

# MINUTES

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

Wednesday, October 24, 2007  
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slauch, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Honorable Anthony B. Quinn, Honorable Derek Pullan, Anthony W. Schofield, Thomas R. Lee (via phone), Cullen Battle, Barbara Townsend, Steven Marsden

EXCUSED: Todd M. Shaughnessy, Debora Threedy, Lori Woffinden, Janet H. Smith, Jonathan Hafen, Honorable R. Scott Waterfall, David W. Scofield

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

### I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the September 26, 2007 minutes. No comments were made and Mr. Wikstrom asked for a motion that the September 26, 2007 minutes be approved. The motion was duly made and seconded, and unanimously approved.

### II. OVERALL EVALUATION OF URCP.

Mr. Wikstrom asked that the committee further discuss the general results of the discovery survey at the next meeting.

### III. RULE 35. PHYSICAL AND MENTAL EXAMINATION OF PERSONS.

Mr. Carney and Mr. Lee addressed comments they obtained from personal injury lawyers concerning the proposed changes to Rule 35. Judge Quinn, Judge Anderson, and Judge Pullan observed they were addressing an increasing number of motions concerning physical examinations.

The committee discussed generally the use and application of Rule 35, and the need to revise the rule to allow a trial court judge to appoint an independent medical examiner. The committee also considered whether the "good cause" standard in subsection 35(a) provided a sufficient standard to determine the need for an examination.

Mr. Wikstrom elicited the committee's comments about allowing the person being examined to elect to record the examination by videotape or other means. Judge Quinn

addressed the pros and cons of allowing videotaping. Mr. Carney noted he did not feel defense lawyers had strong objections to videotaping.

Mr. Carney addressed the need for subsection (b). He indicated he did not feel practitioners utilized subsection (b). The committee addressed the meaning of subsection (b) and whether subsections (b) and (c) were duplicative. The committee also discussed the difficulty understanding the current language in subsection (b), and the need to make the existing rule clearer. Mr. Lee questioned the need to have the specific provision in subsection (c) addressing disclosure of prior reports. Judge Pullan indicated issues concerning Rule 35 examinations are raised so often that it would be appropriate to specifically address prior reports in Rule 35.

Mr. Wikstrom asked Mr. Carney and Mr. Lee to re-examine the language and proposed revisions to Rule 35, and bring their suggestions back to the committee next month. He also asked Mr. Carney and Mr. Lee to explore a tiered approach for an examiner's disclosure of prior reports.

#### **IV. E-FILING RULES.**

Mr. Shea brought the e-filing rules back to the committee.

The committee unanimously agreed to strike Rule 1 (c) referencing e-filing as a pilot program.

Mr. Shea indicated he would ask the AOC's IT department how a lawyer would know opposing counsel was an e-filer.

The committee discussed Rule 5(b)(1)(B) and the effectiveness of service, but agreed the language did not need revision.

The committee also discussed Rule 5(e) and the language giving a trial court judge discretion to require parties to file electronically using an e-filing account.

The committee addressed the elimination of Rule 6 (e) allowing for three-extra-days-for-mailing. The committee discussed the feasibility of providing a uniform time period for responses and notices. Many committee members noted the need to make response and notice time periods for motions and hearings consistent with the federal rules. The committee agreed it would examine revisions to the time periods at the next meeting.

Mr. Shea addressed Rule 10(a)(3) and the need to contain a parties' contact information "on every pleading and other paper." The committee discussed the need to protect a pro se litigants privacy. The committee also questioned the need to protect a lawyer or a pro se litigants address and/or email address. After discussion, the committee agreed it did not want to strike Rule 10(a)(3) in its entirety, but the committee took out the language in Rule 10(a)(3) requiring a party to list the ". . . *the name of* the party for whom it is filed."

Finally, Mr. Shea addressed Rule 10(i) which defines electronic papers. Mr. Shea noted all references to a writing, recording, or image includes the electronic version thereof. The

committee discussed the need to revise subsection (i)(5) to address hyperlinks to citations, pleadings, and papers filed with the court. Mr. Shea indicated at some point it is anticipated the e-filing rules will require a filer to include hyperlinks in filings.

**V. RULE 54. AURORA CREDIT, INC. V. LIBERTY WEST DEVELOPMENT, INC.**

Mr. Wikstrom asked that Mr. Battle and Mr. Carney address Rule 54 and the *Aurora Credit* decision at the next meeting.

**VI. 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, November 28, 2007, at the Administrative Office of the Courts.