

# MINUTES

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

Wednesday, April 23, 2008  
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Francis J. Carney, Terrie T. McIntosh, Leslie W. Slaugh, Honorable Derek Pullan, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Jonathan Hafen, Thomas R. Lee, Lincoln Davies, Cullen Battle, Todd M. Shaughnessy, Honorable Anthony B. Quinn, Anthony W. Schofield, Janet H. Smith

EXCUSED: Lori Woffinden, Barbara Townsend, Judge R. Scott Waterfall, David W. Scofield, Steven Marsden

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 April 23, 2008 minutes. No comments were made and Mr. Wikstrom asked for a motion that the minutes be approved. The motion was duly made and seconded, and unanimously approved.

### II. CJA CHAPTER 11. ADVISORY COMMITTEES AND THE RULEMAKING PROCESS.

Mr. Wikstrom brought to the committee's attention a proposed amendment to the rule-making process that requires committee members to disclose the general nature of his or her legal practice. Mr. Shea indicated that the rule change would not go into effect until later this year. However, in anticipation of the rule change, Mr. Wikstrom invited the committee members to disclose the nature of their practices to the other members, and those present did so.

### III. OVERALL EVALUATION OF URCP.

Mr. Wikstrom asked the respective committee members to address their observations of other jurisdictions' expedited discovery rules.

Mr. Hafen discussed his observations of Arizona's expedited discovery rules. He noted that Arizona referred to its expedited discovery process as the "Madd" track. Cases subject to expedited discovery were randomly selected. Cases under a certain amount in controversy were

subject to mandatory arbitration. Mr. Hafen indicated that certain practitioners noted an increase in civility due to the rules.

Judge Pullan discussed his observations of Colorado's simplified procedures for civil actions, CRCP 16.1(a)(1). He noted the rules applied to all civil actions for monetary damages (under \$100,000 - one party, one claim) or any other form of relief. However, the rules allow a party to opt-out, and the trial court could order termination of the simplified procedures as well.

Colorado's simplified procedures do not allow for written discovery or depositions. An emphasis is placed on initial disclosures. But there is a voluntary discovery procedure. Parties can agree to engage in traditional discovery, but disputes regarding voluntary discovery cannot be presented to the court.

Trial dates are set within 40 days of the case being at issue. The jury is not instructed as to the \$100,000 limit. The trial court makes adjustments post-verdict.

Mr. Carney, Mr. Blanch and Mr. Shaughnessy addressed the simplified procedures project for the federal rules of civil procedures. Mr. Carney indicated the advisory committee for the federal rules was hostile to expedited discovery. Mr. Shaughnessy noted, that according to one report, discovery is not used at all in approximately 40% of federal civil actions, and used sparingly in another 25% to 30% of cases.

The committee discussed a number of different proposals — limited discovery, no discovery, and expedited trial settings.

Mr. Wikstrom asked the committee to continue discussion on these issues at the next meeting.

#### **IV. RULE 6, ET AL. TIME.**

Mr. Shea brought Rule 6 back to the committee.

He indicated he revised Rule 6 to basically mirror the federal rule, i.e., the days-are-days approach. The committee members generally indicated their approval to the change, and indicated the committee's desire to adopt the rule change in lock-step with the federal rules.

#### **V. GARNISHMENT PROCEDURES.**

Mr. Shea brought the garnishment procedures to the committee to address.

Mr. Shea indicated a number of employers complained during the legislative session about the complexity of the garnishment process. Mr. Shea discussed the garnishment process, including a number of requirements that are dictated by federal law. He indicated that in light of those requirements he did not know what could be changed to simplify the process. The current policy is that the state approved forms could be used, but are not mandatory.

At Mr. Carney's suggestion, the committee agreed to invite the state legislators interested in simplifying the garnishment process and members of the public who may want to discuss the process to a later committee meeting.

#### **VI. RULE 45. OBJECTION TO SUBPOENA BY A PARTY.**

Mr. Shea brought a question concerning Rule 45 and the grounds to object to a subpoena to the committee.

Currently, a third party affected by a subpoena (but not subject to the subpoena) can only object to the subpoena by moving for a protective order. Mr. Slaugh suggested the addition of a committee note indicating that a party affected by a subpoena could also object to the subpoena by filing an objection with the court.

After discussion, the committee agreed to further address this issue at the next meeting.

#### **VIII. MISCELLANEOUS ISSUES.**

Mr. Wikstrom asked that the committee address these topics at the next meeting.

#### **IX. 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, May 28, 2008, at the Administrative Office of the Courts.