

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, November 28, 2007
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Francis J. Carney, Leslie W. Slaugh, Terrie T. McIntosh, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Jonathan Hafen, Thomas R. Lee, Honorable R. Scott Waterfall, David W. Scofield, Cullen Battle, Steven Marsden, Anthony W. Schofield, Debora Threedy, Lori Woffinden

EXCUSED: Barbara Townsend, Janet H. Smith, Todd M. Shaughnessy, Honorable Anthony B. Quinn, Honorable Derek Pullan

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

GUEST: Ron Bowmaster

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the October 24, 2007 minutes. No comments were made and Mr. Wikstrom asked for a motion that the October 24, 2007 minutes be approved. The motion was duly made and seconded, and unanimously approved.

II. E-FILING RULES.

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

Mr. Slaugh noted his concern regarding effectuating service for e-filing under Rule 5(b)(1)(B). The committee discussed revising subsection (b)(1)(B) to state, "Service by mail, email or fax is complete upon sending, but service by *electronic means* is not effective if the party making service learns that the attempted service did not reach the person to be served."

Mr. Shea introduced Ron Bowmaster, and asked him to entertain questions from the committee. Mr. Bowmaster is a member of the Administrative Office of the Court's ("AOC") technology committee.

Mr. Bowmaster explained the framework of the AOC's e-filing system is designed to allow an individual e-filers' internet service provider to communicate with the court's electronic database. The AOC plans to establish a certification procedure for service providers. The

committee asked that the contract between the AOC and the service provider require the provider to provide notice to the court that it delivered the filing to the anticipated recipient. Mr. Wikstrom asked that the committee re-address the e-filing system after the system comes on-line.

Mr. Lee expressed concern about the meaning of the language, “most likely to give actual notice,” in Rule 5 (b)(1)(A). The committee discussed whether actual notice should be required. The committee also discussed revising the language to state, “most likely to give *prompt* actual notice.”

After further discussion, Mr. Wikstrom entertained a motion to approve the proposed changes to subsections (b)(1)(A) and (B). Mr. Slauch seconded the motion, and the committee unanimously approved the revisions.

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

Mr. Carney and Mr. Lee brought Rule 35 back to the committee.

Mr. Carney expressed his concerns regarding the language in subsections (c)(1) and (2). He indicated the purpose of the proposed revision was to explicitly allow the party examined to receive copies of reports created by physicians who regularly conducted examinations for purposes of litigation. He further noted he thought it was unwise to allow the examining physician or the requesting party to determine whether prior reports involved the same condition, and thus cautioned against including this language.

The committee revised subsection (c)(1) inserting the phrase, “for litigation purposes” and removing the phrase, “of the same condition.” The committee further agreed to remove the phrases, “upon motion showing good cause” and “of the same condition” in subsection (c)(2). Finally, the committee agreed the subsections should describe the person conducting the examination as the “examiner” instead of the “proposed examiner.”

Mr. Lee suggested the second sentence in subsection (b)(3), addressing the discovery of an examiner’s report or deposing an examiner, should be included in a separate subsection.

Mr. Battle suggested subsection (c)(3) should be revised to state, “The *examiner* producing the reports *shall* redact any personal identifying information.”

The committee agreed to adopt the above suggested revisions.

IV. RULE 6, ET AL. TIME.

Mr. Shea brought Rule 6 back to the committee.

Mr. Shea revised Rule 6 to conform to the approach taken by the federal rules. Rule 6 would now contemplate the “days-are-days” approach for computing elapsed time. All days except the trigger days are counted. No extended time is provided if notice is served by mail, and no counting intervening weekends.

Mr. Shea submitted a table of the existing rules with proposed changes for the applicable time periods. For several of the rules, the proposal is to enlarge the time periods from 5 days to 7 days, 10 days to 14 days, and 15 days to 21 days.

Mr. Wikstrom assigned specific committee members a designated set of rules to examine in light of the proposed time period changes, and report back to the committee with any concerns.

V. ENCOURAGING COMMENTS TO RULES

Mr. Wikstrom expressed concern about the lack of comments from the Bar concerning proposed changes to the rules. The committee discussed ways to encourage further comments, and the effectiveness of sending notice of proposed changes by e-mail.

Mr. Schofield suggested limiting the times in which requests for comment are published to designated times of year when practitioners are on notice to analyze the changes.

After discussion, Mr. Wikstrom asked that the committee re-address the issue at a later meeting.

VI. OVERALL EVALUATION OF URCP.

Mr. Wikstrom asked that the committee discuss this topic at a later meeting.

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, January 23, 2008, at the Administrative Office of the Courts.