

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, May 23, 2007
Administrative Office of the Courts

Francis J. Carney, Presiding

PRESENT: James T. Blanch, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slauch, Judge David O. Nuffer, Thomas R. Lee, Cullen Battle, Barbara Townsend, David W. Scofield, Todd M. Shaughnessy, Judge Anthony B. Quinn, Steven Marsden, Judge R. Scott Waterfall

EXCUSED: Francis M. Wikstrom, Janet H. Smith, Judge Lyle R. Anderson, Debora Threedy, Lori Woffinden, Judge Derek Pullan, Jonathan Hafen, Judge Anthony W. Schofield, Matty Branch, Trystan B. Smith

STAFF: Tim Shea

I. APPROVAL OF MINUTES.

Mr. Carney called the meeting to order at 4:05 and entertained comments concerning the April 25, 2007 minutes. Mr. Blanch moved to approve the minutes. The motion was seconded by Mr. Slauch and passed unanimously.

II. RECOMMENDATIONS ON RULES PUBLISHED FOR COMMENT.

Mr. Carney noted Mr. Havas' comment in support of Rule 37 on spoliation. Mr. Carney said he spoke with Mr. Havas about creating a duty to preserve evidence, that the committee had considered it but decided that it was outside the scope of the rules.

Mr. Shea noted Mr. Johnson's comment requesting that unopposed motions before commissioners not be scheduled for a hearing. Mr. Shea had spoken with several court commissioners. The practice is to strike the matter from the calendar if there is a stipulation, but, absent that, the commissioners cannot tell whether a motion is unopposed. Mr. Shea will respond to Mr. Johnson.

Mr. Lee moved to recommend the rules as drafted to the Supreme Court for adoption. The motion was seconded by Mr. Shaughnessy and passed unanimously.

The committee discussed the need to educate the Bar about the electronic discovery changes. Judge Nuffer noted that the topic had been on several Bar conferences because of the federal changes.

III. RULE 10. SANCTIONS FOR UNCIVIL MATERIALS.

Mr. Lee summarized Rule 10 for the committee. He indicated that this simple approach was probably the best way to express judicial authority without inviting satellite litigation. Mr. Shea indicated that the district court judges had briefly discussed the text at their recent conference and no one had raised any concerns. Mr. Blanch said he liked the way the rule identified judicial authority without discussing motions. Presumably a party could file a motion asking the judge to exercise that authority.

Judge Quinn moved to publish the rule for comment. The motion was seconded and passed unanimously.

III. RULES 7 & 101. MOTIONS.

Mr. Shea brought Rules 7 and 101 back to the committee. Mr. Shea had drafted revisions based on the discussion from last month.

After discussion, the committee decided to phrase paragraph (b)(2) more closely to (b)(1). Also, Mr. Battle noted that the draft would require an affidavit and motion for an order to show cause, when, in practice, the judge sometimes issues the order without a motion.

The committee discussed several drafts and decided upon:

An application to the court for an order to show cause shall be made only for enforcement of an existing order or for sanctions for violating an existing order. An application for an order to show cause must be supported by an affidavit sufficient to show probable cause to believe a party has violated a court order.

Mr. Shea will make the same change to Rule 101 and bring the rules back to the committee.

IV. RULE 40. ASSIGNMENT OF CASES FOR TRIAL; CONTINUANCE.

Mr. Carney brought Rule 40 back to the committee, stating that there were no local rules for putting cases on the trial calendar. Mr. Blanch felt that the entire rule was unnecessary. Mr. Marsden felt the same. Others felt that parties and attorneys needed to know how to put cases on the trial calendar and how to postpone a case. It was observed that Rule 16 requires a certificate of readiness for trial. After discussion, the committee decided that Rule 40 should include the certificate of readiness or a court order for scheduling a trial, should have the method for postponing a trial, including any conditions, and should contain a provision for preserving evidence.

V. RULE 41. DISMISSAL OF ACTIONS.

Mr. Shea brought Rule 41 to the committee. He explained that the reference to Rule 66(I) needed to be deleted because that paragraph had been deleted. The remainder of the changes

were an attempt to rewrite the rule in a simpler style without changing the substance of the rule. After discussion the committee decided to delete only the reference to Rule 66(I).

VI. STYLE AMENDMENTS.

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

VII. CODE V. DOH.

The committee discussed the recent Supreme Court opinion interpreting Rule 7, which requires the prevailing party to submit a proposed order unless the judge expressly states that such is not needed. Mr. Slaugh said there may still be a circumstance not resolved by the rule and opinion, but that the Committee did not need to address it.

VIII. RULE 35. MEDICAL EVALUATIONS.

Mr. Carney reported that he and Mr. Lee had met with plaintiff and defense lawyers, and that any amendments would likely be controversial, but that it was still worth the effort.

IX. ADJOURNMENT.

The meeting adjourned at 5:30 p.m. The next committee meeting will be held at 4:00 p.m. on Wednesday, September 26, 2007, at the Administrative Office of the Courts.