

LAW OFFICES OF
VAN COTT, BAGLEY, CORNWALL & McCARTHY

A PROFESSIONAL CORPORATION

SUITE 1600

50 SOUTH MAIN STREET

SALT LAKE CITY, UTAH 84144-0450

TELEPHONE (801) 532-3333

FACSIMILE (801) 534-0058

TELEX 453149

ADDRESS ALL CORRESPONDENCE TO

POST OFFICE BOX 45340

84145-0340

WRITER'S DIRECT DIAL NUMBER

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DAVID E. SALISBURY
M. SCOTT WOODLAND
NORMAN S. JOHNSON
SPHEN D. SWINDLE
LIAM G. FOWLER
GREGORY P. WILLIAMS
ALAN F. MECHAM
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JOHN T. NIELSEN
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DANNY C. KELLY
STEVEN D. WOODLAND
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DOUGLAS A. TAGGART
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JON E. WADDOUPS
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THOMAS W. CLAWSON
DANIEL P. MCCARTHY
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2404 WASHINGTON BOULEVARD
OGDEN, UTAH 84401
(801) 394-5783

314 MAIN STREET
PARK CITY, UTAH 84060
(801) 649-3889

100 WEST LIBERTY
RENO, NEVADA 89501
(702) 333-6800

OF COUNSEL
LEONARD J. LEWIS
CLIFFORD L. ASHTON
RICHARD K. SAGER
JAMES P. COWLEY
JOHN CRAWFORD, JR.
MARLIN K. JENSEN
GEORGE M. McMILLAN

MEMBERS OF THE UTAH SUPREME COURT
ADVISORY COMMITTEE ON CIVIL PROCEDURE

Re: October Meeting

Dear Committee Members:

The next meeting of the Supreme Court Advisory Committee will be held on Wednesday, October 25, 1995, beginning at 4:00 p.m. at the Administrative Office of the Courts, 230 South 500 East, Salt Lake City, Utah. Please be prompt so that we may end by 5:30. Please let me, or my secretary Kay Rich, know if you will not be able to attend or will be late.

Please find enclosed a copy of minutes from Julie Fortuna. We once again express our appreciation for Julie's service as our secretary and recorder.

At our meeting on October 25, the matters we will discuss will be as follows:

1. We will consider proposed changes to Rule 11 to match recent changes in the Federal Rules of Civil Procedure. Please find enclosed a proposal and comparison prepared by Tim Shea in that regard.

2. We will consider a host of changes to Rules 3 and 4. Perrin Love, our subcommittee of one on that subject, will give us a report.

3. We will again consider changes to Rule 65B on extraordinary relief. I have enclosed again for your information a copy of a proposal from Lorenzo Miller of the Attorney General's office. In addition, we will hear from Christine Soltis who brings us another proposal. This is a topic of

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ADVISORY COMMITTEE ON CIVIL PROCEDURE
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continuing and, at this time, extraordinary interest; the Supreme Court and the Legislature have asked that we give these topics our special attention in advance of the legislative session.

4. We will again consider a proposal from Leslie Slauch of Provo on Rule 77's provisions for mailing of judgments and orders. I enclosed for your information another copy of that proposal.

5. We will consider a proposal for possible emergency rule-making on the fee requirements for writs of garnishment. Tim Shea will explain.

6. We will also consider whether we should recommend the adoption of a rule on appearances *pro hac vice*.

Finally, we will resume our discussion on changes in the state rules to coincide with changes in the federal rules on discovery.

I look forward to seeing all of you next Wednesday. In the meantime if you have any questions about our schedule or about the items on the agenda, I hope you will free to call me at any time.

Very truly yours,



Alan L. Sullivan

ALS/kr
Enclosure
cc:

Timothy Shea, Esq.
Julie Fortuna, Esq.
Christine Soltis, Esq.
Lorenzo Miller, Esq.

UTAH SUPREME COURT ADVISORY COMMITTEE
ON CIVIL PROCEDURE

AGENDA

October 25, 1995

1.

Welcome and approval of minutes (*A. Sullivan*)

2.

Rule 65B (extraordinary relief): Presentations by the Utah Attorney General's Office

- (a) Lorenzo K. Miller - Petitions from actions of by the Utah Board of Pardons & Parole
- (b) Christine F. Soltis - *Habeas corpus* petitions generally and legislation

3.

Rule 11 (signing of pleadings, etc.): Modifications of the rule (*T. Shea*)

4.

Rules 77 and 58A (notification of entry of orders and judgments): Discussion of the need for rule modification (*T. Shea and Judge Stirba*)

5.

Rule 64D (garnishments): Emergency modification of rule pending legislative action (*T. Shea*)

6.

Proposed new rule on appearances *pro hac vice* (*T. Shea*)

7.

Discovery rules discussion

MINUTES

**Utah Supreme Court Advisory Committee
on the Rules of Civil Procedure**

**Wednesday, October 26, 1995, 4:00 p.m.
Administrative Office of the Courts**

Alan L. Sullivan Presiding

PRESENT: Honorable Ronald N. Boyce, Honorable Boyd Bunnell, David K. Isom, Thomas R. Karrenberg, Terry S. Kogan, Terrie T. McIntosh, James R. Soper, Fran M. Wikstrom, Mary Anne Q. Wood

EXCUSED: W. Cullen Battle, M. Karlyn Hinman, Virginia S. Smith, Honorable Anne M. Stirba, Perrin R. Love, John L. Young, Glen C. Hanni

STAFF: Timothy M. Shea

GUESTS: Kim Christy, Ronald W. Gibson, Lorenzo Miller, Christine Soltis, David Yocom

I. WELCOME AND APPROVAL OF MINUTES

Change in meeting dates. The regularly scheduled meetings of the Committee on November 22 and December 27 are canceled. The next meeting of the committee is December 6 at 4:00 at the Administrative Office of the Courts.

Minutes. Alan Sullivan noted that the minutes of September 27 should be amended to refer to Rule 58A rather than Rule 68A. The committee approved the minutes as amended.

II. PROPOSED CHANGES TO RULE 11: PROPOSAL AND COMPARISON BY TIM SHEA

Rule 11. The committee considered amendments that would conform the state Rule 11 to the federal Rule 11. Ms. Wood stated that she did not care for the federal version. Mr. Karrenberg and Mr. Wikstrom stated that they had seen a reduction in the number of Rule 11 claims under the federal rule. Mr. Sullivan stated that the existing state rule is based on the old federal rule and that without amendments we lose the benefit of the federal case law. Mr. Kogan moved the adoption of the amendments. Mr. Karrenberg seconded the motion. The motion passed with Ms. Wood opposed. The committee directed Mr. Shea to circulate the final version to the committee for the next meeting. The committee will consider the effective date of the rule at the next meeting.

III. RULE 65B: PROPOSAL FROM LORENZO MILLER

Rule 65B(e). Lorenzo Miller reported that, because of legislation proposed by the Attorney General and the October 12 Supreme Court opinion in David Renn v. Board of Pardons, the AG requests that the committee table consideration of the proposed amendments to Rule 65B(e).

Rule 65B(b). Christine Soltis summarized the post conviction relief process. She reported that the Attorney General will propose legislation in the 1996 General Session that will provide for compensation of counsel appointed in capital post conviction cases in order to take advantage of federal legislation. The federal legislation enacts time restrictions and issue restrictions in post conviction cases in the federal courts if the state provides compensation for appointed counsel in capital post conviction cases in the state courts.

Ms. Soltis reported that the AG is not satisfied with the procedures of Rule 65B(b), nor with the application of Rule 65B(b). She stated that the courts are not uniform in their application of the rule; there is a problem with the provisions for service; some courts proceed immediately to an evidentiary hearing without considering whether there may be a procedural bar to the action; there is no uniform form for the petitions; inmates mix petitions regarding the conditions of confinement with petitions challenging the conviction or sentence. Ms. Soltis stated that the legislation tries to clarify the provisions of Rule 65B(b) rather than substantially alter them. The legislation provides for the payment of fees and costs. The legislation establishes time limits for the courts and provides for compensation for court appointed attorneys in capital cases.

Ms. Soltis stated that the AG was seeking legislation rather than a rule change because the federal government, the uniform act, and many states have statutes in this area.

Mr. Sullivan stated that the committee is always available to consider any proposal by the AG. Ms. Soltis will return on December 6.

IV. RULE 77: PROPOSAL FROM LESLIE SLAUGH

Rule 58A and Rule 77. Judge Stirba reported that the clerks in the Third District are mailing orders to those parties for whom they have received envelopes. The clerks are concerned that proposed changes may impose a burden on them. The clerks should not have to try to determine which parties to the case remain in the litigation at the time of distributing the order. Judge Bunnell pointed out that many times the order or judgment is filed with the judge rather than the clerk. Judge Stirba observed that there are no sanctions against a lawyer for non-compliance.

Mr. Sullivan suggested that the rules of appellate procedure be amended to provide that the time in which to file an appeal runs from the date of notice of the judgment rather than the date of entry of the judgment. Mr. Kogan suggested that Rule 60 be amended to provide that failure of a party to follow Rule 58A or Rule 77 is grounds to set aside the judgment. Judge Stirba suggested that the party submitting the order or judgment certify that copies of the order and envelopes were filed with the clerk. Mr. Karrenberg suggested that the party

submitting the order be required to include a fully prepared mailing certificate for the clerk to sign upon distribution.

Mr. Sullivan directed Mr. Shea to draft amendments to URCP 58A, 60, and 77, URAP 4, and CJA 4-504 as suggested by the members. The committee will consider the amendments and any suggestions by the clerks of court at its next meeting.

V. PRO HAC VICE: SHOULD THE COMMITTEE RECOMMEND ADOPTION?

Rule for appearance pro hac vice. Judge Bunnell pointed out that the URCP 5(b)(2) contains a provision similar to a pro hac vice rule. Committee members suggested that a rule should be more detailed, similar to the local federal rule 103-1. Mr. Shea was directed to compare provisions of other states and the federal rule and to propose a draft rule for the committee.

VI. CONCLUSION

There being no further business, Mr. Sullivan adjourned the Committee until the next meeting.