

# MINUTES

## UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, October 22, 2008  
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Honorable Lyle R. Anderson, Lincoln Davies, Jonathan Hafen, Thomas R. Lee, Judge R. Scott Waterfall, Cullen Battle, Honorable Anthony B. Quinn, Leslie W. Slauch, Lori Woffinden, James T. Blanch, Francis J. Carney, Todd M. Shaughnessy, Steven Marsden, Honorable Derek Pullan

EXCUSED: Terrie T. McIntosh, Honorable David O. Nuffer, David W. Scofield, Barbara Townsend, Matty Branch, Janet H. Smith, Anthony W. Schofield

STAFF: Tim Shea, Trystan B. Smith

GUEST: Rich Humpherys

### I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the May 28, 2008 minutes and the September 17, 2008 minutes. Mr. Shea noted two spelling changes to the May 28<sup>th</sup> minutes. With those changes, Mr. Wikstrom asked for a motion that the minutes from both meetings be approved. The motion was duly made and seconded, and unanimously approved.

### II. SIMPLIFIED CIVIL PROCEDURES.

Mr. Wikstrom asked the committee for its thoughts and comments on how to approach the topic.

Judge Quinn suggested that the committee draft a set of guiding principles, and elicit the Supreme Court's reaction before drafting a set of proposed rules.

Mr. Battle suggested a grass roots approach where the committee elicited comments from the Bar and the general public.

Mr. Wikstrom suggested the committee first reach a consensus on a set of principles before eliciting the Supreme Court's reaction. He agreed to draft an initial set of guiding principles for the committee to discuss at next month's meeting.

### **III. FINAL RECOMMENDATIONS ON AMENDMENTS TO RULES 6, 45, AND 103.**

Mr. Wikstrom addressed the final recommendations concerning the proposed amendments to Rules 6, 45, and 103.

The committee addressed the meaning of “inaccessibility” under Rule 6(a)(3). Mr. Lee noted his concern regarding the definition of “legal holiday” under Rule 6(a)(6). After discussion, the committee considered revising the subsection to state “any day designated by the Governor or Legislature as a state holiday.” Mr. Lee moved to revise the subsection, but later withdrew his motion.

The committee agreed to revise the 90 day deadline under Rule 60(b) to 91 days (or 13 weeks).

After debating the need to expand the 10 day time period under Rule 3(a), the committee agreed it should not revise the 10 day time period to file a Complaint after service of a Summons under Rule 3(a).

After discussing the remaining comments concerning Rule 6, the committee unanimously approved the proposed amendments, and recommended to the Supreme Court that the amendments not be approved until e-filing was operational.

The committee discussed the comments to Rules 45 and 103 and agreed to submit the proposed amendments without further changes.

### **IV. RULE 30(b)(6) DESIGNATION OF TRIAL WITNESSES.**

Mr. Wikstrom invited Mr. Humpherys to discuss a proposed amendment to Rule 30(b)(6). Mr. Humpherys suggested a revision to Rule 30(b)(6) that would allow a party to request that another party designate a company representative as a trial witness.

The committee questioned a trial court’s power to require a company representative to travel from outside the state to testify at trial.

The committee debated the need for such a rule and questioned Mr. Humpherys concerning his experiences at trial.

The committee also questioned whether there were other jurisdictions that had a similar rule that would allow a company representative as a trial witness. Mr. Wikstrom asked Mr. Shea and Mr. Humpherys to look at what other jurisdictions may have done concerning the issue, and readdress the subject at a subsequent meeting.

### **V. CANFIELD REQUEST.**

Mr. Wikstrom asked that the committee address this request at the next meeting.

**VI. RULE 26.**

Mr. Wikstrom asked that the committee address Rule 26 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, November 19, 2008, at the Administrative Office of the Courts.