

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE OF THE RULES OF CIVIL PROCEDURE

Wednesday, June 23, 2010
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Francis J. Carney, W. Cullen Battle, Barbara L. Townsend, Terrie T. McIntosh, Trystan B. Smith, David W. Scofield, James T. Blanch, Honorable Lyle R. Anderson, Todd M. Shaughnessy, Jonathan O. Hafen, Lincoln L. Davies

PHONE: Lori Woffinden

EXCUSED: Honorable Derek P. Pullan, Honorable Kate A. Toomey, Honorable David O. Nuffer, Leslie W. Slaugh, Janet H. Smith

STAFF: Timothy M. Shea, Sammi V. Anderson

GUESTS: Clark W. Sabey

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and Mr. Wikstrom entertained comments from the committee concerning the May 26, 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. WELCOME TO CHIEF JUSTICE DURHAM AND RECOGNITION OF JUSTICE THOMAS LEE.

Chief Justice Durham presented Justice Thomas Lee with a certificate of thanks and appreciation for ten years of service on the committee. Mr. Wikstrom expressed the committee's deepest thanks for Mr. Lee's tremendous efforts and contributions to the committee's work. Mr. Wikstrom and the committee offered heartfelt congratulations on Justice Lee's confirmation to the Utah Supreme Court.

III. REPORT ON MEETING WITH THE UTAH SUPREME COURT.

Mr. Wikstrom reported on his meeting with the justices of the Utah Supreme Court regarding the simplified rules. The proposed changes were enthusiastically received and appreciated. Mr. Wikstrom proposed a roll-out period and educational process targeted to

conclude on or around November 30, 2010. Chief Justice Durham echoed Mr. Wikstrom's comments and offered the support of the Court during that roll-out process. The Chief Justice complimented the committee on the scope of its work and expressed appreciation.

IV. DISCUSSION ON SIMPLIFIED RULES.

Mr. Wikstrom directed the committee's attention to the "Process for Consideration of the Proposed Rules," which he has prepared and shared with the Utah Supreme Court. The committee reviewed that document along with the "Proposed Rules Governing Civil Discovery". Mr. Wikstrom indicated a willingness and inclination to send the new rules to the Bar membership via e-mail within the next week. Mr. Wikstrom then indicated his hope that committee members would speak and advocate on behalf of the revised rules, listen for feedback and report back to the committee.

Mr. Battle suggested the committee affirmatively offer, as opposed to waiting for a request, to present on the new rules to each of the major firms. Ms. McIntosh noted that it would be helpful to create a forum for committee members to report back on concerns shortly after presenting. Mr. Battle suggested that all the concerns be collected in one central location. Mr. Wikstrom agreed that contemporaneous reporting is important.

The committee further discussed how to get the word out at various events and Bar functions, and among firms and law schools. Mr. Shea identified and discussed judicial events for which the simplified rules are already on the agenda. Mr. Wikstrom asked committee members to look for opportunities to get the word out and to volunteer on behalf of the committee as needed at upcoming presentations.

The committee approved for circulation the "Proposed Rules Governing Civil Discovery". Mr. Wikstrom asked for comments back on his proposed power point quickly so that it can be finalized for presentations to begin shortly. The committee discussed anticipated questions from the Bar and judiciary and discussed responses to those questions.

Mr. Wikstrom then turned the discussion to the Advisory Committee Notes. Mr. Battle volunteered to draft a Note for Rule 1.

Rule 8 - The committee reviewed Mr. Davies' draft of the Rule 8 Committee Note. A motion to approve was made, seconded and unanimously approved.

Rule 35 - The committee reviewed Mr. Carney's draft of the Rule 35 Committee Note. Mr. Shaughnessy noted a concern on p. 43, line 45 with the language "[t]his proposal was deemed impractical, and the committee leaves such matters to the courts' discretion..." Mr. Carney proposed striking lines 44-46. The committee decided to strike everything in lines 44-46 except "This proposal was deemed impractical."

The committee discussed whether the language beginning at line 42 regarding the "independence" element is necessary. Mr. Schofield proposed was made to strike lines 42,

beginning at “the committee considered,” through line 46 and “nevertheless” at the beginning of line 47. So moved, seconded and unanimously approved.

Changes to lines 80-81. The committee noted that, “as with other experts,” the use of subpoenas to obtain prior reports remains an option for the practitioner in appropriate circumstances, “subject to the proportionality standards set forth in Rule 26.” Moved, seconded and unanimously approved.

Subject to these changes, the committee unanimously approved the Advisory Committee Note for Rule 35.

Rule 37 - The committee reviewed the proposed Note for Rule 37 and revised line 125 to read “a” protective order.

Rule 26 - The committee reviewed the proposed Note for Rule 37 and agreed to remove the examples included in the draft. The committee agreed to circulate the Note for Rule 26 as amended, including Mr. Carney’s proposed changes regarding clarification as to non-retained experts.

Mr. Wikstrom said that the notes would be finalized and circulated once more. Any response would be required quickly.

V. 10-DAY SUMMONS.

Mr. Wikstrom reported on his discussion with the Utah Supreme Court regarding his suggestion to table the 10-day summons issue for the immediate future. Mr. Wikstrom reasoned that it distracts from the bulk of the revisions, and the issues it raises will be largely neutralized by the roll out of e-filing in state courts. Mr. Wikstrom suggested segregating the 10 day summons issue from the simplified rule revisions. So moved, seconded and unanimously approved by the Committee.

VI. ADJOURNMENT.

The meeting was adjourned at 6:15 p.m. The next meeting will be held at 4:00 p.m. on Wednesday, September 29, 2010, at the Administrative Office of the Courts.