

## MINUTES

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

Wednesday, May 26, 2010  
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

**PRESENT:** Francis M. Wikstrom, Francis J. Carney, Honorable Derek P. Pullan, Barbara L. Townsend, Janet H. Smith, James T. Blanch, W. Cullen Battle, Terrie T. McIntosh, David W. Scofield, Trystan B. Smith, Leslie W. Slauch, Todd M. Shaughnessy, Honorable Kate A. Toomey, Lincoln L. Davies, Jonathan O. Hafen

**EXCUSED:** Tim Shea

**STAFF:** Sammi Anderson

**GUESTS:** Clark Sabey

#### **I. APPROVAL OF MINUTES.**

Mr. Wikstrom called the meeting to order at 4:00 p.m. Mr. Wikstrom entertained comments from the committee concerning the April 28, 2010 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. RULE 58A. ENTRY OF JUDGMENT.**

Mr. Wikstrom asked for discussion regarding the technical amendments to Rule 58A. A motion was made to approve the amendments circulated by Tim Shea in advance of the meeting. The motion was seconded, and unanimously approved.

#### **III. WELCOME TO JUDGE TOOMEY.**

Mr. Wikstrom welcomed Judge Toomey to the committee. Judge Toomey replaces Judge Quinn.

#### **IV. INTRODUCTIONS.**

Pursuant to Utah Supreme Court Rule 11-101(4), Judge Toomey formally introduced herself.

## **V. REPORT ON 10 DAY SUMMONS.**

Mr. Wikstrom reported to the committee regarding a conversation with a collections lawyer on the 10 day summons issue. Mr. Wikstrom reported that members of the collections bar believe that e-filing will solve some of the prior issues. The committee discussed the 10 day summons generally and whether such a summons should be allowed. The committee remained committed to the decision to eliminate the 10 day summons from the current version of the simplified rules.

## **VI. REPORT ON MR. WIKSTROM'S PRESENTATION AT INNS OF COURT.**

Mr. Wikstrom reported on his presentation on the simplified rules to one of the Inns of Court. Mr. Wikstrom walked the group through the details, standard discovery, extraordinary discovery, etc. Mr. Wikstrom indicated that the reception was not negative.

## **VII. SIMPLIFIED RULES OF CIVIL PROCEDURE.**

**Rule 26.** Ms. McIntosh noted one small change on Rule 26, line 11. The word “and” should be moved up to line 9, following the semi-colon.

**Rule 30.** Mr. Davies noted there has been some discussion regarding reducing further the deposition hours allotted to each side. Mr. Slauch previously suggested reducing the allotted hours from 20 to 16. The committee discussed various limits. Judge Pullan suggested reducing the limit to 16. Messrs. Wikstrom and Hafen advocated the higher limit of 20. Mr. Smith noted that multiple party cases will go more smoothly under the 20 hour limit because then multiple parties on the same side have more room to get what they need. A motion was made to drop to 16 the limit on deposition hours per side. The motion was seconded and the committee voted 7 to 5 to reduce the hours limit from 20 to 16.

**Rule 35.** Mr. Wikstrom noted that the current Rule 35 is in the same iteration as it was at the last meeting. The committee voted on it at the last meeting, but the vote was close. The close vote arose primarily from the debate about whether the examining doctor should have to disclose reports and testimony for four years prior. Mr. Carney noted that he was in opposition, but that there has been full discussion and the vote is fair and well taken. Mr. Carney also noted that a good Advisory Committee Note would be useful here and volunteered to do that. There was no motion to revisit the vote. Rule 35 stands as drafted in the last meeting, with the exception of one technical change: Mr. Davies noted that on Rule 35(c), line 21, it should be (e)(2), not (d)(2).

**Rule 37.** The committee discussed motions to compel disclosures under rule 37. The general idea is we are moving away from Rule 26(a)(1) disclosures as currently used in practice. Parties will now have to disclose at the outset everything upon which they intend to rely. Mr. Wikstrom noted that it is self-policing - if parties don't disclose the information, they cannot use it. There will therefore be little need for a motion to compel the first sets of disclosures.

The committee agreed to leave the language regarding "disclosures" in 37(a) through (a)(1)(B). The committee also agreed to leave the word "may" in place in lines 60-63. "May" allows courts more discretion to award fees if certain findings are made. Judge Pullan emphasized that we are introducing some uncertainty into the system about what "proportionality" means and courts therefore should have more discretion in determining sanctions.

Following this discussion, Mr. Wikstrom announced that there is now a complete set of revised rules. The committee turned to the task of drafting Advisory Committee Notes. Mr. Carney agreed to prepare the first draft of a Note for Rule 30 pertaining to expert depositions and for Rule 35. Messrs. Shaughnessy and Blanch and Judge Pullan will prepare the first draft of a Note for Rule 26. Mr. Davies agreed to prepare the Note for Rule 8 and Messrs. Hafen and Lee will draft a Note for Rule 37.

The committee discussed ideas for rolling out the new rules, including consideration of a pilot program. Judge Toomey noted it is difficult for the courts if the change is not uniform. Mr. Hafen noted the concerns with forum shopping. Mr. Carney noted that the other problem with a pilot program is it is not practical. It is difficult to do it fairly and effectively. The committee agreed that a state-wide rollout is the most effective idea, and that a pilot program is essentially unworkable and imprudent. Mr. Wikstrom recommended that the committee recommend to the Utah Supreme Court that the simplified rules be adopted as proposed rules across the board. Mr. Wikstrom noted that, once the rules are in effect, there will time to study their effect on the system.

The committee discussed further ideas for rolling out the new rules and working to educate the judiciary and bar regarding the changes and their effect. Various committee members agreed to approach their constituencies, *ie*, bar conventions, county bars, board of district court judges, the bar journal, litigation section quarterly luncheons, annual district judges conference, and to seek out opportunities to present to those bodies regarding the rules changes.

The meeting adjourned at 5:50 pm. The next meeting will be June 23, 2010.