state, "The Court [may] destroy the cover-sheet after recording the information it contains." The committee approved the suggested revisions.

Finally, Mr. Shea addressed the balance of the comments to the remainder of the proposed rule changes. After considering the comments, the committee did not incorporate any of the suggested changes. The committee agreed to submit the proposed amendments, with the agreed upon changes, to the Utah Supreme Court.

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

Mr. Wikstrom asked that the committee discuss Rule 35 at the next meeting.

V. RULE 6, ET AL. TIME.

Mr. Wikstrom asked that the committee discuss Rule 6 at the next meeting.

VI. OVERALL EVALUATION OF URCP.

Mr. Wikstrom asked that the committee discuss the overall evaluation of the Rules at the next meeting.

VII. 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, February 27, 2008, at the Administrative Office of the Courts.

Tab 2

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.

(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 a report of any other examiner or the taking of a deposition of an examiner in accordance with the provisions of any other rule.~~

(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 examiner has performed ten or more examinations in the preceding year, for litigation purposes under this rule or under a comparable rule of another jurisdiction, the party requesting the examination shall, at its own expense, provide to the party examined a copy of the reports of all examinations conducted by the examiner in the preceding four years.

(c)(2) If the examiner has performed fewer than ten examinations in the preceding year, for litigation purposes under this rule or under a comparable rule of another jurisdiction, the court may order the party requesting the examination to provide a copy of the reports of examinations conducted by the examiner upon payment of reasonable costs by the requesting party.

(c)(3) The examiner shall redact any personal identifying information from the reports.

(d) Subdivisions (b) and (c) apply also to examinations made by agreement of the parties, unless the agreement expressly provides otherwise. Subdivisions (b) and (c) do not preclude discovery of an examiner's report or deposing an examiner under other rules.

~~(d)~~ (e) 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 3

Rule	Change	To
Tony Schofield		
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
7(f)	15	21
7(f)	5	7
12(a)	20	21
12(a)(1)	10	14
12(a)(2)	10	14
12(e)	10	14
12(f)	20	21
Frank Carney		
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
Jon Hafen		
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	14
54(d)(2)	7	14
54(e)	2	No Chg
56(a)	20	21
Cullen Battle		
59(b)	10	14
59(c)	10	14
59(c)	20	21
59(d)	10	14
59(e)	10	14
60(b)	3 months	90
Tom Lee		
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
David Scofield		
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(b)(4)	2	48 hrs
James Blanch		
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	No Chg
69B(b)(2)	1	24 hrs
69B(c)	72 hrs	72 hrs
Steve Marsden		
69C(f)	20	21
69C(f)	7	14
69C(i)(2)	5	7
69C(i)(2)	15	21
74(c)	20	21
Leslie Slaugh		
101(b)	Delete “calendar”	
101(c)	5	7
101(c)	3	72 hrs
101(d)(2)	2	48 hrs
101(g)	2	48 hrs

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) Martin Luther King, Jr. Day;

(3) Washington and Lincoln Day;

(4) Memorial Day;

(5) Independence Day;

(6) Pioneer Day;

(7) Labor Day;

(8) Columbus Day;

(9) Veterans' Day;

(10) Thanksgiving Day;

(11) Family Day;

(12) Christmas Day; and

(13) any day designated by the President as a national holiday or 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.

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: February 25, 2008
Re: Rule 103. Child support worksheets

Section78-45-7.3 requires that the parties to a divorce action file child support worksheets calculating the amount of child support. Rule 103 requires that the parties send a copy of the worksheet to the AOC. The child support data are being entered into a database, but the information is not being used. Since there is no purpose to sending a copy to the AOC, the clerks of court and the AOC recommend that the rule be repealed. The parties will continue to file with the trial court under the statute.

Copy: Kim Allard

450 South State Street / POB 140241 / Salt Lake City, Utah 84114-0241 / 801-578-3808 / Fax: 801-578-3843 / email: tims@email.utcourts.gov

~~Rule 103. Child support worksheets.~~

~~(a) When filing a child support worksheet required by Utah Code Section 78-45-7.3, a party shall:~~

~~(a)(1) file the worksheet in duplicate and the clerk of court shall send one copy to the Administrative Office of the Courts; or~~

~~(a)(2) file one worksheet with the court, send the information on the worksheet electronically to the Administrative Office and so indicate on the worksheet.~~

~~(b) The court shall not enter the final decree of divorce, final order of modification, or final decree of paternity until the completed worksheet is filed.~~

Tab 5

UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill establishes a process for a party residing in another state that is involved in a civil case in Utah to issue and serve subpoenas in Utah.

Highlighted Provisions:

This bill:

- establishes definitions and defines the scope of the bill;
- authorizes issuance and service of subpoenas by out-of-state parties under certain circumstances;
- clarifies the application of certain Utah statutes and court rules relating to issuance, service, and enforcement of subpoenas;
- establishes criteria for interpreting and applying this uniform law; and
- establishes May 5, 2008 as the date when this uniform law applies to discovery requests in pending cases.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

S.B. 205

78-63-101, Utah Code Annotated 1953
78-63-102, Utah Code Annotated 1953
78-63-103, Utah Code Annotated 1953
78-63-201, Utah Code Annotated 1953
78-63-202, Utah Code Annotated 1953
78-63-203, Utah Code Annotated 1953
78-63-204, Utah Code Annotated 1953
78-63-301, Utah Code Annotated 1953
78-63-302, Utah Code Annotated 1953

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

Section 1. Section **78-63-101** is enacted to read:

CHAPTER 63. UNIFORM INTERSTATE DEPOSITIONS AND DISCOVERY ACT

Part 1. General Provisions

78-63-101. Title.

This chapter is known as the "Utah Uniform Interstate Depositions and Discovery Act."

Section 2. Section **78-63-102** is enacted to read:

78-63-102. Definitions.

As used in this chapter:

(1) "Foreign jurisdiction" means a state other than Utah.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of a court of record requiring a person to:

(a) attend and give testimony at a deposition;

(b) produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

(c) permit inspection of premises under the control of the person.

Section 3. Section **78-63-103** is enacted to read:

78-63-103. Scope -- Unauthorized practice of law prohibited -- Reciprocity required.

(1) Except as provided in Subsection (3), this chapter applies only to issuance, service, and enforcement of subpoenas as provided in this chapter.

(2) Except as provided in Subsection 78-63-201(1)(b), nothing in this chapter may be construed to exempt an attorney from another state from complying with statutes and rules governing unauthorized practice of law or from the requirements contained in the Utah Rules of Civil Procedure governing limited appearance.

(3) Parties resident in another state may use the provisions of this chapter for issuance, service, or enforcement of subpoenas only if the other state has enacted this uniform act or enacted provisions substantially similar to this uniform act.

Section 4. Section **78-63-201** is enacted to read:

Part 2. Process for Issuance and Service of a Subpoena by a Party in Another State

78-63-201. Issuance of subpoena.

(1) (a) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to a court in the judicial district in which discovery is sought to be conducted in Utah.

(b) A request for the issuance of a subpoena under this chapter does not constitute an appearance in the courts of this state.

(2) When a party submits a foreign subpoena to a clerk of court in Utah, the clerk, in accordance with that court's procedure, shall promptly issue a subpoena for service upon the person to whom the foreign subpoena is directed.

(3) A subpoena under Subsection (2) must:

(a) incorporate the terms used in the foreign subpoena; and

(b) contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not

represented by counsel.

Section 5. Section **78-63-202** is enacted to read:

78-63-202. Service of subpoena.

A subpoena issued by a clerk of court under Section 78-63-201 must be served in compliance with Rule 4 and Rule 5, Utah Rules of Civil Procedure.

Section 6. Section **78-63-203** is enacted to read:

78-63-203. Depositions, production, inspection, and contempt remedies for subpoenas.

Section 78-32-1 and Utah Rules of Civil Procedure 26 through 37 and 45 apply to subpoenas issued under Section 78-63-201.

Section 7. Section **78-63-204** is enacted to read:

78-63-204. Application to court.

An application to the court for a protective order or to enforce, quash, or modify a subpoena issued by a clerk of court under Section 78-63-201 must comply with the rules or statutes of Utah and be submitted to the court in the judicial district in which discovery is to be conducted.

Section 8. Section **78-63-301** is enacted to read:

Part 3. Uniform Application and Construction - Application to Pending Actions

78-63-301. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 9. Section **78-63-302** is enacted to read:

78-63-302. Application to pending actions.

This chapter applies to requests for discovery in cases pending on May 5, 2008.

Legislative Review Note
as of 2-5-08 9:44 AM

Office of Legislative Research and General Counsel

S.B. 205 - Uniform Interstate Depositions and Discovery Act

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

2/12/2008, 3:17:52 PM, Lead Analyst: Syphus, G.

Office of the Legislative Fiscal Analyst

Rule 26. General provisions governing discovery.

…

(h) Deposition where action pending in another state. Any party to an action or proceeding in another state may take the deposition of any person within this state, in the same manner and subject to the same conditions and limitations as if such action or proceeding were pending in this state, provided that in order to obtain a subpoena the notice of the taking of such deposition shall be filed with the clerk of the court of the county in which the person whose deposition is to be taken resides or is to be served, and provided further that all matters arising during the taking of such deposition which by the rules are required to be submitted to the court shall be submitted to the court in the county where the deposition is being taken.

…

Tab 6

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.

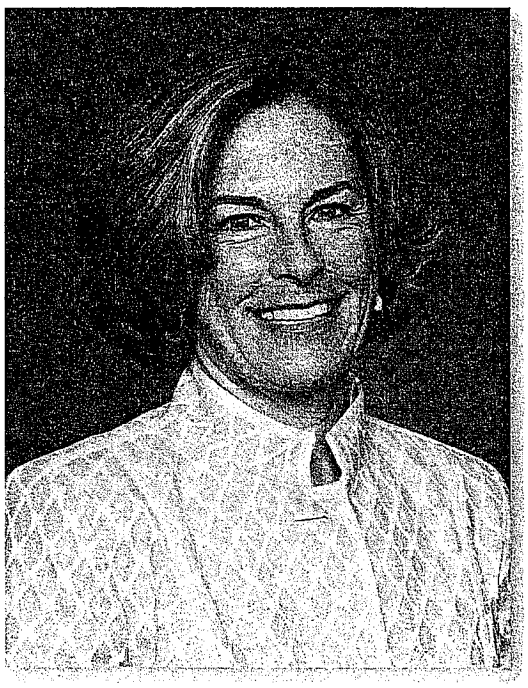
(vi) The parties shall schedule a final pre-trial conference with the court no later than 180 days after the first answer is filed. Final pre-trial disclosures shall be provided by each party on the date of the pre-trial conference.

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

cases shall not exceed 2 days.

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."

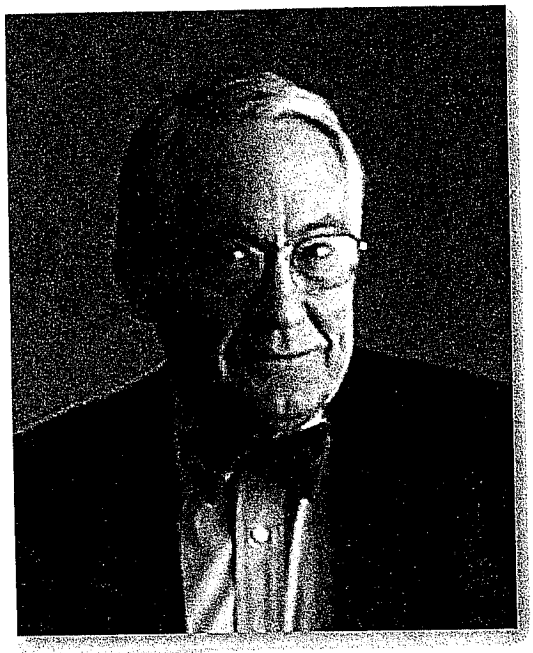
[Editors' note: The College has subsequently created an ad hoc committee to cooperate with the Institute for the Advancement of the American Legal System in examining the state of the civil justice system.]

"[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.

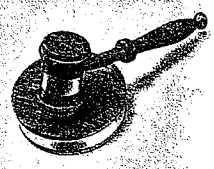
But no one seems to have undertaken to ask or to answer all the questions to which I have alluded, much less to make certain that all of them and all those that may occur to others are being addressed. No one seems to have established a clearinghouse of information that could lead to a rational, comprehensive,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