

Agenda

Advisory Committee on Rules of Civil Procedure

March 22, 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
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 Peggy Gentles
Rule 54(e). Prejudgment interest	Peggy Gentles
Rule 26(i) and 30(f). Filing Deposition Transcripts	Tim Shea
Rule 63A. Change of Judge upon Remand after Appeal	Tom Karrenberg

Meeting Schedule

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

Wednesday, March 22, 2000
Administrative Office of the Courts

Francis M. Wikstrom, Presiding

PRESENT: Mary Anne Q. Wood, Terrie T. McIntosh, Honorable Ronald N. Boyce, Thomas Karrenberg, Thomas Lee, Todd M. Shaughnessy, Leslie W. Slaugh, Cullen Battle

EXCUSED: James R. Soper, Honorable K. L. McIff, Deborah Threedy, Honorable Anthony B. Quinn, Honorable Darwin C. Hansen

STAFF: Tim Shea, Peggy Gentles, Marilyn Branch, James Blanch

GUEST: Mary Quinn

I. WELCOME AND INTRODUCTION OF NEW MEMBERS.

Committee Chairman Francis M. Wikstrom called the meeting to order at 4:00 p.m. Mr. Wikstrom announced the formal appointment of new committee members Thomas Lee and Deborah Threedy.

II. APPROVAL OF MINUTES.

The minutes of the February 24, 2000 meeting were reviewed. Thomas Karrenberg moved that the minutes be approved. Todd Shaughnessy seconded the motion, and the minutes were approved without amendment.

III. RULE 4. SERVICE.

Peggy Gentles reported on the research she had done on approaches taken by various states on service by mail and waiver of service issues. That research is described in Ms. Gentles' memorandum to the Committee dated March 14, 2000.

Mr. Wikstrom opened discussion regarding what changes, if any, the Committee feels should be made to Rule 4. Leslie Slaugh inquired whether the proposed rule change would require service to be made on someone actually authorized by the defendant to receive service. Thomas Lee similarly inquired whether registered or certified mail to a receptionist of a corporation would be adequate service on the corporation. Judge Boyce stated that the rule would not permit a default to be taken following service by mail on an unauthorized recipient but

observed that many defendants would nevertheless respond to such service, thus achieving the rule's objectives.

Mary Anne Wood stated that she was opposed to permitting service by mail. Mr. Wikstrom reiterated that the rule would require service by certified mail on someone actually authorized to accept service. Otherwise, no default would be permitted. Ms. Wood stated that this would lessen her concerns.

Mr. Wikstrom inquired whether registered mail, as opposed to certified mail, should be required. Judge Boyce stated that registered mail would be excessively cumbersome relative to certified mail, without a corresponding benefit.

Leslie Slaugh stated his opinion that the service by mail rule should provide that service is effective only if signed by the actual defendant or the defendant's registered agent. Mr. Slaugh stated that a plaintiff serving by mail should bear the risk of not being able to obtain a default if the person signing the mail receipt turns out to be unauthorized. The Committee approved language for the amendment to Rule 4 providing that service by mail is valid only if signed for by someone upon whom personal service would be effective.

Judge Boyce stated that permitting service by mail simply expands the options of litigants and could effect cost savings when service is made on out-of-state defendants.

Todd Shaughnessy inquired whether courts of other states would accord full faith and credit to judgments obtained in Utah following service by mail. Mr. Lee stated that his research suggests that constitutional arguments attacking such judgments in other states would likely be ineffective.

Mr. Shaughnessy inquired how permitting service by mail would affect the requirement for endorsing the process. Mr. Battle responded that permitting service by mail would probably require the elimination of the endorsement requirement altogether.

The Committee developed proposed language for Rule 4(f) stating that service can be made by mail "or courier" to make clear that service by FedEx or similar service constitutes valid service by mail.

Mr. Wikstrom requested the Committee to give its consensus regarding how Rule 4 should be amended. Additional concerns were raised regarding whether the language permitting service by "courier" should be clarified or further defined to specify that commercial services such as FedEx are what is intended, as opposed to less reputable services. The majority of the Committee stated that service by courier should be permitted. Judge Boyce observed that the definitional problem could be minimized by restricting a plaintiff's right to take a default to situations where the service has been personally delivered to and signed for by the defendant. The majority of the Committee approved language for Rule 4(f) clarifying the majority view on permitting service by courier.

Mary Anne Wood inquired whether the amended Rule will make it sufficiently clear that service by mail directly upon a person of unsound mind is not effective. Judge Boyce responded

that this issue is clear enough under the amended rule and that it should not be made more complicated and convoluted. Peggy Gentles will attempt to draft language addressing this concern and otherwise implementing the consensus of the Committee for consideration at a future meeting. Ms. Gentles will prepare alternative approaches to service on persons of unsound mind for further review and discussion.

Todd Shaughnessy explained the proposed change in sub-paragraph (i), simplifying the proof of service requirement, and subsection (k), eliminating the endorsement requirement. The Committee approved these changes.

The Committee agreed that language should be included in the rule permitting waiver of service as an alternative when the defendant agrees to waive. The Committee agreed that an official form for an affidavit of service should be included with the rule similar to the form included with the federal rule. The Committee also agreed that the rule should state that an affidavit of service should include the "date, place, and manner of service."

IV. SERVICE OF PAPERS BY FAX.

Mr. Wikstrom inquired whether Mr. Karrenberg's proposed amendment to Rule 5, contained in his memorandum dated February 25, 2000, should include language clarifying the effect of service by private courier. The Committee agreed to strike out the final sentence of the first paragraph of the Advisory Committee Note. Todd Shaughnessy moved to approve the amendment to Rule 5 with that change. The motion was seconded, and it passed unanimously.

V. COURT REPORTER INQUIRIES.

Tim Shea explained a request by the Utah Court Reporter's Association requesting amendments to Rules 28 and 32(c) requiring that transcripts of videotaped and audiotaped depositions be prepared by certified court reporters. These proposals are outlined in Mr. Shea's memorandum to the Committee dated January 28, 2000.

Mr. Shea introduced Mary Quinn, president-elect of the Utah Court Reporters Association, who also distributed a memorandum to the Committee explaining the proposals. Ms. Quinn stated that her greatest concern is to ensure that when a deposition is transcribed stenographically, the transcript is prepared by a certified court reporter to ensure impartiality. The Committee agreed to implement such a change. Tim Shea will draft proposed language to that effect for consideration at a future meeting.

As to the proposal that transcripts of audio and video tapes of depositions be prepared by certified court reporters, the Committee concluded that such a change was unnecessary because the special skills of a court reporter are unnecessary to ensure accuracy in such circumstances.

VI. SMALL CLAIMS RULES UPDATE.

The subcommittee has decided to draft a set of rules to govern practice and procedure in small claims court, which they will address further at their next meeting.

VII. ADJOURNMENT.

Mr. Wikstrom adjourned the meeting at 6:05 p.m. The next meeting of the Committee will be held on Wednesday, April 19, 2000, at the Administrative Office of the Courts.