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MEMBERS OF THE UTAH SUPREME COURT
ADVISORY COMMITTEE ON CIVIL PROCEDURE

Dear Committee Member:

The next meeting of the Committee will be held on Wednesday, October 28, 1992, beginning at 4:00 p.m. The meeting will be held at the usual location, in the Council Room of the Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah. I look forward to seeing you then. Please be prompt so that we can begin and conclude within the usual two hour period. If you can't make it, or expect to be late, please give me a call so that we do not wait for you.

At this month's meeting, we'll begin on at least one of the projects that we discussed at our last meeting. The approximate order of our discussions on October 28 will be as follows:

1. We will try to define the tasks that should be given to our new subcommittee on Rule 45. I have asked Perrin Love to chair that subcommittee. The other members will be Tom Karrenberg (a tireless worker) and Elizabeth Dunning. One of the issues that this subcommittee needs to address is the issue raised by Judge Murphy prior to our last meeting involving the issuance of subpoenas in blank. Incidentally, please find enclosed a letter dated July 23, 1992 from Andrew McCullough relating to this problem. There are, of course, other issues that we must address in relation to this rule.

2. Please find enclosed for your review a newly-revised version of Rule 65B, which we approved at our last meeting. Please also find enclosed a brief set of suggested committee notes, which I have prepared for your consideration. With luck, we can approve the committee notes and send these

SUPREME COURT ADVISORY COMMITTEE
October 21, 1992
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rule changes, along with changes to Rule 35(a), to the Supreme Court.


3. Please find enclosed another edition of changes to Rule 69 and a set of proposed committee notes. Most of the changes in this revised edition were approved by the committee at our last meeting; the rest relate to another problem that has arisen since the last meeting. Once again, our thanks go to Brad Baldwin and his committee in running this rule to the ground.

4. Please find enclosed a request from Brian Barnard relating to the use of recycled paper under Rule 10. To get you in the spirit of his request, Brian has included (on recycled paper) enough copies of his original letter to go around.

5. Finally, we will discuss a request from Bruce Plenk relating to a proposed change in the procedures relating to writs of restitution. To avoid overloading you with reading, I have not circulated Bruce's letter but will discuss the matter with all of you at our meeting.

I look forward to seeing all of you on October 28. If you have any other items that you would like to place on the Agenda, please call me at any time.

Very truly yours,



Alan L. Sullivan

ALS/kr
Enclosure

cc: Craig T. Jacobsen, Esq.
Colin R. Winchester, Esq.

UTAH SUPREME COURT ADVISORY COMMITTEE
ON CIVIL PROCEDURE

AGENDA

October 28, 1992

1. Welcome and discussion of time for next meeting (A. Sullivan)
2. Rule 45 revisions (A. Sullivan)
 - a. Issuance of subpoenas in blank [per subpart (a) of the rule] vs. "proof of service of a notice of deposition" as a predicate for the issuance of the subpoena [per subpart (d) of the rule]
 - b. Production of documents from non-parties without a deposition [changes in subparts (a), (b) and Rule 34(c)], together with notice to all parties
 - c. Special provisions for the protection of persons subject to subpoena, including federal-type objection procedure
 - d. Detailed standards for quashing subpoenas
 - e. Other issues
3. Rule 65B - Consideration of proposed committee notes (A. Sullivan)
4. Rule 69 - Consideration of final draft and proposed committee notes (B. Baldwin)
5. Rule 10(d) - Brian Barnard letter on use of recycled paper for pleadings
6. Writ of restitution proposal (Bruce Plenk)
7. Other business

M I N U T E S

SUPREME COURT ADVISORY COMMITTEE
ON THE RULES OF CIVIL PROCEDURE

Wednesday, October 28, 1992, 4:00 - 6:00 p.m.
Administrative Office of the Courts

Alan L. Sullivan, Presiding

PRESENT:

Alan L. Sullivan
Alan L. Larson
Glenn C. Hanni
Prof. Ronald N. Boyce
Prof. Terrie T. McIntosh
Kevin N. Anderson
David K. Isom
Elizabeth T. Dunning
Brad R. Baldwin
Thomas R. Karrenberg
Hon. Boyd Bunnell
Hon. Michael R. Murphy
M. Karlynn Hinman
John L. Young

EXCUSED:

Hon. Samuel Alba
Robert A. Echard
Perrin R. Love
Mary Anne Q. Wood
Prof. Terry S. Kogan
James R. Soper
Francis M. Wikstrom
Jaryl L. Rencher
Craig T. Jacobsen

STAFF:

Colin Winchester

GUEST:

Stewart Smith

1. **WELCOME.** Mr. Sullivan welcomed the Committee members to the meeting. Because the next Committee meeting is currently scheduled for the day before Thanksgiving, it will be moved to Wednesday, December 9 at 4:00 p.m.

2. **RESIGNATION OF KEVIN ANDERSON.** Mr. Anderson announced that he will be moving to Las Vegas to open a branch office for his firm. Consequently, he is resigning from the Committee. Mr. Sullivan expressed gratitude for Mr. Anderson's diligent service to the Committee. Mr. Anderson then left the meeting.

3. **DISCOVERY RULES.** The Committee again discussed the possibility of general changes to the discovery rules. Mr. Sullivan suggested that rather than changing the rules immediately, the Committee may wish to wait and see the affect of the new local federal discovery rules. He said, however, that the Committee may be more inclined to consider immediate revisions to Rule 45. The Committee then discussed some of those problems.

Current Rule 45(a) indicates that subpoenas must be issued in blank by the clerk of the court. However, current Rule 45(d) states that subpoenas for purposes of depositions must be proceeded by the filing of a Notice of Deposition. The Third District Court interprets Rule 45 as allowing subpoenas only to be issued for purposes of depositions if proceeded by a Notice of Deposition. In addition, the Third District Court will not issue subpoenas requiring attendance in less than ten days. Judge Murphy explained that the Court's position arises in part from the fact that non-attorneys, by acquiring blank subpoenas, can abuse the subpoena process. The Court's larger concern is that last minute subpoenas are extremely inconvenient, especially when issued to non-parties.

Mr. Sullivan noted that the new federal practice allows a subpoenaed person to stop the subpoena process by filing an objection to the subpoena.

Mr. Hanni indicated that the practice of issuing in-blank subpoenas has been in effect for many years, and that short of some evidence of abuse, the practice should not be changed.

Several Committee members told of situations where subpoenas had been issued on short notice, and the corresponding inconvenience caused by those subpoenas.

Mr. Sullivan indicated that effective February 1992, the federal rule had been changed to eliminate the requirement that a Notice of Deposition be filed before a subpoena could be issued. The federal rules now specifically provide for after-the-fact sanctions for abuse, rather than attempt to prevent the abuse by requiring a Notice of Deposition.

Mr. Isom suggested that a remedy for failure to appear be included within the rule.

Prof. Boyce indicated that the local federal practices for the court to entertain objections made by phone calls and letters from subpoenaed individuals, rather than requiring formal objections and motions to quash.

Mr. Sullivan indicated that the subcommittee should study the following issues:

1. The issuance of subpoenas in blank.
2. Appropriate time limits.
3. The filing of objections as stopping the subpoena process.
4. A procedure to require the production of documents from non-parties other than a subpoena duces tecum for deposition purposes.

Mr. Karrenberg, Judge Bunnell and Mr. Baldwin expressed the need for some time limits in the rule.

Several Committee members expressed favor for the procedure of issuing subpoenas in blank, rather than following the current practice in the Third District.

Mr. Larson indicated that the rule should also address the proper location for depositions.

Mr. Karrenberg suggested that the subcommittee also study whether Rule 45 should be used to shorten the thirty-day time period in which a party can produce documents under Rule 34.

Mr. Sullivan directed the subcommittee chaired by Perrin Love to study those issues raised by the Committee and report back.

4. **RULE 65B.** Mr. Sullivan reviewed the copy of Rule 65B distributed with the mailing. He noted that the changes to the text of the rule consisted of those changes approved by the Committee at its last meeting. The Committee comments were drafted by Mr. Sullivan after the last meeting.

MOTION: Prof. Boyce made a motion to adopt the comments as drafted.

SECOND: Mr. Karrenberg seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

5. **RULE 69.** Mr. Baldwin discussed the most recent draft of Rule 69 which was distributed in the Committee mailing. He highlighted several changes, among them:

1. A change in Rule 69(d) which now requires that sheriffs or constables serve writs of execution.
2. New paragraphs at the end of Rule 69(g) and 69(h) stating that executions upon real property which were the subject of statutory mortgage foreclosure proceedings need not comply with the new notice and opportunity to object provisions of the rule. The Committee discussed whether those paragraphs should be contained in the rule, or whether they should be placed in the mortgage foreclosure statute. It was the consensus of the Committee that they should remain in the rule.
3. New Committee Notes.

MOTION: Mr. Karrenberg made a motion to adopt Rule 69 and the Committee Notes, subject only to editorial type changes.

SECOND: Mr. Young seconded the motion.

VOTE: The Committee voted unanimously to approve the motion.

6. USE OF RECYCLED PAPER FOR PLEADINGS. The Committee reviewed a letter from Brian Barnard, printed and distributed on recycled paper, suggesting that Rule 10 be amended to allow the use of recycled paper. Mr. Barnard's recycled paper was white with small black specks. Although the Committee was generally in favor of allowing recycled paper, it determined to have staff forward the issue to the Judicial Council for consideration. Mr. Sullivan asked staff to report back to the Committee as to whether a rule change is necessary to allow use of recycled paper.

7. WRITS OF RESTITUTION. Mr. Sullivan informed the Committee that he had received a letter from Bruce Plenk asking that specific procedures be adopted for writs of restitution. The letter was initially sent to the Judicial Council, which in turn forwarded the matter to the Committee. Mr. Sullivan indicated that the matter would be placed on the next Committee meeting agenda for additional discussion.

8. ADJOURNMENT. There being no further Committee business, the meeting was adjourned.