

## MINUTES

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

Wednesday, September 29, 2010  
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Lincoln L. Davies, Barbara L. Townsend, Terrie T. McIntosh, W. Cullen Battle, Steve Marsden, Todd M. Shaughnessy, Jonathan O. Hafen, Robert J. Shelby

PHONE: David H. Moore, Brigham Young University Law School, Lori Woffinden

EXCUSED: Honorable David O. Nuffer, Trystan B. Smith, Leslie W. Slauch

STAFF: Timothy M. Shea, Sammi V. Anderson

GUESTS: Diane Abegglen, Appellate Court Administrator

#### I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:00 p.m., and entertained comments from the committee concerning the June 23, 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 NEW COMMITTEE MEMBERS BOB SHELBY AND DAVID MOORE.

Robert J. Shelby was welcomed to the committee. Mr. Shelby practices commercial litigation with Burbidge Mitchell & Gross. Professor David H. Moore was also welcomed. Professor Moore is a Professor of Civil Procedure and International Law at Brigham Young University. His academic focus is on Foreign Relations law.

#### III. CORRECTION TO RULE 64(D).

Mr. Shea explained that the same technical change previously made to single writs of garnishment needs to be made applicable to continuing writs of garnishment. The proposed change was unanimously approved by the committee.

#### **IV. SIMPLIFIED DISCOVERY RULES.**

The committee discussed at length the feedback, comments and concerns received by committee members thus far from the Bar and the judges on the proposed simplified discovery rules. The committee also discussed different ways to elicit more comments and concerns from the Bar and the judges. The committee expressed a unified intention and desire to receive and consider feedback from as many sources as possible in considering the proposed simplified rules of discovery.

#### **V. TECHNICAL CORRECTION OF DISCLOSURE AND DISCOVERY RULES.**

Mr. Shea explained that he received a telephone call from a reviewer of the proposed simplified rules who had observed that a portion of two of the rules are redundant. After reviewing the identified portions, the committee determined to remove the redundant language from Rule 36(c) and to leave it in Rule 37(f).

#### **VI. FEDERAL RULE CHANGES REGARDING EXPERT DISCOVERY.**

Mr. Battle raised the issue of upcoming changes to the Federal Rules of Civil Procedure governing expert discovery. In sum, the new amendments will protect from discovery draft expert reports and communications between counsel and experts. Proponents of the changes believe the amendments will reduce collateral discovery. The new changes will take effect in December 2010. Mr. Wikstrom noted that the committee appeared to be generally in favor of adopting these changes and invited a Motion to incorporate them into the current draft of the simplified rules. A Motion was duly made and seconded, and the committee approved the Motion.

#### **VII. ADJOURNMENT**

The meeting was adjourned at 6:03 p.m. The next meeting will be held at 4:00 pm on Wednesday, October 27, 2010, at the Administrative Office of the Courts.