

# MINUTES

## UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, January 26, 2005  
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

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

STAFF: Tim Shea, Judith Wolferts

EXCUSED: Honorable Anthony B. Quinn, Thomas R. Karrenberg, James T. Blanch

GUESTS: Representative LaVar Christensen  
Ralph Dewsnup  
Edward Havas  
Paul Belnap  
Rick Schwermer  
John Lund  
Matty Branch

### I. APPROVAL OF MINUTES.

Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. The minutes of the November 17, 2004 meeting were reviewed, and R. Scott Waterfall moved that they be approved as submitted. The Motion was seconded by Leslie W. Slaugh, and approved unanimously.

### II. APPROVAL OF PROPOSED RULES 51 AND 62 BY SUPREME COURT.

Mr. Wikstrom reported on his meeting with the Supreme Court concerning proposed amendments. The Court approved proposed Rule 62 under its emergency rules. The Court also approved proposed Rule 51 with a minor change, which will make clear that jury instructions given during the course of the trial need not be repeated at the end of trial.

### **III. RULE 9. SB 10. DESIGNATION OF PERSONS CHARGED WITH FAULT.**

Mr. Wikstrom reported that the Supreme Court has not yet made a decision regarding the proposed amendment to Rule 9. This deferral is in anticipation of this Committee considering the proposed rule once again in light of proposed legislation contained in SB 10 that also addresses the process for designating persons who may be charged with fault. Mr. Wikstrom stated that a concern with amending only Rule 9 is that the Utah Rules of Civil Procedure do not apply in federal court, whereas if the proposed amendment is also dealt with by statute, it would be applied by both state and federal courts. This will make application consistent.

Mr. Wikstrom introduced Ralph Dewsnup, who provided background on SB 10. Mr. Dewsnup stated that SB 10 already was in the drafting process at the time the legislature learned that this Committee was also considering an amendment that would deal with designating persons charged with fault. By that time, the legislature had already met with both plaintiffs' and defense lawyers and come to an agreement on language. He stated that the legislature believes that it is proper to clarify this provision of the law by statute since there presently is nothing that deals with the timeliness of designating persons for purposes of allocating fault. Mr. Dewsnup also stated that the legislature is willing to work with the Committee to assure the consistency of requirements and language in SB 10 and proposed Rule 9.

The Committee and visitors discussed various aspects of SB 10 and proposed Rule 9, and proposed various modifications to make proposed Rule 9 and SB 10 consistent. After extensive discussion, it was moved and seconded to approve Rule 9 as amended in today's meeting. The motion passed unanimously.

### **IV. AMENDMENT TO RULE 26.**

A proposal was made to amend Rule 26(f)(2) to reflect the proposed amendment to Rule 9. After discussion, Mr. Waterfall moved that the amendment be approved. The motion was seconded and approved unanimously.

### **V. RULE 68. OFFER OF JUDGMENT.**

Mr. Wikstrom introduced Representative LaVar Christensen, who had asked to address the Committee regarding his concerns that Rule 68 is not bilateral in that it deals only with offers of judgment by a defendant. Rep. Christensen, who is a member of the Utah Bar and who has also practiced law in California, recommended that the Committee review and consider adopting an amendment similar to the California equivalent to Rule 68.

The Committee discussed the potential for including a plaintiff's settlement offer in Rule 68, including the potential for devising a proposed rule that is costs-based and bilateral. Mr. Wikstrom asked the staff to work on a draft of Rule 68 that is bilateral, and requested that Rep. Christensen be kept informed of progress.

**VI. SMALL CLAIMS RULE 6; PRETRIAL. SMALL CLAIMS RULE 9; DEFAULT JUDGMENT.**

The Committee rejected a proposed change to small claims Rule 6, which would have made it mandatory that parties in small claims actions exchange information prior to trial. The language which was retained states that the parties “are urged to exchange information prior to trial.”

After discussion, the Committee agreed to amend small claims Rule 9(c) to state that “the appearing party shall promptly serve the default judgment on the non-appearing party.”

**VII. 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 23, 2005, at the Administrative Office of the Courts.