

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, October 25, 2006
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis J. Carney, Terrie T. McIntosh, Leslie W. Slauch, Honorable David O. Nuffer, Cullen Battle, Barbara Townsend, Steven Marsden, Francis M. Wikstrom, Honorable Anthony B. Quinn, Honorable Lyle R. Anderson (by telephone)

EXCUSED: Tim Shea, Todd M. Shaughnessy, Honorable Anthony W. Schofield, Debora Threedy, Janet H. Smith, Jonathan Hafen, Lori Woffinden, Thomas R. Lee, Judge R. Scott Waterfall, Trystan B. Smith

STAFF: Judith D. Wolferts (for Trystan B. Smith)

GUESTS: Commissioner Michael S. Evans, Robert Wilde

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:05 p.m. Judge Quinn moved to approve the September 27, 2006 minutes as submitted. The committee unanimously approved the minutes.

II. UTAH RULES OF CIVIL PROCEDURE 101 & 106.

Commissioner Evans was present on behalf of commissioners to present their suggested changes to URCP 101 and 106, which they believe are needed to clarify these rules and ensure consistency.

The first recommendation was to correct section (g) of URCP 101 to read "reply" instead of "response," and to add a sentence at the end of the same section stating "A separate notice of hearing on counter motions is not required." Mr. Schofield moved to approve the recommended changes, and the committee approved the motion unanimously.

The second recommendation is to make changes to Rule 106 to clarify that the rule also applies to final domestic relations orders and not just to divorce decrees. After discussion, Judge Quinn moved to approve these suggested changes, and the motion passed unanimously.

III. RULE 45.

During discussions of proposed changes to Rule 45 at the September 27, 2006, committee meeting, Mr. Carney had expressed concern about the perjury language contained in the declarations section of Rule 45(f)(1). Mr. Lee had suggested replacing the word “perjury” with “penalty of law” in subsection (f)(1) and in the declaration, and the committee had agreed with the changes.

Robert Wilde, a member of the Advisory Committee on the Rule of Evidence, was present today to inform the committee that the Evidence Committee had similar concerns about the word “perjury” in the context of Rule 902 of the Rules of Evidence. Mr. Wikstrom commented that his perception is that Utah law on perjury is less restrictive than federal law, so that caution should be used in using the term “under law” when referring to Utah law. Mr. Wilde reported that he has drafted legislation similar to the federal unsworn declaration statute (28 U.S.C. § 1746), and has approached two state senators about enacting an unsworn declaration statute. He will keep the committee apprised of the results of his efforts.

IV. E-DISCOVERY.

Judge Nuffer reported that the subcommittee on e-discovery will meet the week of October 30-November 3, 2006, and will have a report ready by the next committee meeting.

V. SIGNING EXPERT REPORTS

Mr. Carney reported that he was recently told by another attorney that Rule 26(a)(3)’s provision that an expert report can be signed by “the witness or party” means that an attorney cannot sign the report. The committee discussed how the word “party” is used in other parts of the rules and whether that word includes attorney and whether an amendment to Rule 45 is needed to clarify that “party” includes attorney. The matter was tabled, with Mr. Carney stating that he would bring the issue up again if a concrete problem arises.

VI. ADJOURNMENT.

The meeting adjourned at 4:40 p.m. The next meeting of the committee will be held at 4:00 p.m. on Wednesday, November 29, 2006, at the Administrative Office of the Courts.