

# MINUTES

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

Wednesday, March 28, 2007  
Administrative Office of the Courts

Tim Shea, Presiding

PRESENT: James T. Blanch, Terrie T. McIntosh, Leslie W. Slaugh, Honorable David O. Nuffer, Jonathan Hafen, Thomas R. Lee, Judge R. Scott Waterfall, Cullen Battle, Barbara Townsend, Steven Marsden, Honorable Anthony W. Schofield, Honorable Anthony B. Quinn

EXCUSED: Francis M. Wikstrom, Francis J. Carney, Todd M. Shaughnessy, David W. Scofield, Honorable Lyle R. Anderson, Janet H. Smith, Debora Threedy, Lori Woffinden, Matty Branch

STAFF: Tim Shea, Trystan B. Smith

### I. APPROVAL OF MINUTES.

Mr. Shea called the meeting to order at 4:00 p.m. Judge Quinn moved to approve the January 24, 2007 minutes as approved. The committee unanimously approved the minutes.

### II. RULE 4. SERVICE BY PRIVATE INVESTIGATORS (HB385); RULE 4. SIGNING FOR MAIL SERVICE.

Mr. Shea brought Rule 4 to the committee. Mr. Ashton a local private investigator requested the committee (1) specifically identify private investigators under Rule 4 as people who may serve a summons and complaint, (2) permit an investigator to show proof of service by an unsworn statement, (3) regulate service of process at gated communities, and post office boxes, and (4) allow service of process by the alternative "nail and mail" method.

Mr. Shea indicated the Legislature this session considered the requested changes, but chose not to adopt the changes. The committee after discussion did not feel it was necessary to adopt the requested changes.

The committee also considered and rejected the suggestion by a member of the bar that Rule 4 be amended to expand the manner in which service by mail is allowed. The committee felt the suggested change was unnecessary.

### **III. RULE 11. SANCTIONS FOR UNCIVIL MATERIALS.**

Mr. Shea brought Rule 11 to the committee. The Supreme Court requested the committee consider amending the Rules of Civil Procedure to include the language contained in Rule 24(k) of the Rules of Appellate Procedure regarding civility.

Mr. Shea suggested including language in Rule 11, which in summary would prohibit burdensome, irrelevant, immaterial, scandalous and uncivil matters from written submissions, and also allow a trial court to assess fees against the offending lawyer. Mr. Lee and Mr. Hafen suggested the proposed language may be too ambiguous, and undermine the remaining language of Rule 11. Mr. Lee suggested perhaps expanding the language of Rule 12(f).

The committee noted the trial court may have inherent authority to strike uncivil materials and sanction counsel, but there was no explicit language allowing it. The committee debated whether the language in Rule 24(k) should be included under a separate rule instead of as a part of an existing rule, perhaps Rule 11A.

Judge Nuffer suggested the proposed rule contemplates a more severe context than those matters currently addressed in Rule 11.

The committee noted the explicit language of Rule 24(k), and further noted that Rule 11 does not address oral representations.

The committee indicated its desire to draft a proposed Rule 11A incorporating the civility language.

The committee debated whether the language should speak not only to a “pleading written motions, and other papers,” but also oral arguments. The committee discussed whether the proposed rule should include a safe harbor provision similar to that in Rule 11. The committee also discussed granting trial courts the authority to *sua sponte* invoke the sanctions of the proposed rule.

The committee indicated their desire for Mr. Shea to draft a proposed Rule 11A.

### **IV. RULE 74. COURT APPROVAL TO WITHDRAW BEFORE MEDIATION.**

Mr. Shea brought Rule 74 to the committee. Mr. Shea noted a suggested change from a member of the public requiring lawyers to comply with the provisions of Rule 74 if a hearing, trial, or [mediation] is pending.

The committee considered the change, but felt the change was unnecessary.

### **V. RULE 108. MOTION FOR TEMPORARY ORDER.**

Mr. Shea drafted a proposed new rule, Rule 108, to the committee. Mr. Shea indicated

a practice has developed in the domestic setting of parties filing a motion for an order to show cause to seek temporary orders. Mr. Shea indicated orders to show cause should be limited to circumstances where a party has violated a court order.

Mr. Slaugh indicated the issue is not only limited to domestic practices, but suggested the rule may be better suited in Rule 7. Judge Quinn indicated a rule change was unnecessary, but believed the matter should be addressed through training practitioners.

Judge Quinn moved that the committee table the adoption of the proposed Rule 108. After discussion, the committee rejected the motion.

Judge Nuffer moved that the committee include the proposed language in a revision to Rule 7, and that Mr. Shea create proposed language for the committee's consideration. The committee unanimously approved the motion.

#### **VI. RULE 8. FALSE WRITING UNDER PENALTY OF LAW.**

Mr. Shea brought Rule 8 to the committee. Mr. Shea indicated that recent legislation was passed penalizing the issuance of a false writing as a Class B Misdemeanor. After a brief discussion, the committee decided it no longer needed to address a change to Rule 8.

#### **VII. SURVEY REGARDING DISCOVERY AMENDMENTS.**

Mr. Slaugh presented a series of draft questions for the bar survey regarding the 1999 discovery rules amendments.

The committee discussed whether the survey should refer to the "1999" discovery rules amendments. The committee also discussed whether it should consider responses from bar members admitted after 1999. The committee agreed with the proposed survey name, and further agreed it should consider all responses. The committee thanked Mr. Slaugh for his work, and voted to adopt the survey.

#### **VIII. STYLE AMENDMENTS.**

Mr. Hafen brought the style amendments and the comparison to the federal rules prepared by Judge Schofield's law clerk to the committee.

Mr. Hafen questioned whether the committee should wait until the style amendments to the federal rules were adopted, before the committee addressed the amendments.

The committee decided to address the style amendments at the next meeting.

#### **IX. RULE 40. ASSIGNMENT OF CASES FOR TRIAL; CONTINUANCE.**

The committee agreed to address Rule 40 at the next meeting.

**X. ADJOURNMENT.**

The meeting adjourned at 5:40 p.m. The next meeting of the committee will be held at 4:00 p.m. on Wednesday, April 25, 2007, at the Administrative Office of the Courts.

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