

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, May 24, 2006
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slaugh, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Janet H. Smith, Jonathan Hafen, Thomas R. Lee, Virginia S. Smith, Judge R. Scott Waterfall, David W. Scofield, Cullen Battle

EXCUSED: Thomas R. Karrenberg, James T. Blanch, Todd M. Shaughnessy, Honorable Anthony B. Quinn, Honorable Anthony W. Schofield, Debora Threedy, Lori Woffinden

STAFF: Tim Shea, Matty Branch, Trystan B. Smith

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m. Mr. Waterfall moved to approve the April 26, 2006 minutes as submitted. The committee unanimously approved the minutes.

II. SANCTIONS. RULES 16, 35 AND 37.

Mr. Wikstrom asked the committee to revisit Rules 16, 35, and 37 at the next meeting.

III. LIMITED APPEARANCE RULES. RULES 5, 11, 74 AND 75.

Mr. Hafen brought the unbundling rules back to the committee.

Mr. Wikstrom entertained comments regarding the proposed revisions to Rule 5. Seeing none, Mr. Wikstrom asked for comments regarding the proposed revisions to Rule 11.

As for Rule 11, Judge Nuffer suggested that for the sake of clarity the committee use the same phrase as stated in subsection (b) — “pleading, written motion, or other paper” — in the proposed subsection (c) which defines “present.” Judge Nuffer also suggested replacing the word “client” with “party” in the proposed subsection (c).

Mr. Battle questioned why the committee needed to alter Rule 11. The committee discussed the merits of amending Rule 11 and their concern with unintended consequences.

Mr. Wikstrom gauged the committee's interest in amending Rule 11. Seeing no interest, the committee agreed to leave Rule 11 as is, but indicated it may revisit Rule 11 depending on future feedback. The committee further indicated that if it chose to revisit Rule 11, it would address any future amendment with the changes previously agreed to.

As for Rule 74, the committee discussed replacing the word "may" with "shall" in subsection (b). The committee discussed the pros and cons of giving counsel discretion to file a withdrawal. After discussion, the committee agreed that a withdrawal should be mandatory.

As for Rule 75, Mr. Hafen indicated that the list (a)(1) - (6) was intended to be formulaic and limit the purposes for which an attorney could enter a limited appearance.

Ms. Branch suggested replacing "client" with "party" in subsection (a). The committee agreed with the recommendation.

Mr. Wikstrom suggested amending Rule 75 (a)(2) to state "*acting as counsel for a specific motion or motions.*"

Mr. Scofield recommended deleting the word "filing" in subsection (a)(2) so it would state "arguing a specific motion or motions."

Mr. Wikstrom suggested replacing "filing or arguing" with "handling" in subsection (a)(2) and deleting "or motions" in subsection (a)(2). After discussion, the committee agreed to replace "filing or arguing" with "acting as counsel."

Ms. Janet Smith recommended replacing the phrase "conducting one or more" in subsection (a)(3) with "participating." After discussion, the committee agreed to replace "conducting one or more" with "acting as counsel."

Ms. Janet Smith also recommended replacing the phrase "acting as counsel for" with "participating in" in subsection (a)(4). After discussion, the committee decided it would not revise (a)(4).

Mr. Shea recommended deleting subsection (a)(5) and allowing the Appellate Committee to address appeals in the context of limited appearances. The committee agreed with the recommendation.

Mr. Wikstrom suggested amending (a)(6) to state "*with any other purpose with leave of court.*"

Mr. Battle suggested a revision to subsection (b) to state, "Prior to the commencement of the limited appearance, the attorney shall file a Notice of Limited Appearance signed by the attorney and the party." The committee agreed with the suggested revision.

The committee voted unanimously to approve Rule 5 as written, and Rules 74 and 75 as revised above.

IV. FINALITY OF JUDGMENTS. RULE 7.

Mr. Slaugh brought Rule 7 back to the committee.

Mr. Slaugh revised proposed Rule 7 to clarify that unless a written ruling is signed by the Court and expressly states that no further order is needed, there is no final order.

The committee thoroughly discussed how to protect practitioners and clarify in what context a written ruling becomes a final order. The committee indicated that an oral ruling never constitutes a final order, the proposed amendment only refers to written rulings.

The committee debated whether it should address an amendment to the Rules to address, when, and if, a written ruling becomes a final order. It discussed whether it should address the issue in Rule 54 or Rule 7, or whether the Appellate Committee should address the issue. The committee agreed it should address the issue with the Rules of Civil Procedure. The committee further agreed it should start anew and consider a revision to Rule 7 to address the issue.

The committee also agreed to revise subsection (f)(2) to clarify how a proposed Order and any objections thereto should be submitted to the Court. Mr. Wikstrom asked Mr. Shea to bring back a suggested revision to subsection (f)(2).

V. DERIVATIVE ACTIONS BY SHAREHOLDERS. RULE 23.1.

Mr. Wikstrom asked the committee to examine Rule 23.1 at the next meeting.

VI. MOTIONS TO RECONSIDER. RULES 59 AND 60.

Mr. Wikstrom brought Rules 59 and 60 to the committee's attention.

The committee indicated there was no need to address Rules 59 and 60 in light of the Supreme Court's *Gillett v. Price* decision filed April 28, 2006. The committee also agreed that Rules 59 and 60 contained appropriate remedies for a party wanting to file post-judgment motions. The committee members further indicated that the proper rule for a party to seek reconsideration of a dispositive motion is through a Motion for New Trial under Rule 59, even though a Motion for New Trial may be an inaccurate description.

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, June 28, 2006, at the Administrative Office of the Courts.