

# MINUTES

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

Wednesday, January 28, 2009  
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Terrie T. McIntosh, Honorable Lyle R. Anderson, Lincoln Davies, Jonathan Hafen, Cullen Battle, Honorable Anthony B. Quinn, Leslie W. Slauch, Lori Woffinden, Steven Marsden, Honorable Derek Pullan, James T. Blanch, Francis J. Carney

EXCUSED: Todd M. Shaughnessy, Janet H. Smith, Honorable David O. Nuffer, Anthony W. Schofield, Barbara Townsend, Thomas R. Lee, David W. Scofield

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

### I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the November 19, 2008 minutes. Judge Quinn noted a change to the committee's meeting minutes concerning Rule 26, where the committee would await a recommendation from the Family law section before addressing concerns regarding practitioners engaging in discovery in domestic cases without an attorney planning meeting. With that change, Judge Quinn moved to adopt the November 19, 2008 minutes. The motion was seconded, and unanimously approved.

### II. REINTRODUCTION OF COMMITTEE MEMBERS.

Mr. Wikstrom addressed Rule 11-101(4), which requires each committee member to briefly disclose the general nature of his/her legal practice at the first committee meeting of the calendar year. The committee members present described the nature of their respective practices, and Mr. Wikstrom noted that those committee members not present would be asked to comply with the rule at the next meeting.

### III. SIMPLIFIED CIVIL PROCEDURES.

Mr. Wikstrom discussed his meeting with the Supreme Court and his discussions regarding the committee's concerns and principles for simplified rules. The Supreme Court indicated its approval for the committee to further explore drafting a set of simplified rules.

After discussion, the committee agreed to approach Becky Kourlis and the Institute for the Advancement of the American Legal System to draft a set of proposed simplified rules for the committee to examine.

#### **IV. RENEWAL OF JUDGMENT BY MOTION.**

Mr. Shea approached the committee with a proposal to allow the renewal of a judgment by motion instead of an independent action. Currently, Utah Code Ann. § 78B-2-311 allows a party eight (8) years to renew a judgment claiming non-payment through a new cause of action. A yet unknown member of the Legislature asked that the committee examine the idea of renewing judgments by motion.

The committee discussed extending the 8-year statute of limitations or abolishing the statute of limitations. The committee also discussed how notice would be given to the debtor, and whether notice should be given under Rule 4 or Rule 5.

After discussion, the committee asked Mr. Shea to invite the legislator who suggested the change to discuss the matter with the committee.

#### **V. RULE 50. MOTION FOR A DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT.**

Mr. Carney noted his concern about the meaning of “move” under Rule 50(b), motions for judgment notwithstanding the verdict, and whether it required a party to file the motion or serve the motion within ten days after entry of judgment. Mr. Carney suggested replacing “move” with “serve a motion.”

Mr. Wikstrom asked Mr. Carney to review the rules and examine all the references to “move” and “file” under Rules 50 and 59, compare the language to the federal rules, and report back to the committee.

#### **VI. CHANGES TO FRCP 26 & 56.**

Mr. Carney shared with the committee proposed changes to federal rules 26 and 56. The committee discussed the proposed changes to the rules, but noted it did not want to address changes to Rule 26 in light of its current consideration of simplified discovery rules.

Mr. Blanch and Mr. Hafen agreed to study the proposed changes to Rule 56 and report back to the committee concerning their observations.

#### **VII. RULE 76. NOTICE OF CONTACT INFORMATION CHANGE.**

Mr. Shea suggested the committee adopt a new rule requiring an attorney and a party to notify the court in writing of any change in that person’s address, e-mail address, phone number, or fax number. The committee unanimously agreed to adopt the rule, but limit the notification requirements to an attorney and an unrepresented party. Rule 76 shall state, “An attorney and

unrepresented party must promptly notify the court in writing of any change in that person's address, e-mail address, phone number or fax number."

#### **VIII. RULE 3. COMMENCEMENT OF ACTION.**

The committee revisited Rule 3(a)(2) and concerns regarding the 10-day summons.

After discussing possibilities of enlarging the time frame or abolishing the rule altogether, the committee agreed to revisit its discussions concerning the 10-day summons at the next meeting.

#### **IX. ADJOURNMENT.**

The meeting adjourned at 5:40 p.m. The next committee meeting will be held at 4:00 p.m. on Wednesday, March 4, 2009, at the Administrative Office of the Courts.