

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, January 28, 2004
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Glenn C. Hanni, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Thomas R. Karrenberg, R. Scott Waterfall, David W. Scofield, Francis J. Carney, Terrie T. McIntosh, Debora Threedy, Paula Carr, W. Cullen Battle, Janet H. Smith, Todd M. Shaughnessy, Leslie W. Slaugh, Virginia S. Smith, James T. Blanch, Honorable Lyle R. Anderson (via telephone)

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Thomas R. Lee, Honorable David Nuffer

GUESTS: None

I. APPROVAL OF MINUTES.

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the December 18, 2003 meeting were reviewed, and R. Scott Waterfall moved that they be approved as written. The motion was seconded and approved unanimously.

II. RULE 65B. REQUEST BY CLIFTON PANOS.

Clifton Panos has submitted letters to Tim Shea and Mr. Wikstrom commenting on Rule 65B, and these letters were circulated to all Committee members before today's meeting. After discussion, a motion was made that after considering Mr. Panos' comments and suggestions regarding Rule 65B, the Committee has decided to take no action. The motion was seconded and approved unanimously.

III. COMMENTS TO AMENDMENTS.

Prior to today's meeting, Mr. Shea compiled the comments to recent amendments along with his own recommendations where applicable, and provided these to Committee members. Mr. Shea and Mr. Wikstrom led the Committee in a discussion of these comments.

A. SMALL CLAIMS RULES.

1. RULE 3.

In response to a comment by Judge Elayne Storrs, it was agreed that the requirement of an affidavit should be included in this Rule.

2. RULE 4.

The issue of res judicata was raised and discussed. A recent case from the Court of Appeals dealing with small claims actions was also mentioned, and there was a discussion about whether that case would effect the amendment. After consideration of the res judicata issue and the Court of Appeals case, it was moved and seconded that the Rule be left as amended. The motion carried, with two members voting no.

3. RULE 6.

After the issue of discovery in small claims cases was discussed, it was agreed that Rule 6 would remain as amended. Mr. Shea commented that there may be a proposal before the legislature to require parties in small claims actions to exchange evidence before trial, but this has not been decided.

4. APPROVAL OF SMALL CLAIMS RULES.

After all comments were considered and discussed, Thomas Karrenberg moved that all Small Claims Rules be submitted as proposed by the Committee. The motion was seconded and approved unanimously.

B. OTHER RULES.

1. URCP 6.

It was agreed to leave this Rule as amended.

2. URCP 7.

In response to comments received, Mr. Shea has changed Rule 7 (p. 56, line 25), to state that this Rule will also apply to proceedings before commissioners. It was agreed that this should be done.

The Committee discussed other aspects of Rule 7, including whether memoranda should be required in cases before commissioners, proposed orders, and the increase in the page limit for summary judgment memoranda.

Judge Anthony Quinn commented that the commissioners feel very strongly that

memoranda should not be required in cases before them and believe that it will tie up cases. Judge Anthony Schofield noted that orders to show cause are sometimes filed in cases before commissioners, when they actually are motions, but that commissioners do not want to require memoranda in all situations. Leslie Slauch commented that orders to show cause are typically filed in order to get a quick ruling without going through the typical process. Mr. Shea pointed out that the wording of the Rule would require a motion any time a party is requesting relief. Several Committee members expressed concern that the domestic bar will not understand from this Rule that they must file a motion. Francis Carney noted that his concern is that commissioners were exempt from old URJP 4-501 but required to comply with old Rule 7, and the amendment would alter that.

After extensive discussion, a motion was made that the Rule be adopted as written regarding memoranda, with the proviso that this Committee develop rules applicable to practice before the commissioners. The motion was seconded, and carried with two Committee members voting no.

Proposed orders under Rule 7 were discussed. With regard to commissioners' orders, it was agreed to change "minute entry" to "date of service of subsequent written recommendation." After discussion, Scott Waterfall moved that the changes to Rule 7 that are proposed on pp. 58 and 59 of today's materials be approved, so that a proposed order would not be served until an objection was served or the time to object had expired. The motion was seconded and approved unanimously.

Judge Quinn then raised the issue of whether to retain the previously adopted 25-page limit for summary judgment memoranda. Referring to Third District Judge Robert Hilder's comment requesting that the 10-page limit be reinstated, Judge Quinn stated that most judges in the Third District are opposed to changing the page limit to 25 pages, with a major concern being the Third District's very heavy caseloads with very little law clerk assistance. There is a concern that the additional pages allowed will further bog down the process, and will also encourage unnecessarily lengthy memoranda.

Mr. Shea stated that since Rule 7 is already in effect, it will take an amendment to change the page limit. Most Committee members expressed opinions either for or against the increase to 25 pages, with many stating that they prefer to defer to the judges' opinions on page limits. After extension discussion, Judge Quinn moved to amend the rule to allow only 10 pages for summary judgment memoranda. The motion was seconded, and rejected. The vote was 8 in favor of returning to the 10-page limit, with 9 opposed. The Committee agreed to revisit this issue in one year, and solicit comments at that time from judges as to how the 25-page limit is working out in practice.

In light of the judges' concerns, the Committee also asked that a comment be included in the Minutes stating that it is troubling to the Committee that there are insufficient resources to allow for assistance with judges' case loads. This is particularly true with regard to financial resources that would enable judges to hire law clerks.

3. RULE 24.

The Attorney General had previously supported language in Rule 24 which would require that the party challenging the constitutionality of a statute notify the Attorney General, which then might choose to intervene. The Attorney General's office has now submitted a comment objecting to this language, and stating that the State's interest regarding constitutionality of statutes is adequately protected by statute. The Committee discussed this issue, with several members stating that even though the notification requirement is already contained in a statute, it should also be included in the Rule. It was pointed out that the Rule does not require the Attorney General to intervene, and only allows it. After further discussion, Debora Threedy moved that the last sentences of Rule 24(d)(1) and -(2) be deleted. The motion was seconded, and carried.

4. RULE 56.

Todd Shaughnessy expressed concern that Rule 56 as presently written would no longer require that an affidavit be submitted in support of a Rule 56(f) motion. Mr. Shea stated that the intent of the amendment was to simplify language and not to remove the requirement of an affidavit. Mr. Shaughnessy then moved that the language of Rule 56(f) track the language of Fed.R.Civ.P. 56(f). The motion was seconded, and carried unanimously.

5. RULE 64D.

In response to comments, Mr. Shea has proposed changes which would include both "Office of Recovery Services" and "Department of Workforce Services" in the language of Rule 64D. Mr. Shea's proposed changes were adopted by consensus.

6. RULE 68.

Several comments were received concerning Rule 68, with most comments being that the Rule should apply equally to both plaintiffs and defendants. Mr. Shea stated that he has proposed language that would make the Rule reciprocal. After discussion, a motion was made that Mr. Shea's proposed language be rejected and that the Rule remain as previously written. The motion was seconded, and carried.

7. RULE 74.

Judge Michael Lyon has recommended the following amendments to proposed Rule 74: (1) attorneys filing motions to withdraw must affirmatively state whether there is a pending motion or trial or certificate of readiness for trial filed, the pending dates for such matters, and the reason(s) for the motion; (2) withdrawing attorneys must provide opposing counsel with his or her client's most current address. Thomas Karrenberg moved that the Committee approve the changes proposed by Judge Lyon. The motion was seconded and carried.

8. RULE 101.

Based on the comment of Commissioner Michael Evans, Mr. Shea moved that Rule 101 be deleted in its entirety. The motion was seconded, and carried.

9. RULE 106.

Commissioner Lyon has submitted a comment suggesting that the phrase “or motion” be added to the following language in Rule 106: “No request to modify a decree shall be raised by an order to show cause.” Mr. Shea suggested that, rather than listing ways in which one may *not* raise a modification of a divorce decree, the language regarding prohibition be deleted so that the Rule retain only the affirmative requirement that modification be made by petition. Judge Schofield moved to adopt Mr. Shea’s proposed change. The motion was seconded, and carried.

10. APPROVAL OF OTHER RULES.

After discussion of these Rules, Cullen Battle moved that the Committee approve all amendments as approved in today’s meeting. Glenn Hanni seconded the motion, which was approved unanimously.

IV. RULE 47. COMMUNICATION WITH JURORS.

The Committee discussed Rule 47, regarding communications with jurors. The term “not form an opinion” was discussed, with Mr. Battle asking how that requirement can be enforced. He noted that jurors can be admonished not to express an opinion and/or to keep an open mind, but making it obligatory not to “form” an opinion is difficult. The Committee also discussed whether it could be a claim of error if the jury is not instructed at every break not to discuss the case. In light of the late hour, it was agreed that this issue will be placed on the agenda for the next meeting.

V. ADJOURNMENT.

The meeting adjourned at 6:05 p.m. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, February 24, 2004, at the Administrative Office of the Courts.