

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE OF THE RULES OF CIVIL PROCEDURE

OCTOBER 24, 2012

PRESENT: Francis M. Wikstrom, Chair, Honorable Todd W. Shaughnessy, Honorable Derek P. Pullan, Honorable Kate Toomey, Francis J. Carney, W. Cullen Battle, Terrie T. McIntosh, Honorable John L. Baxter, Jonathan O. Hafen, David W. Scofield, Honorable James T. Blanch, Lincoln L. Davies

STAFF: Diane Abegglen, Sammi Anderson

EXCUSED: Trystan B. Smith, Leslie W. Slaugh, Robert J. Shelby, Barbara L. Townsend, Lori Woffinden, Professor David H. Moore, Tim Shea, Steven Marsden

GUESTS: Clark Sabey

I. MINUTES.

Mr. Wikstrom entertained comments from the Committee concerning the September 26, 2012 minutes. Mr. Carney noted a typographical error in Section VIII of the minutes. With that amendment, the minutes were unanimously approved by the Committee.

II. RULE 58A.

Mr. Sabey attended on behalf of the Rules of Appellate Procedure Committee and indicated that the Appellate Rules Committee would like to consider amending the appellate rules to resolve issues surrounding notice of entry of judgment and resulting issues resulting from a party's failure to receive notice. Mr. Wikstrom shared with the Committee that the Chair of the Appellate Rules Committee expressed the same sentiment to him. Mr. Davies provided research to the Committee indicating how other states have treated the issue. Mr. Davies' research shows that this issue is always (or virtually always) resolved in the Rules of Appellate Procedure. Mr. Battle indicated he would like to revisit the issue with the Appellate Rules subcommittee before going forward. Mr. Sabey suggested that subparagraph (d) probably requires amendment regardless of which Committee handles it; however, a decision will have to be reached as to which Committee takes on the revisions in subparagraph (h). Mr. Wikstrom asked the Appellate Rules Committee to propose something concrete in fairly short order so that the issue can be addressed as requested by the Supreme Court.

III. COURT GENERATED DEADLINE NOTICES TO PARTIES.

Judge Blanch led a discussion regarding his proposed revisions to the court-generated notices being sent to parties and counsel under the new rules of discovery. Judge Blanch described the revisions as changing the approach from a gentle advisory, inviting some attention, to the approach that these dates will govern unless the parties notify the court that the dates are wrong or stipulate to different dates under Rule 29. Judge Blanch feels that we should tell parties and counsel that the dates govern absent some corrective action. Judge Blanch proposed that his revised version serve as the notice. The committee discussed the timing and mechanism for making this recommendation. Judge Blanch moved the Committee for approval of the notice as revised and noted that the notice can be modified down the road if necessary. Mr. Hafen seconded the motion and the Committee unanimously approved.

In a discussion led by Judges Pullan and Shaughnessy, the Committee next discussed timing in general under the new rules. Mr. Hafen raised the issue of a summary judgment cut-off – a deadline not currently found within the new rules. The committee discussed the issue, including whether the place for a summary judgment cut-off is in connection with the certificate of readiness for trial (or an objection thereto). Judge Pullan advocated for an automated type approach, requiring both a certificate of readiness for trial and a summary judgment deadline to be 30 days after close of expert discovery. Mr. Wikstrom invited Mr. Hafen to propose a change to address this issue and Mr. Hafen agreed.

IV. FREQUENTLY ASKED QUESTIONS.

Question 1 – Monitoring Discovery Deadlines. The Committee approved the response as drafted.

Question 2 – Definition of “Damages” for Designation of a Discovery Tier. The Committee approved the response as drafted.

Question 3 – Discovery Tiers – Effect of Discovery Tier on Limiting the Judgment. The Committee approved the response as drafted, including all 3 subparts.

Question 4 – Depositions – Length of Depositions. The Committee approved the response as drafted.

Question 5 – Expert Discovery – Effect of Premature Disclosure of Expert Witnesses. The Committee determined that the question should be re-worked to make it consistent with the format of other FAQ's. The Committee approved the question and response subject to these non-substantive revisions.

Question 6 - Expert Discovery – Designation of Experts on Affirmative Defenses. The Committee approved this response as drafted.

Question 7 – Expert Discovery – Timing on election of report or depositions. The Committee will hold off on finalizing this FAQ and response until the related proposed amendment is effective.

Question 8 – Extraordinary Discovery – Reaching the Limits of Standard Discovery. The Committee determined that the question should be re-worked to make it consistent with the format of other FAQ's. The Committee approved the question and response subject to these non-substantive revisions.

V. ADJOURNMENT.

The meeting adjourned at 5:28 pm. The next meeting will be held on November 28, 2012 at 4:00 pm at the Administrative Office of the Courts.