

next mtg - Jan 8th 4:00-6:00

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November 14, 1990

TO: MEMBERS, UTAH SUPREME COURT ADVISORY COMMITTEE ON CIVIL
PROCEDURE

Dear Advisory Committee Member:

The next meeting of the Supreme court Advisory Committee meeting will be held on Tuesday, November 20, 1990, beginning at 4 p.m., at the usual place -- the Administrative Office of the Courts, 230 S. 500 E., Suite 300, Salt Lake City, Utah. Please keep in mind that this meeting is to be held on Tuesday, rather than a Wednesday, to accommodate those of us who want to take off for Thanksgiving. Please arrive promptly at 4 p.m. so that we can begin on time. If you can't attend, please let me know so that we don't wait for you.

Our first item on the agenda will be to extend a belated welcome to James Soper, a new member of our committee who (through my mistake) did not receive notice of last month's meeting. Jim, as I indicated to you in a letter sent in September, is in charge of the Litigation Division of the Attorney General's office. We are grateful to have him as a member of our team.

I have enclosed for your review a copy of Jaryl Rencher's minutes from our meeting on October 17. For those of you who were not able to be there, Jaryl's minutes provide an excellent summary. Jaryl provides the committee with a valuable service in preparing these minutes in so detailed a fashion every month.

At our meeting on November 20, we will discuss the following items:

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1) We have a slight hitch in our now-approved draft of Rule 65B. Last month we approved a modification to the rule that would permit "any person" rather than "a private person" to seek extraordinary relief for "wrongful use of or failure to exercise public authority" under subsection (d)(1) of the rule. This change was made at the request of the Office of Legislative Council. The change was made subject to the concurrence of the Attorney General's office. After last month's meeting, I sent a letter to Jim Soper to clear the change with him, and I enclose both my letter and his response. These two letters should frame the issue for our discussion. I have also enclosed for your convenience pages 10 and 11 of our draft rule so that you can focus quickly upon the precise language of Rule 65B that we are dealing with. We invite Gay Taylor and anyone she wishes to designate to attend our meeting next Tuesday.

2) We will consider proposed Rule 63A, "Change of Judge as a Matter of Right" as re-drafted by David Isom. You will recall that at our last meeting, we discussed a number of changes that could be made to Terry Kogan's early draft of this rule, which was approved in concept by the Supreme Court. David Isom has done an excellent job in making sense out of our comments and suggestions. Please find enclosed his draft. This is an important item that the Supreme Court would like us to conclude quickly, so be prepared to make specific comments for final revision.

3) We will ask Sam Alba and the members of his subcommittee to report to us on their progress in reformulating Rule 56. This is an important project that we have not yet, as a committee, given our attention to. We look forward to hearing from Sam.

4) We will consider the need to change the provisions of Rule 35(a) relating to physical or mental examination of persons by professionals other than physicians. This is an issue that we briefly discussed a couple of years ago. Judge Murphy believes that we should make another effort to resolve the question. I have enclosed a copy of Judge Murphy's letter to me

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with its enclosed opinions.

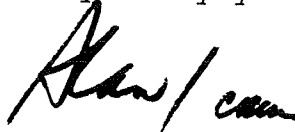
5) We will consider a proposal from the State Bar's Litigation Section for revision of discovery rules relating to videotaped depositions. Please find enclosed for your review a letter to me from Erik Strindberg with its enclosed draft rule change. Eric is, of course, invited to attend our meeting.

6) We will consider any changes that should be made to Rule 77(d) as the result of communications between Carlie Christensen and the Judicial Council. We invite Carlie to make a report on that rule at our meeting.

7) We will consider, and, with luck, give final approval to a new draft of Rule 17(d) in accordance with discussions at our meeting at the beginning of the summer. In my letter to you of September 12, 1990, I enclosed Terrie McIntosh's new draft to reflect the substance of our discussions about allowing judgments against associates' property.

I look forward to seeing all of you next Tuesday.

Very truly yours,



Alan L. Sullivan

ALS:crm

Encls

cc w/encls: Carlie Christensen, Esq.
Jaryl Rencher, Esq.
Gay Taylor, Esq.
Erik Strindberg, Esq.