

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, January 25, 2006
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Honorable David Nuffer, Virginia S. Smith, Paula Carr, Terrie T. McIntosh, Tom Lee, Cullen Battle, Leslie W. Slaugh, David W. Scofield, Honorable Anthony W. Schofield, R. Scott Waterfall, Honorable Lyle R. Anderson, Thomas R. Karrenberg

EXCUSED: Francis J. Carney, Debora Threedy, Jonathan Hafen, Todd M. Shaughnessy, Matty Branch, Lance Long, Honorable Anthony B. Quinn, Janet H. Smith

STAFF: Tim Shea, Trystan Smith, Matty Branch

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m. Judge Nuffer moved to approve the minutes as submitted. Mr. Karrenberg seconded the motion. The Committee unanimously approved the minutes.

II. REVIEW OF COMMENTS TO DRAFT RULES. RECOMMENDATIONS FOR FINAL ACTION.

Mr. Wikstrom brought Rules 4, 6, 62, 64C, 68, 71A, and 71B back to the committee to review the comments thereto, and for final action.

Mr. Shea introduced Mark Olson who discussed the proposed repeal of Rule 71b. Mr. Olson expressed his concern that if Rule 71b were eliminated debtors could face the potential of facing two judgments covering the same debt. The committee expressed its due process concerns concerning the present rule. In response, Mr. Olson suggested the committee could protect debtors by incorporating the language of Rule 71b into Rule 4, but allow the second debtor to be served at any time. The committee decided to move forward with the repeal.

Mr. Shea discussed the remaining comments beginning with the amendment of Rule 6 to allow for 3 additional days to respond to motions even with electronic service. The committee reiterated its concerns about abuse, and also expressed its desire to maintain uniformity for practitioners.

Mr. Shea then discussed Judge Westphal's concerns regarding Rule 62 and the 10 day stay after entry of judgment. Judge Westphal commented that a judgment is something less than final if you have an automatic stay. Judge Schofield agreed with the rule change and mentioned that he as a matter of course will give a 10 stay, if the party has good cause. Judge Nuffer further agreed with the rule change and mentioned the federal rules also contained the 10 day stay.

The committee also discussed the comments supporting the inclusion of attorney fees to Rule 68 Settlement offers. An offer under the revised Rule would include all attorney fees as permitted by law or contract incurred up to the date of the offer. Mr. Schofield questioned whether "claims" means all claims between the parties or all claims raised in the present action. Mr. Shea mentioned the intent of the language means all claims in the action. Mr. Karrenberg moved to add claims "in the action." Judge Nuffer seconded the motion. The committee unanimously approved the motion.

As discussion concluded, Mr. Lee moved to approve the amendments, and submit the same to the Supreme Court. Judge Waterfall seconded the motion. The committee unanimously approved the motion.

III. RULE 45 AND FORM 40. SUBPOENA.

Mr. Shea entertained questions/changes from the committee.

Mr. Slaugh questioned the language in Rule 45(c)(2)(B) allowing a party to issue a subpoena. Mr. Slaugh expressed concerns that only the Court or an attorney can issue a subpoena. Mr. Slaugh also questioned subsection 4(e) which allows the person subject to the subpoena to object, but not the person whose personal or confidential information is subject to production to object. Mr. Slaugh used the example of a bank and the bank's customers.

The committee expressed concern about allowing a pro se party subpoena power. The committee further commented that typically the customer or person who's information was subject to disclosure would be involved in the litigation and would have an opportunity to object or move to quash.

Mr. Lee suggested a change to subsection (e)(2) to add the phrase "for any purpose" after "... to produce documents or tangible things ..." and strike the phrase "for inspection and copying." The committee agreed with the change.

After further discussion, Mr. Karrenberg moved to approve the language of Rule 45 with Mr. Lee's amendment. Judge Waterfall seconded the Motion. The committee unanimously approved the motion.

The committee's discussion then turned to the language contained in Form 40.

Mr. Slaugh questioned the 14 day notice limitation. Mr. Slaugh suggested the committee clarify that the 14 day notice requirement is limited to the production of documents. A subpoena to appear at trial, hearing, or deposition, only needs to be served at a "reasonable time." Mr. Slaugh further suggested the committee clarify paragraph 1 to allow a party commanded to appear at a trial, hearing, deposition, or other place \$18.50 plus 25 cents per mile. Mr. Slaugh suggested that this language should be consistent throughout Rule 45 and Form 40. The committee expressed its consent to the changes.

Mr. Lee moved to approve Rule 45 and Form 40 with the amendments stated above. Mr. Battle seconded the motion. The committee unanimously approved the motion.

IV. URCP 7(f)(2) REGARDING FINALITY OF JUDGMENTS.

Mr. Shea brought Rule 7(f)(2) to the committee. Mr. Shea indicated that confusion has arisen as to when the time period for filing an appeal runs if there is not a final signed Order, but just a minute entry. After some discussion, Mr. Wikstrom asked Mr. Blanch and Mr. Slaugh to serve on a sub-committee to look at the issue and suggest language.

V. URCP 10. FORM OF PLEADINGS AND OTHER PAPERS. COURT FORMS AND FORMAT REQUIREMENTS.

Mr. Shea brought Rule 10 to the Committee. The Board of District Court judges asked for an amendment to the rule to allow an exception for district court forms. Mr. Shea indicated the intent is to move the forms from behind their applicable rules (civil, criminal, small claims, and appellate) to the website. The purpose is to have preprinted forms for pro se parties.

Mr. Battle suggested an amendment to Rule 10(d) which stated "court approved forms in the court approved format." After some discussion, Mr. Karrenberg moved to approve the language as suggested by the Board. Mr. Battle seconded the motion. The committee unanimously approved the motion.

VI. ADJOURNMENT.

The meeting adjourned at 5:40 p.m. The next committee meeting will be held on Wednesday, February 22, 2006, at the Administrative Office of the Courts.