

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE OF THE RULES OF CIVIL PROCEDURE

Wednesday, October 27, 2010
Administrative Office of the Courts

PRESENT: Francis M. Wikstrom, Trystan B. Smith, Steve Marsden, Francis J. Carney, Janet H. Smith, Terrie T. McIntosh, Barbara L. Townsend, Honorable David O. Nuffer, James T. Blanch, Leslie W. Slaugh, Honorable Lyle R. Anderson, W. Cullen Battle, Lincoln L. Davies, Jonathan O. Hafen, Honorable Kate Toomey

PHONE: Honorable Reuben Renstrom, Lori Woffinden, Honorable Derek Pullan

EXCUSED: David H. Moore, David W. Scofield, Robert J. Shelby

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 September 29, 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 108. OBJECTIONS TO COMMISSIONER'S RECOMMENDATIONS.

Mr. Shea discussed the issue of whether, following a hearing before a commissioner where evidence is proffered by one or both sides and the commissioner thereafter issues a recommendation to the district court, an evidentiary hearing before the district court is mandatory upon request of a party. Mr. Shea noted that the Board of District Court Judges is opposed to this change. Mr. Slaugh commented that an evidentiary hearing at some point would seem to be a basic facet of due process.

Mr. Shea noted that Commissioner Conklin would like to see a revision clarifying the existing rule. Judge Renstrom, who still practices primarily in the domestic area, commented that he has spoken with Commissioner Conklin several times and echoed the need for a standard that is applied uniformly in these cases.

After further discussion and recommendations by Mr. Shea, Mr. Carney moved that changes be adopted that require an evidentiary hearing by the district court upon request by a party, if the parties earlier proffered evidence to a commissioner and the commissioner entered a

recommendation. The motion was seconded by Ms. Smith. The committee voted in favor, with the exception of one "no" vote.

III. TECHNICAL CHANGE TO RULE 58A.

Mr. Shea explained that Rule 58A has been changed so that the Clerk of Court can now sign and enter a judgment by confession. Ms. Smith moved for approval of this change. Mr. Marsden seconded and the change was approved by the committee unanimously.

IV. SIMPLIFIED RULES OF DISCOVERY.

The committee discussed at length the feedback and comments that have been received from the Bar, judiciary and other constituencies in response to the proposed simplified rules. Much of the discussion focused upon two primary areas of concern: 1) whether there should be a two-tiered system, with the rules having application to cases with a certain amount in controversy, or some variation on this theme; and, 2) expert depositions. The committee discussed these issues at length. Mr. Wikstrom emphasized that all options are still on the table and invited proposals to frame, discuss and address these concerns concretely. Mr. Wikstrom also circulated a list of issues that have been identified through the comment process that require further discussion and analysis. Finally, the committee discussed upcoming presentations and the remaining groups to whom the committee should present the proposed simplified rules.

V. ADJOURNMENT.

The meeting was adjourned at 5:54 p.m. The next meeting will be held at 4:00 p.m. on Wednesday, November 17, 2010, at the Administrative Office of the Courts.