

Agenda

Advisory Committee on Rules of Civil Procedure

February 24, 2000
4:00 to 6:00 p.m.

Administrative Office of the Courts
Scott M. Matheson Courthouse
450 South State Street
Council Room, Suite N31

Introduction of new members	Fran Wikstrom
Approval of minutes	Fran Wikstrom
ORS request	Karma Dixon
Rule 4. Service	Peggy Gentles Perrin Love Todd Shaughnessy
Serving papers by fax	Tom Karrenberg
Court reporter inquiries	Tim Shea
Simplified rules of procedure for small claims cases	Judge Quinn
Subpoena form	Peggy Gentles
Rule 10. Form of pleadings and other papers	Peggy Gentles

Meeting Schedule

March 22
April 26
May 24
September 27
October 25
November 29 (5th Wednesday)
December: No meeting

MINUTES

Utah Supreme Court Advisory Committee on the Rules of Civil Procedure

**Thursday, February 24, 2000
Administrative Office of the Courts**

Francis M. Wikstrom, Presiding

PRESENT: Honorable Ronald N. Boyce, Glenn Hanni, Thomas Karrenberg, Thomas Lee, Virginia S. Smith, Cullen Battle

EXCUSED: Mary Anne Q. Wood, Honorable K. L. McIff, Honorable Darwin C. Hansen, Paula Carr, Honorable Anthony B. Quinn

STAFF: Peggy Gentles, Marilyn Branch, James Blanch

GUEST: Karma Dixon

I. WELCOME AND APPROVAL OF MINUTES.

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. Mr. Wikstrom announced the impending appointment of Thomas Lee and Deborah Threedy to the Committee. Tom Karrenberg moved to approve the minutes from the January 26, 2000, meeting. Glenn Hanni seconded the motion. The minutes were approved without amendment.

II. ORS REQUEST.

Karma Dixon, from the Office of Recovery Services, addressed the Committee and requested that genetic testing in paternity cases under Utah Code Ann. §§ 78-45-a-7 and -10 be exempted from the expert report requirement of Rule 26. Ms. Dixon explained that requiring expert reports to accompany every genetic test would be extremely burdensome to the ORS because most cases they handle involve a genetic test. Ms. Dixon stated that the ORS would like Rule 26 to state that in cases where no objection is made to the result of the test, no additional information beyond that required in the statutorily mandated affidavit from the genetic testing laboratory is necessary to satisfy the expert disclosure requirements.

Cullen Battle inquired whether paternity cases should be considered as a category for wholesale exclusion from the new expert disclosure rules. The Committee recognized that this issue had not been discussed during the amendments to the discovery rules.

Ms. Dixon stated that paternity issues come up in almost every case in which the OCS is involved and that parties rarely object to the results. Ms. Dixon noted that the statutes relating to genetic testing already establish a procedure to permit objections to genetic test results.

Tom Karrenberg stated that the statutory requirements for an affidavit setting forth genetic test results would cover most of the requirements of the expert disclosure rule. Ms. Dixon replied that the Rule 26(a)(2) requirement of setting forth qualifications of experts would still be very burdensome.

Judge Boyce expressed concern over the factual question of whether the genetic tests are sufficiently accurate to justify excusing them from the requirements of the expert disclosure rule.

Cullen Battle stated that the Committee had already considered and decided that divorce cases should be included under the new discovery rules. Mr. Battle reiterated that the Committee should consider a categorical exemption cases involving the OCS from the scope of the new rules.

Thomas Lee suggested that the Rule could be amended to provide that the expert disclosure requirement would only apply when objection is made to the results of the test. Ms. Dixon agreed that this would be an acceptable approach.

Mr. Wikstrom stated that the statutory provisions expressly addressing genetic testing affidavits probably trump the general provisions of Rule 26. Judge Boyce disagreed but stated that the Committee could solve the problem by interpreting the rule in a note to state that affidavits of genetic testing that comply with the statute will be deemed to comply with the requirements of Rule 26(a)(2) unless a party objects under the rule. Judge Boyce moved to include a sentence in the Committee note stating as such. Cullen Battle seconded the motion. The Committee approved language to that effect to be included in the Advisory Committee note for Rule 26. The language will be published for public comment and approval by the Supreme Court.

Ms. Dixon also stated that delays associated with obtaining information from other states in UIFSA cases will prevent compliance with the timeframes set forth in the discovery rules. She proposed that UIFSA cases be exempted from the standard discovery timeframes.

Judge Boyce noted that if defaults are entered in such cases due to failures of other states timely to provide information, there is not a problem that raises concerns for the State of Utah.

The Committee elected not to take action on the UIFSA issue but advised Ms. Dixon that she can return to address the matter further if problems emerge in practice.

III. RULE 4. SERVICE.

Peggy Gentles reported that she has spoken with people associated with the civil rulemaking process in Montana, Oregon, Wyoming, and New Mexico regarding their experience with waiver or service by mail. None reported any practical problems with the approaches they had chosen to take.

Mr. Wikstrom stated that discussion of the issue should be delayed until a future meeting at which more Committee members are present. Peggy Gentles will inquire of individuals in South Dakota concerning their experience with non-traditional service. She will also attempt to ascertain the number of states that have moved to an approach permitting waiver or service by mail.

IV. SERVING PAPERS BY FAX.

Tom Karrenberg explained the proposed amendment to Rule 5(b)(A) contained in his memorandum to the Committee dated February 22, 2000.

Mr. Wikstrom observed that the proposed additional language in Rule 5 should be amended to complete the sentence. Mr. Karrenberg stated that he still needs to prepare an Advisory Committee note explaining certain aspects of the rule. Mr. Karrenberg moved to amend the language accordingly and approve it as amended. Cullen Battle seconded the motion, which passed unanimously.

Mr. Karrenberg then explained his proposed amendment to Rule 5(b)(B) requiring that service be made within "normal business hours" to be effective as of that day. Mr. Karrenberg stated that he would include in proposed Committee note that "normal business hours" means 8:00 a.m. to 5:00 p.m. Mr. Karrenberg moved to approve the amended language to Rule 5(b)(B). Glenn Hanni seconded the motion. It passed unanimously. The Committee will consider the Advisory Committee note at the next meeting.

V. COURT REPORTER INQUIRIES.

Mr. Wikstrom explained the concerns regarding non-stenographic means of recording depositions as outlined in Tim Shea's memorandum dated January 28, 2000. The Committee will consider the issue further at the next meeting.

VI. SUBPOENA FORM.

Peggy Gentles explained a proposal by Judge Mower to amend the approved subpoena form to state that if payment for witness fees is not tendered with the subpoena, the witness need not respond to the subpoena. Tom Karrenberg moved to approve the proposed amendment the form, and Virginia Smith seconded the motion. The motion passed unanimously. The change to the form will be published for comment.

VII. SIMPLIFIED RULES OF PROCEDURE AND EVIDENCE FOR SMALL CLAIMS CASES.

Peggy Gentles announced that a subcommittee has been formed to address the need for small claims rules in the wake of the Kawamoto case. The subcommittee is chaired by Judge Quinn and includes Paula Carr, Leslie Slaugh, Judge Elayne Storrs, John Mullen, and Scott Sabey.

Judge Quinn will report on the sub-committee's progress at the next meeting.

VIII. RULE 10. FORM OF PLEADINGS AND OTHER PAPERS.

Peggy Gentles explained a proposed amendment to Rule 10 to include a requirement that case captions include the name of the commissioner to whom the case is assigned, if applicable. Tom Karrenberg moved to amend the rule accordingly. Glenn Hanni seconded the motion. The motion passed unanimously.

IX. ADJOURNMENT.

Mr. Wikstrom adjourned the meeting at 5:30 p.m. The next meeting of the Committee will be held on Wednesday, March 22, at the Administrative Office of the Courts.