

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, July 27, 2005
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Francis J. Carney, James T. Blanch, Honorable David Nuffer, Virginia S. Smith, R. Scott Waterfall, Paula Carr, Debora Threedy, Todd M. Shaughnessy, Terrie T. McIntosh

EXCUSED: Honorable Anthony W. Schofield, Matty Branch, Lance Long, Honorable Anthony B. Quinn, David W. Scofield, Janet H. Smith, Tom Lee, Cullen Battle, Leslie W. Slaugh, Honorable Lyle R. Anderson, Thomas R. Karrenberg

STAFF: Tim Shea, Trystan Smith

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:05 p.m. Mr. Wikstrom thanked Lance Long for his service during Mr. Lee's absence. Mr. Wikstrom entertained a motion to approve the May 25, 2005 minutes as submitted. The Committee unanimously approved the minutes.

II. COMMENTS TO DRAFT RULES. FINAL RECOMMENDATIONS.

Mr. Shea presented the comments to the proposed amendments of Rules 7, 9, 26, 47, 62, and 101.

The sole comment to Rule 7 suggested an increase of the pages limits from 10 pages to 15-20 pages. After a brief discussion, the comment received no support from the Committee.

The Committee noted two comments supporting the amendments to Rules 9 and 26.

The Committee revised the third sentence of Rule 47(e) to include a period after "three peremptory challenges" striking the remainder of the sentence.

Mr. Slaugh (via email) suggested the Committee delete the phrase "with a response" from the third sentence of Rule 101(d)(1). Mr. Slaugh indicated the language as stated implied there would be two documents filed to oppose a motion — a response and a memorandum. The Committee discussed striking in their entirety the second and third sentences of Rule 101(d)(1).

Next, the Committee examined Rule 101(b). The Committee discussed whether a moving party should serve the opposing party or his/her counsel if more than 90 days passed

since entry of the most recent appealable order. Judge Nuffer indicated many domestic practitioners withdraw their representation immediately after a Decree of Divorce is entered. The Rule as proposed would require a moving party to serve an opposing party directly if more than 90 days passed since entry of a Decree of Divorce or last appealable order. This would avoid the need for counsel to attempt to locate previous clients.

Judge Nuffer suggested a revision to the last two sentences of subsection (b): “If service is more than 90 days after the date of entry of the most recent appealable order, service may not be made through counsel.” The Committee with the exception of Mr. Blanch expressed support for the revision.

Mr. Shea suggested the Committee revise the language of the second sentence of Rule 106(b)(1) to state: “The Court may make the modification retroactive to the date on which the petition was filed and served.” The Committee discussed the different time periods associated with when a petition is filed as opposed to served. Mr. Wikstrom suggested the Committee replace “filed” with “served.” The Committee supported Mr. Wikstrom’s suggestion.

Finally, Mr. Shea suggested the second sentence of Rule 106(a) should be revised to state: “Service of the petition, or motion *pursuant to Utah Code Ann. 30-3-37*, and summons upon the opposing party shall be in accordance with Rule 4.” The Committee expressed its approval to the revision.

After discussion of the comments to the proposed amendments and consideration of the above revisions and modifications, Mr. Carney moved to approve the proposed amendments for Rules 7, 9, 26, 47, 62, and 101. Mr. Blanch seconded the motion, and the motion was unanimously approved.

III. RULE 45. SUBPOENA

Mr. Wikstrom suggested the Committee table discussion of Rule 45 for September’s meeting.

IV. RULE 71B. PROCEEDINGS WHERE PARTIES NOT SUMMONED

Mr. Shea brought Rule 71B before the Committee. Mr. Shea indicated the Third District Court asked for clarification regarding the process to be followed when presented with a pleading seeking relief under the Rule.

Mr. Wikstrom indicated his concerns relative to the language in Rule 71B(b) which seemed to require a party not originally served to show cause why he should not be bound by a judgment entered against a co-defendant. Several Committee members indicated the rule and the process seemed antiquated. The Committee asked Mr. Shea to trace the history of the rule and report back for further discussion at September’s meeting.

V. RULE 6(e).

Judge Nuffer brought Rule 6(e) to the Committee. Judge Nuffer suggested an amendment to Rule 6(e) to allow the identical 3 days of additional time after electronic service that we now allow for service by mail. The proposed amendment would be consistent with the federal rules.

Mr. Wikstrom asked the Committee to table the proposed amendment and discussion thereon for September's meeting.

VII. ADJOURNMENT.

The meeting adjourned at 5:05 p.m. The next committee meeting will be held on Wednesday, September 21, 2005, at the Administrative Office of the Courts.

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