

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE OF THE RULES OF CIVIL PROCEDURE

January 23, 2013

PRESENT: Francis M. Wikstrom, Chair, W. Cullen Battle, Judge John L. Baxter, James T. Blanch, Professor Lincoln Davies, Jonathan Hafen, Steven Marsden, Terrie T. McIntosh, Honorable David O. Nuffer, Honorable Derek Pullan, David W. Scofield, Leslie W. Slauch, Trystan B. Smith, Honorable Kate Toomey, Barbara L. Townsend

TELEPHONE: Honorable Lyle R. Anderson, Professor David H. Moore

STAFF: Tim Shea, Diane Abegglen

EXCUSED: Sammi Anderson, Janet H. Smith, Francis J. Carney

GUEST: Chief Justice Matthew B. Durrant, Debra Moore

I. RECOGNITION OF JUDGE DAVID NUFFER

Chief Justice Durrant thanked Judge Nuffer for ten years of service on the committee and presented him with a certificate of appreciation. Mr. Wikstrom added his thanks and noted Judge Nuffer's dedicated service and many contributions to the committee. Chief Justice Durrant thanked the committee members for their hard work.

II. MINUTES.

Mr. Wikstrom entertained comments from the committee concerning the November 28, 2012 minutes. The committee unanimously approved the minutes.

III. WRITS OF GARNISHMENT

Mr. Shea reported that Sen. Hillyard has filed legislation that will change the duration for a writ of continuing garnishment from 120 days to 12 months. There is a companion joint resolution of the legislature that removes the duration of the writ from Rule 64D. Mr. Shea said that the resolution is protected and that members should not distribute it.

Mr. Wikstrom raised the question of whether the Court has the sole power to determine the duration of the writ since writs are issued by the courts. Ms. McIntosh said that when the committee discussed the rule years ago the creditors wanted a

four-month duration because they were afraid only the first creditor would be paid. Mr. Slaugh said there may be a way to renew the writ rather than apply for a new one after the old writ expires. Mr. Wikstrom said that the committee would be willing to discuss the matter with Sen. Hillyard and consider whether to make appropriate amendments to the rule, and he asked Mr. Shea to convey to Rick Schwermer a summary of the committee's discussion.

IV. ABOTA JURY SUMMIT

Mr. Wikstrom said that the ABOTA Jury Summit would be held in Austin, TX on October 10. Judge Pullan said that he has agreed to present on the new rules of disclosure and discovery.

V. APPEALS

Mr. Wikstrom distributed a new paragraph (g) to Rule of Appellate Procedure 4 proposed by the appellate advisory committee that would allow the trial court judge to reinstate the time to appeal under certain conditions. He said the appellate committee had approved this amendment for comment earlier today. Mr. Shea distributed amendments to Rule of Civil Procedure 58A, which this committee has been working on. Mr. Shea said that the new URAP 4(g) would eliminate the need for the proposed URCP 58A(h), re-entry of judgment

Mr. Hafen moved to approve the proposed amendment to URCP 58A(d), but not proposed paragraph (h) nor the change in the title. Judge Toomey seconded the motion. The motion passed unanimously. Appellate Rule 4 and civil Rule 58A will be published for comment in tandem.

VI. CONSIDERATION OF COMMENTS ON PROPOSED RULES.

Tim Shea summarized proposed changes to Rule 3 of the Rules of Small Claims Procedure which would permit regular service and alternative service in small claims cases. Mr. Marsden moved to approve the amendments and recommend adoption to the Supreme Court. Mr. Slaugh seconded the motion. The motion passed unanimously.

VII. DISCOVERY TIER DATA

Ms. Moore said that about a week ago the e-filing interface had been modified to require the filer to designate a discovery tier for the case. If no tier is declared, the filing will bounce back. The change will apply to all case initiations. Ms. Moore did not know whether a defendant would have to declare a tier as part of a counter claim, but she will check.

VIII. NOTICE OF DEADLINES

Mr. Shea said that he had distributed an earlier draft of the notice of deadlines form and has incorporated some of the suggested changes. He has calculated the deadlines based on the amendments to Rule 26 approved this morning by the Supreme Court. The amendments will take effect April 1.

Mr. Hafen said that the notice should include the deadline for dispositive motions. The committee agreed that the notice should include only deadlines provided by rule, and Mr. Hafen volunteered to draft an appropriate rule amendment.

Mr. Hafen moved to remove the second sentence of the form and the word "otherwise" from the third sentence. Mr. Marsden seconded the motion. The motion passed unanimously. Ms. Moore will work with the programmers to include the amended notice in the district court case management system.

IX. EXPEDITED PROCEDURES FOR RESOLVING DISCOVERY ISSUES

Mr. Shea reported that the Judicial Council has adopted Rule 4-502, which makes the expedited process for discovery disputes, originally adopted by the Third District Court, applicable statewide. He said that Council would like that rule to be a temporary measure, until this committee can consider appropriate amendments to the Rules of Civil Procedure.

Mr. Wikstrom asked the judges for their experience with the local rules. Judge Toomey said that she has used the expedited process about 20 times and has asked for additional briefs only twice. She thought the process disposed of discovery disputes quickly and with appropriate outcomes. Judge Blanch said that he has a criminal calendar and has not used the process frequently, but he too thought that it is working as planned. Judge Pullan reported a decline in discovery motions; he thinks that the new rules are forcing the parties into more reasonable positions.

Mr. Hafen said that in his conversations a few lawyers complained of judges not acting quickly, but that most input has been favorable. Judge Toomey said that lawyers should simply call the judge if the judge has not scheduled a telephone conference within the time required. Sometimes a matter is simply not brought to the judge's attention.

The committee discussed whether to include a motion for extraordinary discovery or an objection to a subpoena. They decided to remove an objection to a

subpoena. Mr. Shea said that motions for extraordinary discovery were included in the Third District Court local rule on which this is based.

The committee discussed whether to add the expedited process to Rule 7 or Rule 37 and decided on the former.

The committee discussed whether the process should be an expedited process for resolving discovery disputes or an expedited preliminary process to see whether the dispute could be resolved before filing a discovery motion. Mr. Shea said the local rule was a pre-motion process, and this proposal is drafted using that model. Mr. Marsden suggested that the process should be a request for permission to file a discovery motion. Judge Toomey said she did not favor a "mini motion." Judge Pullan said that is how the current process is working. Mr. Slauch said the process should resolve the dispute, not be a preliminary step to a motion.

Mr. Shea will provide the committee with another draft at the next meeting.

X. PROOF OF ELECTRONIC SIGNATURE

Mr. Shea said that the presiding judge of the Third District Court has requested an amendment that would require a party relying on a physical representation of an electronic signature to assert that the person whose signature is represented did in fact sign the document. Mr. Shea proposed some language for the committee to consider. After discussion the committee concluded that the issue was not procedural. The matter might be appropriate for the evidence committee since the draft provides for authentication of an electronic signature.

XI. FAQs.

Mr. Wikstrom presented the next set of FAQs for publication on the court's webpage. Ms. McIntosh suggested adding the year to the April 1 reference since the Q & A might be on the webpage for a long time. Professor Davies suggested referring to the paragraph in Rule 26 that will include discovery of rebuttal expert opinions. Mr. Hafen moved to adopt the first two questions and answers under the first category. Mr. Marsden seconded the motion. The motion passed unanimously.

XII. ADJOURNMENT.

The meeting adjourned at 6:00 pm. The next meeting will be held on February 27, 2013 at 4:00 p.m. at the Administrative Office of the Courts.