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TO: MEMBERS, UTAH SUPREME COURT ADVISORY COMMITTEE ON CIVIL
PROCEDURE

Dear Advisory Committee Members:

The next meeting of the Supreme Court Advisory Committee will be held on Wednesday, February 20, 1991 at 4 p.m. at the usual place, the Administrative Office of the Courts, 230 S. 500 E., Suite 300, Salt Lake City, Utah. After a long vacation, we will be back with a few old issues and a number of new ones. Please arrive promptly at 4 p.m. so that we can begin on time. If you cannot attend, please let me know in advance so that we don't wait for you.

At our last meeting, we gave final approval to modifications to Rule 65B, on extraordinary writs. As you know, we have been working on this rule for a number of years. I do not intend necessarily to revisit this rule at our next meeting, but I enclose a copy of the final rule, as approved by the committee, from our last meeting. Since some of the changes to this rule and to the Advisory Committee Notes resulted from our discussions at the meeting in November, I am providing each of you with a copy of the final version so that you can raise any problems at the meeting. (The items we approved at our last meeting are underlined at pages 10, 14-15 and 16-17.) Again, however, I hope our discussion on this rule will be kept to a bare minimum so that we can go on to other business.

I have enclosed for your information a copy of Jaryl Rencher's detailed minutes of our last meeting. I recommend that you read Jaryl's minutes to bring yourselves up to date. As usual, Jaryl has done an excellent job. We thank him for all of his service to our committee.

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At the February 20 meeting, we will take up the following issues:

1. We will give final approval to a draft of Rule 17 and accompanying Advisory Committee Notes. As you will see, the only significant changes to Rule 17 are in paragraph (d). The only new material that the committee has not previously approved is the last sentence of Rule 17(d), which was intended to clarify an ambiguity in the earlier version of the rule.

2. We will again consider Rule 63A on peremptory challenge of judges. Since our last meeting I have met with the Utah Judicial Council about this rule. Although it is the desire of the Utah Supreme Court and of many members of the Judicial Council to promulgate such a rule, they are dissatisfied with our formulation of the time period within which the notice of change of judge must be filed. They ask for our suggestions as to other, more definite, time periods within which the notice should be filed. I put on my thinking cap and drafted as many alternative periods of time for the filing of the notice of change of judge as I could think of. The enclosed draft has four new alternatives that at least have the advantage of being more easily ascertainable than our original concept. Please give these alternatives (and any you can think of on your own) some thought so that we can make a recommendation to the Supreme Court and to the Judicial Council.

3. We will have a report from Brad Baldwin's subcommittee on Rules 64A, 64B, and 64C. Brad and his committee have done a great deal of work in formulating the basic questions that our committee must answer before they can proceed with detailed drafting. As you know, the basic effort here is to bring up to date these provisional remedy rules, just as we revamped Rule 64D two years ago to comply with current constitutional standards.

4. We will briefly discuss the status of work on the discovery rules. I have appointed a discovery subcommittee consisting of Allan Larson, Terry Dunning, and Jim Soper. As their initial assignment I have asked them to look at several clear-cut issues that have been presented to us. First, they are looking at Justice Zimmerman's request that Rule 30(f)(1) and 5(d) be modified to eliminate the requirement that depositions be filed. I have enclosed Justice Zimmerman's correspondence to me on that issue as well as a letter received from George Hunt on basically the same question. Second, I have asked the subcommittee to consider the Cullen Battle-Eric Strindberg proposal for changes to Rule 30(b)(4) on videotaping of

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depositions. For your convenience, I have enclosed another copy of that proposal.

5. We will discuss a request from the Chief Justice for our committee to study changes in the rules that might assist it in handling claims of ineffective assistance of counsel in habeas corpus proceedings. Please find enclosed the Chief Justice's letter to me on that issue. I would especially appreciate your comments on people inside or outside our committee who might help on this project.

6. Finally, we will ask Carlie Christensen to report on any progress that has been made in requiring the clerk's offices to comply with existing Rule 77(d) on notification of parties of signing of orders. This has been an issue that has lain dormant for a number of months while the court clerks of the state consider their resources to provide this service to the public and the bar.

Once again, I look forward to seeing all of you on February 20.

Very truly yours,



Alan L. Sullivan

ALS:crm

Encls

cc w/encls: Jaryl Rencher, Esq.

Carlie Christensen, Esq.

cc w/out encls: Justice Richard C. Howe