

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, April 25, 2007
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slaugh, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Thomas R. Lee, Cullen Battle, Barbara Townsend, Debora Threedy, Lori Woffinden, Judge Derek Pullan

EXCUSED: Janet H. Smith, Judge R. Scott Waterfall, David W. Scofield, Jonathan Hafen, Todd M. Shaughnessy, Honorable Anthony B. Quinn, Honorable Anthony W. Schofield, Steven Marsden

STAFF: Tim Shea, Matty Branch, Trystan B. Smith

Mr. Wikstrom called the meeting to order at 4:05 p.m., and welcomed a new member to the committee, Judge Derek Pullan.

I. APPROVAL OF MINUTES.

Mr. Wikstrom entertained comments from the committee concerning the March 28, 2007 minutes. Seeing none, Mr. Carney moved to approve the March 28, 2007 minutes as submitted. The committee unanimously approved the minutes.

II. RULES 10 & 12. SANCTIONS FOR UNCIVIL MATERIALS.

Mr. Lee brought Rules 10 & 12 to the committee.

Mr. Lee indicated to the committee his concerns about satellite litigation with drafting a proposed Rule 11A to govern “redundant, immaterial, impertinent, or scandalous matters” in all pleadings and other papers.

Mr. Battle and Mr. Lee expressed their concerns about the need to address uncivil materials through either Rule 10 or Rule 12.

The committee indicated their desire to address uncivil materials in not only “pleadings” but “other papers.” The committee debated several different proposed revisions.

The committee considered whether it should revise the language of Rule 12(f) where there was an established body of case law interpreting its language. The committee also

discussed whether a trial court should have the authority to strike an entire pleading or paper instead of the uncivil materials contained in a pleading or paper.

Mr. Wikstrom and Mr. Blanch suggested revising 10(h) to state, “Improper Content. The court may strike and disregard all or any part of a pleading or other paper that contains redundant, immaterial, or scandalous matter.” The committee agreed with the revision.

The committee agreed it would not revise Rule 12(f).

III. RULES 7 & 101. MOTIONS.

Mr. Shea brought Rules 7 and 101 to the committee. Mr. Shea drafted a proposed Rule 7(b)(2) placing explicit limits on the circumstances in which a party may seek an order to show cause. Mr. Shea also amended Rule 101 (i) to explicitly limit orders to show cause to those circumstances where a party seeks to enforce an existing order or sanctions for violating an existing order.

Mr. Carney questioned whether it was necessary to include the last sentence of the proposed Rule 7(b)(2) indicating the “Court shall proceed in accordance with Utah Code Title 78, Chapter 32, Contempt.” The committee agreed to remove the sentence.

Judge Nuffer suggested the committee revise the second to last sentence of Rule 7(b)(2) to state, “Upon motion supported by affidavit or other evidence sufficient to show probable cause to believe a party has violated a court order” The committee unanimously agreed with Judge Nuffer’s suggested revision.

The committee further agreed to adopt the changes to Rule 101 (i).

IV. STYLE AMENDMENTS.

The committee agreed to address style amendments at the next meeting.

V. RULE 40. ASSIGNMENT OF CASES FOR TRIAL; CONTINUANCE.

Mr. Carney brought Rule 40 to the committee. Mr. Carney questioned whether Rule 40(a) was still necessary in light of the elimination of the Code of Judicial Administration.

Judge Nuffer indicated that Rule 16 provided authority for a party to file a certificate for readiness for trial. Ms. Townsend moved to remove Rule 40(a). The committee unanimously agreed to the subsection’s removal.

Judge Anderson suggested the title to Rule 40 should be revised. The committee voted to revise the title of Rule 40 to state, “Postponement of the Trial” instead of “Continuance of the Trial.”

VI. ADJOURNMENT.

The meeting adjourned at 5:30 p.m. The next committee meeting will be held at 4:00 p.m. on Wednesday, May 23, 2007, at the Administrative Office of the Courts.

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