

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, September 21, 2005
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Francis J. Carney, James T. Blanch, Honorable David Nuffer, Virginia S. Smith, R. Scott Waterfall, Todd M. Shaughnessy, Terrie T. McIntosh, Janet H. Smith, Tom Lee, Cullen Battle, Leslie W. Slauch, Honorable Lyle R. Anderson, Thomas R. Karrenberg, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Jonathan Hafen

EXCUSED: Matty Branch, Lance Long, David W. Scofield, Paula Carr, Debora Threedy

STAFF: Tim Shea, Trystan Smith

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:04 p.m. Mr. Waterfall moved to approve the minutes as submitted. Mr. Blanch seconded the motion. The Committee unanimously approved the minutes.

II. INTRODUCTION OF NEW MEMBER: JONATHAN HAFEN.

Mr. Wikstrom introduced and welcomed Mr. Hafen to the Committee.

III. SUPREME COURT ACTION ON DRAFT RULES.

Mr. Wikstrom reported that he met with the Supreme Court, and the Court approved changes to the draft rules.

IV. RULE 45. SUBPOENA.

Mr. Shea brought Rule 45 back to the Committee. Mr. Wikstrom expressed concern that the Committee adequately protect the rights of third parties. Mr. Battle initiated an extensive discussion concerning whether a producing party should be paid before they are required to produce documents. The Committee discussed concerns regarding potential abuses with the costs of production versus the need for payment of costs up front.

The Committee's discussions then shifted to the difference between actual costs and reasonable costs. Mr. Wikstrom moved to revise Rule 45(d)(1)(D) to state "a statement of the

reasonable costs of producing or copying the documents or tangible things.” The Committee voted to approved the revision.

Next, the Committee discussed revising subsection (d) to allow for a declaration, instead of an affidavit. Mr. Hafen suggested the Committee include a form declaration with the rule. The Committee also discussed the evidentiary differences between a declaration and an affidavit. The Committee expressed no consensus concerning the declaration.

Mr. Slaugh suggested the Committee delete the phrase “not a party” from subsection (c)(2). The Committee agreed with his proposal.

Mr. Wikstrom asked Mr. Shea to incorporate the changes discussed above, and bring Rule 45 back to the Committee for further discussion.

V. RULE 71B. PROCEEDINGS WHERE PARTIES NOT SUMMONED

Mr. Shea brought Rule 71B back to the Committee. Mr. Shea explained the results of his legal research concerning the rule, including its historical background. Mr. Shea explained the case law interpreting the Rule 71B made clear that no personal judgment can be rendered against a defendant who has not been served.

Mr. Shea suggested the Committee delete in its entirety Rule 71B, and incorporate language concerning proceedings against non-served parties into Rule 4(b). Judge Quinn moved to repeal Rule 71B. Mr. Karrenberg seconded the motion, and it passed unanimously. Mr. Karrenberg moved to adopt the suggested addition to Rule 4(b). Mr. Carney seconded the motion, and it passed unanimously.

VI. RULE 6(e).

Judge Nuffer brought Rule 6(e) back to the Committee. Judge Nuffer suggested the Committee revise Rule 6(e) to allow for an additional 3 days to be added to any prescribed period for service by electronic means. Mr. Slaugh moved to adopt the revision. Judge Nuffer seconded the motion, and it passed unanimously.

VII. URSCP 13. REPRESENTATION.

Mr. Shea brought the new rule of small claims procedure to the Committee’s attention. The Supreme Court unilaterally adopted URSCP 13 to clarify who may represent a party during a small claims action. Mr. Shea indicated the addition of the rule is a part of a bigger project defining the unauthorized practice of law.

VIII. E-FILING: RULES 5, 10, & 11.

Mr. Shea brought e-filing back to the Committee. The Committee considered whether it should adopt e-filing rule changes in advance of e-filing coming on-line. Mr. Shea indicated there is no timetable for when e-filing will be possible because of budgetary concerns. After some discussion, the Committee decided to continue its creation of e-filing rules.

Mr. Shea indicated Rule 5(b)(1)(A)(vii) contained the procedure for e-filing, specifically, a document is e-filed when submitted to a party or attorney with an electronic filing account. Mr. Shea further indicated Rule 11 (a)(2) allows a signature to be made by any means recognized by law.

Mr. Slaugh suggested a revision to Rule 5(b)(1)(A)(vi) to allow a party to receive e-service by order of the Court, if the attorney has an electronic filing, or if he consents.

Mr. Waterfall moved to replace the word “averments” with “statements” in Rule 10(b). Mr. Slaugh seconded the motion. Mr. Shaughnessy and Judge Quinn disagreed with the need to revise the language. The Committee approved a revision to Rule 10(b) which stated: “All *statements* of claim or defense shall be made in numbered paragraphs.” “Each *paragraph* shall be limited”

Mr. Lee moved to redact the phrase “in the lower left hand corner” in Rule 10(a). The motion was seconded, and approved by the Committee.

The Committee also approved a change to the title of Rule 10(f) which shall now read “Nonconforming Papers.”

Finally, Mr. Wikstrom suggested a revision to the first sentence of Rule 10(f). After a brief discussion, the Committee agreed to the following revision: “The clerk of the court shall accept for filing papers not prepared in conformity with this rule, but the clerk or the court may require substitution of properly prepared papers.”

IX ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next committee meeting will be held on Wednesday, October 26, 2005, at the Administrative Office of the Courts.