

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE OF THE RULES OF CIVIL PROCEDURE

FEBRUARY 27, 2013

PRESENT: Honorable James T. Blanch, Acting Chair, Trystan B. Smith, Terrie T. McIntosh, Francis J. Carney, David W. Scofield, Lori Woffinden, Steve Marsden, Professor Lincoln Davies, W. Cullen Battle

TELEPHONE: Honorable Lyle R. Anderson, Honorable Derek Pullan,
Professor David Moore

STAFF: Tim Shea, Sammi Anderson, Diane Abegglen

EXCUSED: Francis M. Wikstrom, Chair, Jonathan O. Hafen, Leslie W. Slauch

GUESTS: Jonathan Grover, Clint Munns

I. APPROVAL OF MINUTES.

Judge Blanch entertained comments from the committee concerning the January 23, 2013 minutes. The committee unanimously approved the minutes.

II. RULE 58B. Satisfaction of Judgment.

Jonathan Grover and Clint Munns attended the meeting to request that the word "shall", rather than "may", be included in the first sentence of Rule 58B(a), and to explain the need for the proposed revision. Mr. Munns satisfied a judgment entered against him, but then experienced considerable delay before the judgment creditor filed a satisfaction of judgment. This delay ruined Mr. Munns's credit and ultimately damaged his overall farming operation. When Mr. Munns sought to hold the creditor accountable in court, the district court held that 58B(a) was permissive, not mandatory, so that the creditor was not required to file a satisfaction of judgment. Messrs. Grover and Munns believe the creditor should bear the burden of filing a satisfaction of judgment.

The committee expressed sympathy for Mr. Munns's situation and discussed what could be done. Judge Blanch suggested inserting a sentence requiring that a satisfaction of judgment be filed within 30 days if requested by a debtor, and leaving the word "may" in the first sentence. Mr. Carney confirmed that there is a form "Satisfaction of Judgment" available to filers. Mr. Scofield pointed out that there are many different issues codified in many different laws and many different avenues to address different situations. Mr. Scofield suggested hearing from different groups

before any proposed rule change. The committee discussed the issues surrounding judgments and their satisfaction in full.

A motion was made to include a sentence that "[a]t the request of the judgment debtor, an owner or owner's attorney shall file a satisfaction of judgment within 28 days, if the judgment has been paid in full." Seconded and approved by the committee. The proposed revision was sent for comment.

III. RULE 64D. Writ of Garnishment.

Mr. Shea led a discussion regarding a proposed change to 64D(1) regarding writs of continuing garnishment. Legislation to make the proposed change is pending and Mr. Shea opined that the change is sensible. A writ of continuing garnishment will now be good for 12 months (instead of 4), unless a second or subsequent writ of continuing garnishment is in place. The idea is to reduce the creditor's costs in collecting on a judgment, which would be passed on to the debtors and consumers. The committee unanimously approved the proposed change.

IV. SENATE JOINT RESOLUTION 14.

Messrs. Shea and Battle led a discussion regarding SJR 14. The joint resolution would impose a requirement for cities and municipalities, which are presently exempt from the bonding requirement, to post a bond or other security when appealing a judgment for any amounts in excess of \$5,000,000. Mr. Battle explained the rationale for the present city/municipality exemption. Discussion as to whether the committee would formally express its view on SJR 14 to the legislature. A motion to do so failed.

V. RULE 7.

Mr. Shea led the discussion regarding two proposed revisions to Rule 7. The first revision is to eliminate the necessity to file a separate motion. The committee discussed whether this should be optional or mandatory, tracking the language of the local federal rule. The consensus of the committee was to bring the rule into line with the federal local rule. Mr. Shea agreed to work on some language for the next meeting.

The second proposed revision relates to the expedited procedure for discovery motions, which currently resides in the Code of Judicial Administration. The proposal is to move it into the Rules of Civil Procedure. Mr. Marsden recommended shortening the length of the statement of issues and the time period for responding. Mr. Smith spoke about his experience with the procedure in his practice. His impression is that it is working quite well. No motion to shorten the response period was made. The committee discussed whether to impose a time limit as to when a ruling must or should be issued. This discussion was tabled, by motion, until more of the committee's judges were present to discuss such a change's impact.

VI. FAQ's.

FAQ 1 – Expert discovery – timing of disclosures, elections and extensions. This FAQ and Answer was approved for publication as written.

FAQ 2 – This FAQ and Answer was deleted as it has been negated by a recent amendment explaining rebuttal experts.

FAQ 3 – The committee decided that the answer is clear enough from the plain text of the rule, such that there is no need for a FAQ. The FAQ and Answer are deleted from the FAQ list.

FAQ 4 – Committee decided to approve the FAQ related to what constitutes a “brief summary” of the opinions. Motion to adopt as written, seconded and approved by the committee for publication.

VII. ADJOURNMENT.

The meeting adjourned at 6:04 pm. The next meeting will be held on March 27, 2013 at 4:00 p.m. at the Administrative Office of the Courts.