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October 2, 1990

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

Dear Advisory Committee Member:

The next meeting of the Supreme Court Advisory Committee will be held on Wednesday, October 17, beginning at 4 p.m. I apologize for cancelling our last meeting at the last minute, but it became clear that most of the members of our committee would be actively involved in the Utah Judicial Conference on that date. At any rate, I look forward to seeing you on October 17.

Since our last meeting, I have been in contact with Chief Justice Hall of the Utah Supreme Court about Rule 63 revisions. You will recall that our committee definitively rejected Jackson Howard's proposal for modifications to Rule 63 that would permit peremptory challenges of judges. You may also recall that Terry Kogan prepared an alternative modification, which he designated as Rule 63A, which would permit parties, by stipulation, to change the judge assigned to a case once during the course of the litigation. At our last meeting, the committee narrowly rejected this modification. In light of the close vote, I suggested that we approach the Court to obtain a sense of its feeling about this type of proposal.

I provided the Chief Justice and other members of the Court with a copy of Terry's draft. Last week, the Chief Justice reported back to me that the Court would be interested in adopting this type of rule. In effect, we have been asked by the Court to put this rule in final form and submit it for publication. We will naturally want to discuss this issue, along with all the others that I described in my last letter, on October 17. For those of you who may not have received it

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earlier this year, I have enclosed a copy of Terry Kogan's draft Rule 63A.

Again, I look forward to seeing you on October 17.

Very truly yours,



Alan L. Sullivan

ALS:crm

cc: Carlie Christensen, Esq. ✓  
Jaryl Rencher, Esq.  
John Fellows, Esq.

# DRAFT

## Rule 63A. Change of Judge as a Matter of Right By Consent of All Parties

(a) *Nature of Proceedings.* In any civil action pending in a trial court in this state, upon unanimous consent of all parties, said parties are entitled as a matter of right to one change of judge in the action. To invoke said entitlement, all parties shall jointly file with the Clerk of Court a "Notice of Change of Judge." The notice shall be signed by all parties and shall state the name of the judge to be changed. The notice shall neither specify grounds for the requested change nor be accompanied by any affidavit.

(b) *Time.* Failure to file a timely notice precludes a change of judge as a matter of right. The notice shall be filed not later than ten (10) days after service of a written order setting the action for status conference, pretrial conference, hearing on the first contested motion, or for trial, or not later than twenty (20) days after service of a written notice of assignment of the judge, whichever occurs first.

(c) *Waiver.* In instances in which a judge has been permanently assigned to a case, the parties waive their entitlement to change that judge as a matter of right by any party's knowingly participating before that judge in:

- (i) Any judicial proceeding which concerns the merits of the action and involves the consideration of evidence or of affidavits; or
- (ii) A pretrial conference; or
- (iii) The commencement of trial.

(d) *Assignment of Action.* After a Notice of Change of Judge is timely filed, the presiding judge shall immediately assign the matter to a new judge within that judicial district. Should there be no other available judge within the district, the presiding judge shall immediately notify the administrative director in writing and request that he obtain from the Chief Justice an order assigning the case to another judge.

(e) *Nondisclosure to Court.* No party shall communicate to the court, or cause another to communicate to the court, the fact of one party's seeking consent to a Notice of Change of Judge.

(f) *Rule 63 Unaffected.* Filing or failing to file a Notice of Change of Judge hereunder in no way affects a party's entitlement to proceed pursuant to Rule 63(b) concerning disqualification of a judge based on bias or prejudice.

Utah Supreme Court Advisory Committee  
on Civil Procedure

AGENDA

October 17, 1990

1. Welcome and approval of minutes
2. Reconsideration of proposed Rule 63A--change of judge as a matter of right by consent of all parties (Alan Sullivan and Terry Kogan)
3. Consideration of redraft of modifications to Rule 17(d) (Terrie McIntosh)
4. Consideration and approval of modifications to proposed Rule 65B--extraordinary writs (Alan Sullivan)
5. Consideration and approval of modifications to Rule 65A--injunctions (Alan Sullivan)
6. Report from subcommittee on changes to Rule 56--summary judgment (Sam Alba)
7. Report from subcommittee on changes to Rules 64A (prejudgment writs generally), 64B (replevin), and 64C (attachment) (Brad Baldwin)