

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, January 24, 2007
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Honorable Anthony B. Quinn, Terrie T. McIntosh, Leslie W. Slaugh, James T. Blanch, Todd M. Shaughnessy, Honorable Anthony W. Schofield, Honorable David O. Nuffer, Jonathan Hafen, Thomas R. Lee, Judge R. Scott Waterfall, Barbara Townsend, Steven Marsden, Lori Woffinden

EXCUSED: Debora Threedy, Francis J. Carney, Honorable Lyle R. Anderson, Janet H. Smith, David W. Scofield, Cullen Battle

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

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m. Judge Nuffer noted a change to the November 29, 2006 minutes concerning Rule 26(b)(5)(B). Under subsection (B), “a party *may* produce material without reviewing the production for privilege.” Judge Waterfall moved to approve the November 29, 2006 minutes with the change noted by Judge Nuffer. The committee unanimously approved the minutes with the suggested change.

II. REQUEST FROM SUPREME COURT: RESEARCH THE EFFECTS OF THE DISCOVERY AMENDMENTS.

The Utah Supreme Court requested the committee poll the members of the Bar concerning their impressions of the amendments to the discovery rules. Mr. Slaugh agreed to create an initial draft of questions for the poll. Mr. Wikstrom asked that the committee consider the contents of the poll at the next meeting.

III. RULE 45 SUBPOENA.

Mr. Shea brought Rule 45 back to the committee. Mr. Shea indicated the committee approved the e-discovery revisions, but did not approve the remaining revisions to Rule 45.

Judge Nuffer expressed concern that the “prior notice” language was insufficient. He shared with the committee the federal rule requirement of at least five (5) days notice prior to service of a subpoena on a nonparty. The committee again debated the need for additional notice time. However, the committee declined to adopt a specific prior notice time period.

Mr. Shea suggested revising Rule 45(b)(3) to state “other method of actual notice *before serving* the subpoena.” Mr. Slaugh recommended revising the third sentence of Rule 45(e)(5) to state “[a]n order *compelling* compliance.” The committee agreed with the suggested changes. Judge Waterfall moved to approve Rule 45 with the suggested changes. The committee unanimously approved the revisions to Rule 45. Mr. Shea indicated that Rule 45 with the committee’s current revisions and the e-discovery revisions would be republished for comment.

IV. STYLE AMENDMENTS TO FRCP.

Mr. Hafen brought the proposed style amendments to the Federal Rules of Civil Procedure to the committee. He indicated the style amendments were designed to make the rules easier to understand, but were not intended to make substantive changes. He further noted the style amendments were recently submitted to the U.S. Supreme Court for approval. Mr. Hafen suggested the committee consider analyzing the style amendments to the federal rules to determine if the committee should make similar changes to the state rules.

Mr. Wikstrom asked the committee to review the preamble to the style amendments, pick three or four rules, and consider if the committee should make similar changes. Judge Quinn recommended the committee first consider revising the state rules which are identical or substantially similar to the federal rules. Judge Schofield volunteered to have an intern review the style amendments and compare which state rules were identical or substantially similar to the federal rules for the committee’s consideration.

V. ADJOURNMENT.

The meeting adjourned at 4:55 p.m. The next meeting of the committee will be held at 4:00 p.m. on Wednesday, March 28, 2007, at the Administrative Office of the Courts.