

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday February 23, 2011
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, Chair, Trystan B. Smith, W. Cullen Battle, Barbara L. Townsend, Terrie T. McIntosh, W. Todd Shaughnessy, Robert J. Shelby, David W. Scofield, James T. Blanch, Honorable Derek P. Pullan, Janet H. Smith

TELEPHONE: Honorable Lyle R. Anderson, Lori Woffinden

EXCUSED: Honorable David O. Nuffer, Lincoln L. Davies, Jonathan O. Hafen, Leslie W. Slauch, Honorable Reuben Renstrom

STAFF: Timothy M. Shea, Sammi V. Anderson, Diane Abegglen

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 January 26, 2011 meeting minutes. No comments were made, and a motion for approval of the minutes was duly made, seconded and unanimously approved.

II. RESIGNATION OF JUDGE REUBEN RENSTROM.

Mr. Wikstrom announced that Judge Renstrom has resigned from the committee due to scheduling conflicts. Appreciation for Judge Renstrom's service on the committee was expressed.

III. RULE 64D WRIT OF GARNISHMENT.

Mr. Shea discussed with the committee that a legislator has requested that Rule 64D be amended to impose a meet and confer requirement before a creditor may bring a garnishee into court to impose liability for failing to follow proper garnishment procedures. Mr. Shea noted that a creditor would have to at least attempt to confer before bring action against a garnishee. A motion to so amend was duly made and seconded, and the committee approved. The amendment will be put out for public comment.

IV. DISABILITY OR DISQUALIFICATION OF A JUDGE.

Mr. Shea reported that in some cases a motion to disqualify the judge has been filed, but is never ruled upon because the court is awaiting a Request to Submit for Decision, which will never come because the motion is *ex parte* and does not require a response. The requested amendment is that the motion go directly to the presiding judge upon filing, without need of a Request to Submit for Decision. The committee discussed the current rule and its operation at length. Mr. Wikstrom proposed that the committee give further consideration to this at the next meeting and the issue was tabled.

V. SIMPLIFIED DISCOVERY RULES.

Mr. Wikstrom introduced the topic of a tiered discovery system. The committee expressed a majority interest in working the concept of tiered discovery into the simplified rules. The committee then discussed a host of issues related to a tiered discovery system, including the problem of cases that do not involve damages, *e.g.*, office of professional conduct, or cases seeking equitable relief, at what point in time the parties are fixed into a certain tier, cases where fraud may be discovered later in discovery and how that affects discovery limitations, damage caps, and the issue of timing with respect to completing discovery where motions to compel or for protective order are filed. The committee then reviewed the proposed tiered discovery system tier by tier and established limitations on the various discovery mechanisms and a tier-specific time limit for completing discovery. The committee also discussed and established the amounts in controversy that will designate the boundaries between the different tiers. The committee discussed efforts by certain sections of the bar to exempt themselves from certain rule changes and declined to insert exceptions for particular sections of the bar. Mr. Wikstrom then suggested that the committee revisit the comments received from the bench and bar to ensure that each issue has been addressed in light of the committee's subsequent work. It is believed that some of these can be addressed in the amended Advisory Committee Notes.

VI. ADJOURNMENT.

The meeting adjourned at 5:58 p.m. The next meeting will be held at 4:00 p.m. on Wednesday March 23, 2011.