

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, March 24, 2004
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, David W. Scofield, Francis J. Carney, Glenn C. Hanni, Cullen Battle, Janet H. Smith, R. Scott Waterfall, Terrie T. McIntosh, Paula Carr, Thomas R. Lee, Todd M. Shaughnessy, Virginia S. Smith, James T. Blanch, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn, Honorable Lyle R. Anderson, Honorable David Nuffer

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Thomas R. Karrenberg, Leslie W. Slaugh, Debora Threedy

GUESTS: Matty Branch
Bob Goodman

I. APPROVAL OF MINUTES.

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the February 26, 2004 meeting were reviewed and R. Scott Waterfall moved that they be approved as written. The Motion was seconded by James Blanch, and approved unanimously.

II. RULE 47. COMMUNICATION WITH JURORS.

The Committee discussed proposed amendments to Rule 47. Mr. Waterfall raised the issue of the meaning of "challenge" in subsection (c), in the context of challenging an entire venire. Referring to the rule, Judge Lyle Anderson commented that judges have discretion to allow additional challenges when there are multiple defendants with adverse interests. Other members pointed out that there may potentially be ambiguity in subsection (e) regarding peremptory challenges.

After discussion, it was agreed that further work on this rule is needed. Frank Carney agreed to review case law and then work on the rule in light of those cases. The Committee then will discuss Rule 47 again at a later date.

III. RULE 51. INSTRUCTIONS TO JURY; OBJECTIONS.

The proposed amendments to Rule 51 were reviewed. Tim Shea stated that the intent of the amendments is to give judges discretion as to whether to repeat all instructions at the end of the case, when all instructions have already been given throughout the course of the case. Mr. Shea stated that the Advisory Committee on the Rules of Criminal Procedure has decided to table the comparable rule in the Criminal Procedure Rules because there have been petitions for certiorari filed in several cases dealing with this issue.

The Committee discussed various issues regarding Rule 51, including whether there is a need to include a distinction between providing copies of substantive rules as opposed to procedural rules, and whether there is a need for language stating that a copy of the rules “shall” be provided to any juror who requests one. It was moved and seconded that the second sentence of subsection (e) be deleted. The Motion passed by majority vote, with two members voting against. It was also agreed that references to “oral” rules will be deleted.

Judge David Nuffer and Judge Anderson expressed concern that if this rule states that all instructions must be in writing, there might be an appealable issue if a judge makes a verbal comment during trial since this might raise the issue of whether the judge’s statement is an instruction as opposed to simply an admonishment.

Other members also made comments and pointed out concerns with Rule 51. After extensive discussion, it was agreed that the Committee would like more time to review this rule, and accordingly will not publish it for comment at the next cycle.

IV. REMEDIES RULES.

The Committee reviewed the final versions of the remedies rules, and made comments and pointed out concerns. Thomas Lee recommended moving subsection (e) to the end of subsection (b), and it was agreed to make this change. It was also agreed that requirements that are statutory can be included in the rules by referencing the statute.

Mr. Shea referred to the garnishment language of Rule 65D shown in italics on p. 33, and stated that the concept behind this is that only one continuing garnishment against a person can be ongoing at any one time. Mr. Shea asked opinions on this language. Judge Nuffer stated that he believes the italicized language is needed, and it was agreed that it should be included in the rule. Mr. Shea will work on the language to find a more efficient way to say the same thing, and then will move this language to the “general” section. It was also agreed that the language of Rule 64D at line 24, page 33, will be changed from “in favor of the state of Utah,” so that it is limited to the two agencies in Utah permitted to do this.

In addition to the above, Committee members suggested minor changes in punctuation and wording, which were adopted. These include: (a) using “junior” instead of “subsequent” at

line 12 on page 38; and (b) deleting “interest” after “6 percent” on line 29, page 38 (Rule 69C).

Virginia Smith moved that the remedies rules be submitted for comment after the inclusion of all changes adopted at today’s meeting. Mr. Lee seconded the Motion, which was approved unanimously. Mr. Wikstrom instructed that when these rules are submitted for comment, a special note is to be included to draw attention to them in hopes that Bar members will make an effort to carefully review the rules and proposed amendments.

V. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. Due to its desire to complete work on the remedies rules at today’s meeting, the Committee has deferred discussion of Rule 26 and Rule 73 to a later date. The next meeting of the Committee will be held at 4:00 p.m. on Wednesday, April 28, 2004, at the Administrative Office of the Courts.

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