

MINUTES

UTAH SUPREME COURT ADVISORY COMMITTEE ON THE RULES OF CIVIL PROCEDURE

Wednesday, September 26, 2007
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Francis M. Wikstrom, James T. Blanch, Terrie T. McIntosh, Leslie W. Slaugh, Judge Anthony W. Schofield, Cullen Battle, Barbara Townsend, Debora Threedy, Judge Derek Pullan, David W. Scofield, Judge R. Scott Waterfall, Jonathan Hafen, Janet H. Smith, Todd M. Shaughnessy

EXCUSED: Francis J. Carney, Judge Lyle R. Anderson, Judge David O. Nuffer, Thomas R. Lee, Lori Woffinden, Judge Anthony B. Quinn, Steven Marsden, Matty Branch, Trystan B. Smith

STAFF: Tim Shea

I. APPROVAL OF MINUTES.

Mr. Wikstrom called the meeting to order at 4:10 p.m., and entertained comments from the committee concerning the May 23, 2007 minutes. No comments were made and Mr. Wikstrom moved that the May 23, 2007 minutes be submitted. The motion was seconded by Mr. Hafen, and unanimously approved.

II. WELCOME TO 2007-2008 SEASON.

Mr. Wikstrom welcomed everyone to the first meeting of the 2007-2008 season. He advised the committee that he and Mr. Shea had met with the Supreme Court over the summer, and that the Court had approved all proposed rule changes submitted by the committee to date. Those rules will take effect November 1, 2007.

III. DISCOVERY SURVEY AND OVERALL EVALUATION OF URCP.

The committee received a discovery survey in its materials for today's meeting. Mr. Wikstrom stated that the survey came about because the Supreme Court had asked what attorneys thought of the requirements and standards set forth in new discovery rules.

Mr. Slaugh presented his impression of the general results of the discovery survey. He expressed his opinion that many attorneys do not like many things under new Rule 26, although they seem to universally favor the new limitation on interrogatories. He also commented that the questions in the survey may not have been specific enough to the new rule to obtain good

feedback. Ms. Threedy observed that it may take awhile for attorneys to become familiar with using the new rule.

Other committee members commented about the cost of discovery as impacting litigation and the ability of the public to pay for legal services. Judge Pullan noted that some good cases may be turned away from the system due to inability to afford attorney costs and/or attorneys' inability to perform the work vis a vis the amount of recovery involved. Judge Schofield stated that Judge Pullan has a discovery form that he uses for small cases, and Judge Pullan was asked to provide that form at the next meeting.

After extensive discussion it was agreed that this subject is worthy of further discussion, and Mr. Wikstrom agreed to place issues related to this general topic on the agenda at future meetings.

IV. E-FILING RULES.

Mr. Shea commented that the district courts are coming close to e-filing ability. He stated that the rule will not require e-filing at first, but that he hopes that attorneys who have the technical capability will choose to e-file. He stated that when a document is e-filed, the document will be available for reading online, just as in the federal system, and that attorneys and parties will be able to view those documents online without charge. The process will require that filing must be in pdf format, and that documents can be filed through a third-party vendor (*e.g.*, a law firm, an outside agent, etc.). Once a law firm meets the standard to qualify as a vendor, that law firm can file on behalf of all of its attorneys. There will be an electronic cover sheet and security checks to assure that the filer is properly approved. The former digital signature requirement has been abandoned due to cost, and only an electronic signature will be required. If a document is e-filed, the court will not retain any paper copies of that documents. Once a document is filed, the system will send a notice to everyone listed on the case who has provided an e-mail address.

Extensive discussion commenced on the effect of e-filing on service, proof of service, and other matters. The question was asked whether e-filing will take the place of service, and Mr. Shea responded that it will take the place of service, but not proof of service so that parties will still be required to attach a "certificate of service" to a document.

The question also arose as to whether the usual three-extra-days-for-mailing will apply to e-filed documents, and how that would work since e-filing can be done 24 hours per day, seven days per week. It was suggested that the rule include that an e-filed document would not be effectively filed until 8 a.m. on the next business day after filing. Various scenarios were suggested, but the committee eventually decided to think about this particular issue for another month before making a decision.

V. AMENDMENTS RECOGNIZING A SELF-AUTHENTICATING DECLARATION INSTEAD OF AN AFFIDAVIT.

The committee discussed Mr. Shea's proposed amendments to various rules which would reflect that a self-authenticating declaration may be used, as well as an affidavit. Mr. Shea stated that he had made this change in every rule where it might apply, so that those who are not aware of the new self-authenticating declaration rule would be made aware that this can be done.

After discussion, it was agreed that as long as the use of self-authenticating declarations is approved by and confirmed in Rule 11, this would have the same effect as including it in each separate rule where it might apply. Ms. Smith moved that the change be made in Rule 11 and Mr. Scofield seconded the motion, which was unanimously approved. Judge Schofield moved that the change *not* be made in any other rules. Mr. Wikstrom seconded that motion, which was unanimously approved.

VI. RULES 7 AND 101. LIMITS ON ORDER TO SHOW CAUSE.

Proposed amendments to Rule 7 and 101 were discussed. A motion was made, seconded, and approved to strike the word "probable" at line 15 of page 77 (Rule 7(b)(2)), and the word "probable" at line 53 of page 81 (Rule 101(i)).

VII. RULE 40. SCHEDULING AND POSTPONING A TRIAL.

The committee discussed an amendment to Rule 40. It was suggested that with all of the changes involved in the amendment, the committee effectively would be making a new rule. After discussion, Mr. Slaugh moved for deletion of the phrase "and the plaintiff shall" at line 3 on p. 83. The motion was seconded and unanimously approved. Judge Schofield moved to delete everything after the first sentence of part (b) on p. 83. Mr. Hafen seconded that motion and it was also unanimously approved.

VIII. URSCP 3.

Mr. Shea proposed an amendment to URSCP at (b) to add the sentence "If the affidavit is not timely served, the plaintiff may request a new trial date or the action is deemed dismissed without prejudice." Mr. Slaugh commented that he believes that this change should include a time frame for dismissal. After discussion, the committee agreed with Mr. Slaugh's comment. Mr. Shea will redraft the proposed amendment to include a time limit that would be consistent with Rule 4.

IX. ADJOURNMENT.

The meeting adjourned at 6:00 p.m. The next committee meeting will be held at 4:00 p.m. on Wednesday, October 24, 2007, at the Administrative Office of the Courts.