

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, January 22, 2003
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, David W. Scofield, R. Scott Waterfall, Francis J. Carney, Terrie T. McIntosh, Thomas R. Lee, Glenn C. Hanni, Paula Carr, W. Cullen Battle, Leslie W. Slaugh, Virginia S. Smith, Debora Threedy, James T. Branch, Honorable Lyle R. Anderson (via telephone conference)

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Thomas R. Karrenberg, Janet H. Smith, Todd M. Shaughnessy

GUESTS: Matty Branch

I. WELCOME AND APPROVAL OF MINUTES

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the December 18, 2002 meeting were reviewed and approved.

II. RECODIFICATION OF CODE OF JUDICIAL ADMINISTRATION INTO RULES OF CIVIL PROCEDURE

Prior to the meeting, W. Cullen Battle, Tim Shea, and Mr. Wikstrom (the "subcommittee") reviewed several items that had been under consideration at earlier meetings. Mr. Shea has now prepared and circulated a memorandum that presents several items identified as requiring additional consideration. Mr. Battle presented these items to the Committee for comments.

1. **Motions and Memoranda.** The state rules and federal rules differ as to which motions require no accompanying memorandum. Mr. Battle suggested that the current state rule, which excepts only uncontested and ex parte motions, be retained. There was no opposition.
2. **Time Limits for Filing Memoranda.** The federal rules provide different times for filing opposing and supporting memoranda on summary judgment motions and on other motions, whereas the state rules establish a uniform time for all

motions. The subcommittee recommends that the present state rule be retained. In response, Leslie Slauch pointed out that the Committee has expanded the page limit for summary judgment memoranda, and that this should be taken into consideration since a greater page limit may require a longer time for responding. James Blanch commented that although most timing issues can be worked out by counsel, it makes sense to allow more time for summary judgment motions. After discussion pro and con, Mr. Battle moved to retain the present time limits. Thomas Lee seconded the motion, which passed unanimously.

3. **Page Limits.** The Committee discussed its earlier decision to increase the page limits for summary judgment memoranda. The Committee's consensus was that its earlier decision should stand.
4. **Content of Memoranda.** Mr. Battle stated that there presently is no state rule regulating the content of memoranda, and asked whether the Committee believes that it is appropriate to mandate specific requirements. Mr. Lee commented that he does not believe that a blanket set of requirements is needed. After Glenn Hanni expressed his preference for requiring a Table of Authorities, Mr. Battle moved to require a Table of Contents and Table of Authorities if the argument exceeds ten pages. The motion was seconded by Glenn Hanni, and passed without opposition. Additional questions were posed for the subcommittee's consideration: (a) Should all evidence be attached to the memoranda, or is it sufficient to cite to the record? (b) Should there be a requirement to attach a proposed order with findings of fact and conclusions of law?
5. **Restating the Facts in Opposing Summary Judgment.** The state rules require the party opposing summary judgment to restate each of the movant's material facts to which the opposing party contends there is a genuine issue. Mr. Battle commented that, in his experience, this is rarely done. He asked whether the Committee should adopt the federal rule, which requires only restating the facts to which there is a dispute. Judge Lyle Anderson stated that he likes the state rule, since it is difficult for judges to move back and forth between memoranda to determine which facts are opposed or unopposed. The consensus was that the state rule should be retained.
6. **Citation of Supplemental Authority.** Mr. Battle stated that the subcommittee believes that a rule on supplemental authority is not needed. Mr. Wikstrom commented that a rule is not needed because counsel will find a way to cite new precedent if it comes up.
7. **Hearings on Motions.** Mr. Battle stated that at the present time, the only way to request a hearing is in the Notice to Submit for decision. Committee members suggested other ways to include in the rules a request for a hearing, including

placing it in the reply memorandum or in the opposing memorandum. Mr. Blanch suggested also including a provision where the court could schedule a hearing on its own motion. Mr. Lee asked whether a hearing on a motion is waived if it is not specifically requested. Mr. Slaugh stated that he likes the language as it is, which implies that a hearing is waived if it is not requested. Judge Anderson asked whether judges should have more discretion in denying requests for hearings. In response, Mr. Hanni stated that oral argument is a fundamental and integral part of the legal system. If a party requests it, even if the judge does not want it, a hearing should be permitted. He further commented that this is such a fundamental right that the Committee should do everything it can to preserve it. No consensus was reached on this issue.

III. STYLE AND GRAMMAR CHANGES

The Committee members then made specific suggestions for style and grammar changes in rules that have already been considered.

After suggestions by Mr. Lee, Mr. Slaugh, and Frank Carney, the subcommittee agreed that it would work on language as to how facts should be opposed. Mr. Lee agreed to prepare a preliminary draft on this issue and submit it to the subcommittee.

Mr. Slaugh agreed to work on the language of Rule 75, including language about attorneys' fees for prosecuting **or** defending an action.

IV. 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, February 26, 2003, at the Administrative Office of the Courts.