

## MINUTES

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

MAY 23, 2012

PRESENT: Francis M. Wikstrom, Chair, Trystan B. Smith, Honorable John Baxter, Barbara L. Townsend, Terrie T. McIntosh, James T. Blanch, Francis J. Carney, Honorable Derek P. Pullan, Lincoln L. Davies, W. Cullen Battle, Janet H. Smith, Honorable Todd W. Shaughnessy, Robert J. Shelby, Jonathan O. Hafen, Leslie W. Slaugh

EXCUSED: Honorable Kate Toomey, Honorable David O. Nuffer, Honorable Lyle R. Anderson, Lori Woffenden, David W. Scofield

STAFF: Timothy Shea, Diane Abegglen, Sammi Anderson

GUESTS: Michael Zimmerman

#### I. APPROVAL OF MINUTES.

Mr. Wikstrom entertained comments from the committee concerning the April 25, 2012 minutes. The committee unanimously approved the minutes.

#### II. RULE 26.2. DISCLOSURES IN PERSONAL INJURY ACTIONS.

Frank Carney introduced and led a discussion regarding subparagraph (d)'s limitation on the use of non-public information obtained during personal injury actions to that litigation. The limitation was originally motivated by the desire to protect private information such as social security numbers. The committee voted unanimously to strike subparagraph (d). Mr. Carney proposed as a compromise that subparagraph (b)(3) be amended to state that social security numbers ("SSN") or Medicare health insurance claim ("HICN") numbers may only be used for purposes of compliance with Medicare, Medicaid, etc. Both Judges Shaughnessy and Pullan expressed concern about the possibility of other legitimate uses, e.g., subpoenaing medical records. Mr. Wikstrom suggested to state: "The SSN and HICN may be used only for the purposes of the action, including compliance with the Medicare, Medicaid, and SCHIP Extension Act of 2007, unless otherwise ordered by the Court." The committee voted unanimously to amend subparagraph (b)(3) as proposed by Mr. Wikstrom. Mr. Carney also proposed to revise subparagraph (a) to re-insert a citation to the Internal Revenue Code's definition of "physical injuries or physical sickness." Mr. Carney explained that questions have arisen as to the scope of the definition and therefore the scope of the Rule's application; specifically, whether Rule 26.2 covers wrongful death actions. Judge Pullan renewed his concerns about

citing the Internal Revenue Code in the rule. Judge Shaughnessy recommended that the committee note be revised to address questions about whether wrongful death actions or emotional distress type actions are covered, rather than changing the text of the rule. The committee agreed to include this explanation in the committee note and the motion to amend subparagraph (a) was withdrawn. The committee note will now make reference to the Internal Revenue Code and expressly clarify that Rule 26.2 covers wrongful death actions.

### **III. RULE 25. SUBSTITUTION OF PARTIES.**

Tim Shea reported that the proposed amendments to Rule 25 had been published for comment and that no comments were received. A motion to send amended Rule 25 to the Supreme Court for final action was made and approved by the committee.

### **IV. SMALL CLAIMS PROCEDURE RULE 3.**

Judge Baxter reported that the small claims subcommittee met and discussed the Small Claims Procedure Rule 3, including its history. The subcommittee proposed striking existing Rule 3 in its entirety and incorporating a provision that Civil Procedure Rule 4 will govern service of the small claims affidavit and summons. Ms. McIntosh pointed out that subparagraph (d) should not be stricken because it involves the obligation to serve parties with all court filings once the action has begun. Mr. Wikstrom also noted that subparagraph (b) should not be stricken because it contains time requirements that govern the proceeding going forward. Mr. Slauch suggested that the proposed language regarding Civil Procedure Rule 4 take the place of original subparagraph (a). The suggested revisions will be incorporated and discussed further at the next meeting.

### **V. RULE 105.**

Tim Shea explained that Utah Code Section 30-3-18 was amended during the legislative session to require "extraordinary circumstances" for waiving the 90-day waiting period in divorce proceedings. The committee voted to amend Rule 105, governing motions for shortening the 90-day waiting period, to include the same standard.

### **VI. PRIORITY OF PENDING TOPICS.**

The committee reviewed a list of open issues raised by members of the Bar, members of the judiciary and the public, and identified those items that warrant action and those that do not. The committee agreed unanimously to amend Rule 4(e)(1) following a suggestion by Judge Shaughnessy to require that a Summons be filed with the court as part of the required "proof of service." The committee also discussed a proposed amendment to Rule 7 to allow for combining a motion and memorandum in support into a single document. There was general conceptual

approval for this idea and some discussion as to whether an amendment could be coordinated with amendments to the local rules of practice for the Federal Rules of Civil Procedure. The committee also discussed the need for a *pro se* manual and the need to make the Frequently Asked Questions and Responses regarding the simplified rules of discovery easier to locate.

## **VII. ADJOURNMENT.**

The meeting adjourned at 5:42 p.m. The next meeting will be held on September 26, 2012 at 4:00 p.m. at the Administrative Office of the Courts.