

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, May 28, 2008
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Terrie T. McIntosh, Honorable Lyle R. Anderson, Honorable David O. Nuffer, Lincoln Davies, Jonathan Hafen, Thomas R. Lee, Judge R. Scott Waterfall, David W. Scofield, Cullen Battle, Barbara Townsend, Honorable Anthony B. Quinn, Leslie W. Slaugh, Lori Woffinden

EXCUSED: James T. Blanch, Francis J. Carney, Todd M. Shaughnessy, Janet H. Smith, Anthony W. Schofield, Steven Marsden, Honorable Derek Pullan

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

GUESTS: Representative Jack Draxler, Jeff Keller, Esther Chelsea-McCarty

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. GARNISHMENT PROCEDURES.

Mr. Wikstrom welcomed our guests, and Mr. Shea summarized for the committee the current garnishment process.

Rep. Draxler addressed the committee, and introduced his constituent, Jeff Keller. Mr. Keller owns Sunset Cycle. He expressed his concerns about what he felt was sloppy and abusive behavior by a lawyer trying to garnish wages. He further expressed his concerns as a small business owner about the inadequacy of the garnishment fee employers receive as compensation for the garnishment — ten (\$10) dollars for a single garnishment and twenty-five (\$25) dollars for a continuing garnishment.

Mr. Wikstrom noted that federal law required some of the information requested in the forms. Mr. Shea indicated the current rules did not mandate use of the garnishment forms. The committee discussed revising the garnishment rules to mandate using the garnishment forms. Mr. Shea also indicated that there is no clear rule that would allow the employer-garnishee to seek court intervention.

Mr. Wikstrom suggested the committee re-examine the garnishment rules and the forms at a later meeting, and thanked the guests for their attendance.

III. RULE 45. OBJECTION TO SUBPOENA BY A PARTY.

Mr. Shea revised Rule 45(e)(3) to allow a non-party affected by a subpoena to object in the same manner as a person subject to a subpoena and to make it clear that a party must file a motion in order to object to a subpoena. After discussion, the committee unanimously approved the revision.

IV. DISCOVERY TIMING.

Mr. Slauch noted his concern about a loophole in Rule 26 that allowed practitioners to serve document subpoenas immediately after filing the complaint, but before an attorneys' planning meeting.

The committee debated language amending Rule 26. Mr. Battle suggested an amendment that precluded any discovery from any source until thirty days after service of the initial pleading, unless otherwise ordered or agreed to by the parties.

Mr. Wikstrom asked Mr. Shea to submit a proposed amendment to Rule 26 incorporating the above language, and bring the proposed revisions to the committee at the next meeting.

V. REFERENCES TO TITLE 78.

Mr. Shea revised the rules of civil procedure to adopt what the Supreme Court considers technical amendments to correct references to Title 78. Mr. Shea indicated the Supreme Court did not feel it was necessary to publish these changes for comment.

The committee agreed to adopt the changes.

VI. OVERALL EVALUATION OF URCP.

Mr. Wikstrom continued the committee's discussions concerning expedited discovery.

Mr. Scofield addressed his observations of Toronto's expedited or simplified discovery procedures. Toronto's expedited discovery rules, like Colorado, contained opt-in and opt-out provisions. However, Toronto does not allow discovery at all, only disclosures.

Mr. Davies examined a sampling of Canadian provinces' expedited discovery rules. He noted that some of these provinces not only limited discovery, but limited the trial process, by limiting the circumstances for live testimony and cross-examination.

The committee discussed the current phenomenon of lawyers discovering every fact before going to trial, and the need to change the culture. The committee further discussed the possible alternatives for expedited discovery, and the types of cases suitable for expedited discovery.

Mr. Wikstrom asked that the committee continue its discussions at the next meeting.

VII. ADJOURNMENT.

The meeting adjourned at 5:50 p.m. The next meeting of the committee will be held at 4:00 p.m. on Wednesday, September 17, 2008, at the Administrative Office of the Courts.